



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 s. 440.49, F.S., to conform cross references;
81 | amending s. 440.491, F.S.; providing training and
82 | education requirements and benefits relating to
83 | reemployment of injured workers; providing for rules;
84 | amending s. 440.525, F.S.; providing for audits,



85 examinations, and investigations of claims-handling
86 entities; providing penalties; providing for rules;
87 amending s. 627.162, F.S.; revising delinquency and
88 collection fee for late payment of premium installments;
89 amending s. 627.311, F.S.; requiring participation in
90 safety programs; providing for an additional subplan
91 within the joint underwriting plan for workers'
92 compensation insurance; providing for rates, surcharges,
93 and assessments; limiting assessment powers; amending s.
94 921.0022, F.S.; revising the offense severity ranking
95 chart to reflect changes in penalties under the act;
96 requiring a report to the Legislature from the Department
97 of Financial Services regarding provisions of law relating
98 to enforcement; amending ss. 946.523 and 985.315, F.S.,
99 to conform cross references; repealing s. 440.1925, F.S.,
100 relating to procedure for resolving maximum medical
101 improvement or permanent impairment disputes; providing
102 that amendments to ss. 440.02 and 440.15, F.S., do not
103 affect certain disability, determination, and benefits;
104 providing effective dates.

105
106 Be It Enacted by the Legislature of the State of Florida:

107
108 Section 1. Effective upon this act becoming a law,
109 Subsections (1), (15), (29), (38), (40), (41), and (42) of
110 section 440.02, Florida Statutes, are amended to read:



111 440.02 Definitions.-- When used in this chapter, unless
112 the context clearly requires otherwise, the following terms
113 shall have the following meanings:

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

137 (15)(a) "Employee" means any person engaged in any
138 employment under any appointment or contract of hire or



139 apprenticeship, express or implied, oral or written, whether
140 lawfully or unlawfully employed, and includes, but is not
141 limited to, aliens and minors.

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

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

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

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

160
161 Services are presumed to have been rendered to the corporation
162 if the officer is compensated by other than dividends upon
163 shares of stock of the corporation which the officer owns.

164 (c)~~1~~. "Employee" includes a sole proprietor or a partner
165 who devotes full time to the proprietorship or partnership and,
166 except as provided in this paragraph, elects to be included in



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

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

187 (d) "Employee" does not include:

188 1. An independent contractor, if:

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

192 b. The independent contractor holds or has applied for a
193 federal employer identification number, unless the independent
194 contractor is a sole proprietor who is not required to obtain a



195 federal employer identification number under state or federal
196 requirements;

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

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

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

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

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

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

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

217

218 However, the determination as to whether an individual included
219 in the Standard Industrial Classification Manual of 1987,
220 Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782,
221 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449,
222 or a newspaper delivery person, is an independent contractor is



223 governed not by the criteria in this paragraph but by common-law
224 principles, giving due consideration to the business activity of
225 the individual. ~~Notwithstanding the provisions of this paragraph~~
226 ~~or any other provision of this chapter, with respect to any~~
227 ~~commercial building project estimated to be valued at \$250,000~~
228 ~~or greater, a person who is actively engaged in the construction~~
229 ~~industry is not an independent contractor and is either an~~
230 ~~employer or an employee who may not be exempt from the coverage~~
231 ~~requirements of this chapter.~~

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

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

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



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

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

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

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

271 7. Any officer of a corporation who elects to be exempt
272 from this chapter.

273 8. A sole proprietor or officer of a corporation who
274 actively engages in the construction industry, and a partner in
275 a partnership that is actively engaged in the construction
276 industry, who elects to be exempt from the provisions of this
277 chapter. Such sole proprietor, officer, or partner is not an



278 employee for any reason until the notice of revocation of
279 election filed pursuant to s. 440.05 is effective.

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

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

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



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

315 (38) "Catastrophic injury" means a permanent impairment
 316 constituted by the loss of both hands, both arms, both feet,
 317 both legs, or both eyes, or any two thereof, or paraplegia or
 318 quadriplegia.÷

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

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

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

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

325 ~~2. Severe communication disturbances;~~

326 ~~3. Severe complex integrated disturbances of cerebral~~
 327 ~~function;~~

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

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



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

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

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

343 (40) "Statement," for the purposes of ss. 440.105 and
344 440.106, shall include the exact fraud statement language in s.
345 440.105(7). This requirement includes, but is not limited to,
346 any notice, representation, statement, proof of injury, bill for
347 services, diagnosis, prescription, hospital or doctor record, X
348 ray, test result, or other evidence of loss, injury, or expense.

349 (41) "Specificity" means information on the petition for
350 benefits sufficient to put the employer or carrier on notice of
351 the exact statutory classification and outstanding time period
352 of benefits being requested and includes a detailed explanation
353 of any benefits received that should be increased, decreased,
354 changed, or otherwise modified. If the petition is for medical
355 benefits, the information shall include specific details as to
356 why such benefits are being requested, why such benefits are
357 medically necessary, and why current treatment, if any, is not
358 sufficient. Any petition requesting alternate or other medical
359 care, including, but not limited to, petitions requesting



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

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

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

381 440.02 Definitions.--When used in this chapter, unless the
382 context clearly requires otherwise, the following terms shall
383 have the following meanings:

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



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

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

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

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

411 2. As to officers of a corporation who are ~~actively~~
412 engaged in the construction industry, no more than three
413 officers of a corporation or of any group of affiliated
414 corporations may elect to be exempt from this chapter by filing
415 written notice of the election with the department as provided



416 in s. 440.05. Officers must be shareholders, each owning at
417 least 10 percent of the stock of such corporation and listed as
418 an officer of such corporation with the Division of Corporations
419 of the Department of State, in order to elect exemptions under
420 this chapter. For purposes of this subparagraph, the term
421 "affiliated" means and includes one or more corporations or
422 entities, any one of which is a corporation engaged in the
423 construction industry, under the same or substantially the same
424 control of a group of business entities which are connected or
425 associated so that one entity controls or has the power to
426 control each of the other business entities. The term
427 "affiliated" includes, but is not limited to, the officers,
428 directors, executives, shareholders active in management,
429 employees, and agents of the affiliated corporation. The
430 ownership by one business entity of a controlling interest in
431 another business entity or a pooling of equipment or income
432 among business entities shall be prima facie evidence that one
433 business is affiliated with the other.

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

437

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

441 (c) "Employee" includes:

442 1. A sole proprietor or a partner who is not engaged in
443 the construction industry, devotes full time to the



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

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

466 3. An independent contractor working or performing
467 services in the construction industry.

468 4. A sole proprietor who engages in the construction
469 industry and a partner or partnership that is engaged in the
470 construction industry.

471 (d) "Employee" does not include:



472 1. An independent contractor who is not engaged in the
473 construction industry., ~~if:~~
474 a. In order to meet the definition of independent
475 contractor, at least four of the following criteria must be met:
476 (I) The independent contractor maintains a separate
477 business with his or her own work facility, truck, equipment,
478 materials, or similar accommodations;
479 (II) The independent contractor holds or has applied for a
480 federal employer identification number, unless the independent
481 contractor is a sole proprietor who is not required to obtain a
482 federal employer identification number under state or federal
483 regulations;
484 (III) The independent contractor receives compensation for
485 services rendered or work performed and such compensation is
486 paid to a business rather than to an individual;
487 (IV) The independent contractor holds one or more bank
488 accounts in the name of the business entity for purposes of
489 paying business expenses or other expenses related to services
490 rendered or work performed for compensation;
491 (V) The independent contractor performs work or is able to
492 perform work for any entity in addition to or besides the
493 employer at his or her own election without the necessity of
494 completing an employment application or process; or
495 (VI) The independent contractor receives compensation for
496 work or services rendered on a competitive-bid basis or
497 completion of a task or a set of tasks as defined by a
498 contractual agreement, unless such contractual agreement
499 expressly states that an employment relationship exists. The



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

503 b. If four of the criteria listed in sub-subparagraph a.
504 do not exist, an individual may still be presumed to be an
505 independent contractor and not an employee based on full
506 consideration of the nature of the individual situation with
507 regard to satisfying any of the following conditions:

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

511 (II) The independent contractor incurs the principal
512 expenses related to the service or work that he or she performs
513 or agrees to perform.

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

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

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

522 (VI) The independent contractor has continuing or
523 recurring business liabilities or obligations.

524 (VII) The success or failure of the independent
525 contractor's business depends on the relationship of business
526 receipts to expenditures. ~~The independent contractor holds or~~
527 ~~has applied for a federal employer identification number, unless~~



528 ~~the independent contractor is a sole proprietor who is not~~
529 ~~required to obtain a federal employer identification number~~
530 ~~under state or federal requirements;~~

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

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

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

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

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

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

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

555



556 ~~However, the determination as to whether an individual included~~
557 ~~in the Standard Industrial Classification Manual of 1987,~~
558 ~~Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782,~~
559 ~~0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449,~~
560 ~~or a newspaper delivery person, is an independent contractor is~~
561 ~~governed not by the criteria in this paragraph but by common-law~~
562 ~~principles, giving due consideration to the business activity of~~
563 ~~the individual.~~

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

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

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



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

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

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

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

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

608 8. ~~An a sole proprietor or officer of a corporation who~~
609 ~~actively engages in the construction industry, and a partner in~~



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

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

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

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



638 a sports official as required by the employing school board or
639 who serves as a sports official as part of his or her
640 responsibilities during normal school hours.

641 12. Medicaid-enrolled clients under chapter 393 who are
642 excluded from the definition of employment under s.
643 443.036(21)(d)5. and served by Adult Day Training Services under
644 the Home and Community-Based Medicaid Waiver program in a
645 sheltered workshop setting licensed by the United States
646 Department of Labor for the purpose of training and earning less
647 than the federal hourly minimum wage.

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

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



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

671 Section 3. Effective January 1, 2004, subsections (3),
672 (4), (6), (10), (11), and (12) of section 440.05, Florida
673 Statutes, are amended, present subsection (13) is renumbered as
674 subsection (11) and amended, and new subsections (12), (13), and
675 (14) are added to said section, to read:

676 440.05 Election of exemption; revocation of election;
677 notice; certification.--

678 (3) Each ~~sole proprietor, partner, or~~ officer of a
679 corporation who is ~~actively~~ engaged in the construction industry
680 and who elects an exemption from this chapter or who, after
681 electing such exemption, revokes that exemption, must mail a
682 written notice to such effect to the department on a form
683 prescribed by the department. The notice of election to be
684 exempt from the provisions of this chapter must be notarized and
685 under oath. The notice of election to be exempt which is
686 submitted to the department by the ~~sole proprietor, partner, or~~
687 officer of a corporation who is allowed to claim an exemption as
688 provided by this chapter must list the name, federal tax
689 identification number, social security number, all certified or
690 registered licenses issued pursuant to chapter 489 held by the
691 person seeking the exemption, a copy of relevant documentation
692 as to employment status filed with the Internal Revenue Service



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



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

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



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

769 (10) Each ~~sole proprietor, partner, or~~ officer of a
770 corporation who is actively engaged in the construction industry
771 and who elects an exemption from this chapter shall maintain
772 business records as specified by the division by rule, which
773 rules must include the provision that any corporation with
774 exempt officers ~~and any partnership~~ actively engaged in the
775 construction industry ~~with exempt partners~~ must maintain written



776 statements of those exempted persons affirmatively acknowledging
777 each such individual's exempt status.

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

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

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

790

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

802 ~~(12) For those sole proprietors or partners that have not~~
803 ~~been in business long enough to provide the information required~~



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

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



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

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

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

851 Section 4. Section 440.06, Florida Statutes, is amended to
852 read:

853 440.06 Failure to secure compensation; effect.--Every
854 employer who fails to secure the payment of compensation, as
855 provided in s. 440.10, by failing to meet the requirements of
856 ~~under this chapter as provided in s. 440.38~~ may not, in any suit
857 brought against him or her by an employee subject to this
858 chapter to recover damages for injury or death, defend such a



859 suit on the grounds that the injury was caused by the negligence
860 of a fellow servant, that the employee assumed the risk of his
861 or her employment, or that the injury was due to the comparative
862 negligence of the employee.

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

865 440.077 When a corporate ~~sole proprietor, partner, or~~
866 ~~officer~~ rejects chapter, effect.--An A sole proprietor, partner,
867 ~~or~~ officer of a corporation who is permitted to elect an
868 exemption under this chapter ~~actively engaged in the~~
869 ~~construction industry~~ and who elects to be exempt from the
870 provisions of this chapter may not recover benefits under this
871 chapter.

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

875 440.09 Coverage.--

876 (1) The employer must ~~shall~~ pay compensation or furnish
877 benefits required by this chapter if the employee suffers an
878 accidental compensable injury or death arising out of work
879 performed in the course and the scope of employment. The injury,
880 its occupational cause, and any resulting manifestations or
881 disability must ~~shall~~ be established to a reasonable degree of
882 medical certainty, based on and by objective relevant medical
883 findings, and the accidental compensable injury must be the
884 major contributing cause of any resulting injuries. For purposes
885 of this section, "major contributing cause" means the cause
886 which is more than 50 percent responsible for the injury as



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

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

911 (b) If an injury arising out of and in the course of
912 employment combines with a preexisting disease or condition to
913 cause or prolong disability or need for treatment, the employer
914 must pay compensation or benefits required by this chapter only



915 to the extent that the injury arising out of and in the course
916 of employment is and remains more than 50 percent responsible
917 for the injury as compared to all other causes combined and
918 thereafter remains the major contributing cause of the
919 disability or need for treatment. Major contributing cause must
920 be demonstrated by medical evidence only.

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

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

935 (4)(a) An employee shall not be entitled to compensation or
936 benefits under this chapter if any judge of compensation claims,
937 administrative law judge, court, or jury convened in this state
938 determines that the employee has knowingly or intentionally
939 engaged in any of the acts described in s. 440.105 or any
940 criminal act for the purpose of securing workers' compensation
941 benefits. For purposes of this section, the term "intentional"
942 shall include, but is not limited to, pleas of guilty or nolo



943 contendere in criminal matters. This section shall apply to
944 accidents, regardless of the date of the accident. For injuries
945 occurring prior to January 1, 1994, this section shall pertain
946 to the acts of the employee described in s. 440.105 or criminal
947 activities occurring subsequent to January 1, 1994.

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

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

958 (7)

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

969 Section 7. Section 440.093, Florida Statutes, is created
970 to read:



971 440.093 Mental and nervous injuries.--
972 (1) A mental or nervous injury due to stress, fright, or
973 excitement only is not an injury by accident arising out of the
974 employment. Nothing in this section shall be construed to allow
975 for the payment of benefits under this chapter for mental or
976 nervous injuries without an accompanying physical injury
977 requiring medical treatment. A physical injury resulting from
978 mental or nervous injuries unaccompanied by physical trauma
979 requiring medical treatment shall not be compensable under this
980 chapter.

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



999 (3) Subject to the payment of permanent benefits under s.
 1000 440.15, in no event shall benefits for a compensable mental or
 1001 nervous injury be paid for more than 3 months after the date of
 1002 maximum medical improvement for the injured employee's physical
 1003 injury or injuries, which shall be included in the period of 104
 1004 weeks as provided in s. 440.15(2) and (4). Mental or nervous
 1005 injuries are compensable only in accordance with the terms of
 1006 this section.

1007 Section 8. Effective January 1, 2004, subsection (1) of
 1008 section 440.10, Florida Statutes, is amended to read:

1009 440.10 Liability for compensation.--

1010 (1)(a) Every employer coming within the provisions of this
 1011 ~~chapter, including any brought within the chapter by waiver of~~
 1012 ~~exclusion or of exemption,~~ shall be liable for, and shall
 1013 secure, the payment to his or her employees, or any physician,
 1014 surgeon, or pharmacist providing services under the provisions
 1015 of s. 440.13, of the compensation payable under ss. 440.13,
 1016 440.15, and 440.16. Any contractor or subcontractor who engages
 1017 in any public or private construction in the state shall secure
 1018 and maintain compensation for his or her employees under this
 1019 chapter as provided in s. 440.38.

1020 (b) In case a contractor sublets any part or parts of his
 1021 or her contract work to a subcontractor or subcontractors, all
 1022 of the employees of such contractor and subcontractor or
 1023 subcontractors engaged on such contract work shall be deemed to
 1024 be employed in one and the same business or establishment, + and
 1025 the contractor shall be liable for, and shall secure, the



1026 payment of compensation to all such employees, except to
 1027 employees of a subcontractor who has secured such payment.

1028 (c) A contractor shall ~~may~~ require a subcontractor to
 1029 provide evidence of workers' compensation insurance ~~or a copy of~~
 1030 ~~his or her certificate of election~~. A subcontractor who is a
 1031 corporation and has an officer who elects ~~electing~~ to be exempt
 1032 as permitted under this chapter ~~a sole proprietor, partner, or~~
 1033 ~~officer of a corporation~~ shall provide a copy of his or her
 1034 certificate of exemption ~~election~~ to the contractor.

1035 (d)1. If a contractor becomes liable for the payment of
 1036 compensation to the employees of a subcontractor who has failed
 1037 to secure such payment in violation of s. 440.38, the contractor
 1038 or other third-party payor shall be entitled to recover from the
 1039 subcontractor all benefits paid or payable plus interest unless
 1040 the contractor and subcontractor have agreed in writing that the
 1041 contractor will provide coverage.

1042 2. If a contractor or third-party payor becomes liable for
 1043 the payment of compensation to the corporate officer ~~employee~~ of
 1044 a subcontractor who is ~~actively~~ engaged in the construction
 1045 industry and has elected to be exempt from the provisions of
 1046 this chapter, but whose election is invalid, the contractor or
 1047 third-party payor may recover from the claimant, ~~partnership,~~ or
 1048 corporation all benefits paid or payable plus interest, unless
 1049 the contractor and the subcontractor have agreed in writing that
 1050 the contractor will provide coverage.

1051 (e) A subcontractor providing services in conjunction with
 1052 a contractor on the same project or contract work is not liable
 1053 for the payment of compensation to the employees of another



1054 subcontractor or the contractor on such contract work and is ~~not~~
1055 protected by the exclusiveness-of-liability provisions of s.
1056 440.11 from any action at law or in admiralty on account of
1057 injury to an ~~of such~~ employee of another subcontractor, or of
1058 the contractor, provided that:

1059 1. The subcontractor has secured workers' compensation
1060 insurance for its employees or the contractor has secured such
1061 insurance on behalf of the subcontractor and its employees in
1062 accordance with paragraph (b); and

1063 2. The subcontractor's own gross negligence was not the
1064 major contributing cause of the injury.

1065 (f) If an employer fails to secure compensation as
1066 required by this chapter, the department shall ~~may~~ assess
1067 against the employer a penalty not to exceed \$5,000 for each
1068 employee of that employer who is classified by the employer as
1069 an independent contractor but who is found by the department to
1070 not meet the criteria for an independent contractor that are set
1071 forth in s. 440.02. The division shall adopt rules to administer
1072 the provisions of this paragraph.

1073 (g) Subject to s. 440.38, any employer who has employees
1074 engaged in work in this state shall obtain a Florida policy or
1075 endorsement for such employees which utilizes Florida class
1076 codes, rates, rules, and manuals that are in compliance with and
1077 approved under the provisions of this chapter and the Florida
1078 Insurance Code. Failure to comply with this paragraph is a
1079 felony of the second degree, punishable as provided in s.
1080 775.082, s. 775.083, or s. 775.084. The department shall adopt
1081 rules for construction industry and nonconstruction-industry



1082 employers with regard to the activities that define what
1083 constitutes being "engaged in work" in this state, using the
1084 following standards:

1085 1. For employees of nonconstruction-industry employers who
1086 have their headquarters outside of Florida and also operate in
1087 Florida and who are routinely crossing state lines, but usually
1088 return to their homes each night, the employee shall be assigned
1089 to the headquarters' state. However, the construction industry
1090 employees performing new construction or alterations in Florida
1091 shall be assigned to Florida even if the employees return to
1092 their home state each night.

1093 2. The payroll of executive supervisors who may visit a
1094 Florida location but who are not in direct charge of a Florida
1095 location shall be assigned to the state in which the
1096 headquarters is located.

1097 3. For construction contractors who maintain a permanent
1098 staff of employees and superintendents, if any of these
1099 employees or superintendents are assigned to a job that is
1100 located in Florida, either for the duration of the job or any
1101 portion thereof, their payroll shall be assigned to Florida
1102 rather than headquarters' state.

1103 4. Employees who are hired for a specific project in
1104 Florida shall be assigned to Florida. ~~For purposes of this~~
1105 ~~section, a person is conclusively presumed to be an independent~~
1106 ~~contractor if:~~

1107 ~~1. The independent contractor provides the general~~
1108 ~~contractor with an affidavit stating that he or she meets all~~
1109 ~~the requirements of s. 440.02; and~~



1110 ~~2. The independent contractor provides the general~~
 1111 ~~contractor with a valid certificate of workers' compensation~~
 1112 ~~insurance or a valid certificate of exemption issued by the~~
 1113 ~~department.~~

1114
 1115 ~~A sole proprietor, partner, or officer of a corporation who~~
 1116 ~~elects exemption from this chapter by filing a certificate of~~
 1117 ~~election under s. 440.05 may not recover benefits or~~
 1118 ~~compensation under this chapter. An independent contractor who~~
 1119 ~~provides the general contractor with both an affidavit stating~~
 1120 ~~that he or she meets the requirements of s. 440.02 and a~~
 1121 ~~certificate of exemption is not an employee under s. 440.02 and~~
 1122 ~~may not recover benefits under this chapter. For purposes of~~
 1123 ~~determining the appropriate premium for workers' compensation~~
 1124 ~~coverage, carriers may not consider any person who meets the~~
 1125 ~~requirements of this paragraph to be an employee.~~

1126 Section 9. Section 440.1025, Florida Statutes, is amended
 1127 to read:

1128 440.1025 ~~Consideration of public~~ Employer workplace safety
 1129 program in rate-setting; program requirements; rulemaking.—

1130 (1) For a public or private employer to be eligible for
 1131 receipt of specific identifiable consideration under s. 627.0915
 1132 for a workplace safety program in the setting of rates, the
 1133 ~~public~~ employer must have a workplace safety program. At a
 1134 minimum, the program must include a written safety policy and
 1135 safety rules, and make provision for safety inspections,
 1136 preventative maintenance, safety training, first-aid, accident
 1137 investigation, and necessary recordkeeping. ~~For purposes of this~~



1138 section, "~~public employer~~" means any agency within state,
1139 county, or municipal government employing individuals for
1140 salary, wages, or other remuneration. The division may adopt
1141 ~~promulgate~~ rules for insurers to utilize in determining ~~public~~
1142 employer compliance with the requirements of this section.

1143 (2) The division shall publicize on the Internet, and
1144 shall encourage insurers to publicize, the availability of free
1145 safety consultation services and safety program resources.

1146 Section 10. Section 440.103, Florida Statutes, is amended
1147 to read:

1148 440.103 Building permits; identification of minimum
1149 premium policy.--~~Except as otherwise provided in this chapter,~~
1150 Every employer shall, as a condition to applying for and
1151 receiving a building permit, show proof and certify to the
1152 permit issuer that it has secured compensation for its employees
1153 under this chapter as provided in ss. 440.10 and 440.38. Such
1154 proof of compensation must be evidenced by a certificate of
1155 coverage issued by the carrier, a valid exemption certificate
1156 approved by the department ~~or the former Division of Workers'~~
1157 ~~Compensation of the Department of Labor and Employment Security,~~
1158 or a copy of the employer's authority to self-insure and shall
1159 be presented each time the employer applies for a building
1160 permit. As provided in s. 627.413(5), each certificate of
1161 coverage must show, on its face, whether or not coverage is
1162 secured under the minimum premium provisions of rules adopted by
1163 rating organizations licensed by the department. The words
1164 "minimum premium policy" or equivalent language shall be typed,
1165 printed, stamped, or legibly handwritten.



1166 Section 11. Section 440.105, Florida Statutes, is amended
1167 to read:

1168 440.105 Prohibited activities; reports; penalties;
1169 limitations.--

1170 (1)(a) Any insurance carrier, any individual self-insured,
1171 any commercial or group self-insurance fund, any professional
1172 practitioner licensed or regulated by the Department of Health
1173 ~~Business and Professional Regulation~~, except as otherwise
1174 provided by law, any medical review committee as defined in s.
1175 766.101, any private medical review committee, and any insurer,
1176 agent, or other person licensed under the insurance code, or any
1177 employee thereof, having knowledge or who believes that a
1178 fraudulent act or any other act or practice which, upon
1179 conviction, constitutes a felony or misdemeanor under this
1180 chapter is being or has been committed shall send to the
1181 Division of Insurance Fraud, Bureau of Workers' Compensation
1182 Fraud, a report or information pertinent to such knowledge or
1183 belief and such additional information relative thereto as the
1184 bureau may require. The bureau shall review such information or
1185 reports and select such information or reports as, in its
1186 judgment, may require further investigation. It shall then cause
1187 an independent examination of the facts surrounding such
1188 information or report to be made to determine the extent, if
1189 any, to which a fraudulent act or any other act or practice
1190 which, upon conviction, constitutes a felony or a misdemeanor
1191 under this chapter is being committed. The bureau shall report
1192 any alleged violations of law which its investigations disclose
1193 to the appropriate licensing agency and state attorney or other



1194 prosecuting agency having jurisdiction with respect to any such
 1195 violations of this chapter. If prosecution by the state attorney
 1196 or other prosecuting agency having jurisdiction with respect to
 1197 such violation is not begun within 60 days of the bureau's
 1198 report, the state attorney or other prosecuting agency having
 1199 jurisdiction with respect to such violation shall inform the
 1200 bureau of the reasons for the lack of prosecution.

1201 (b) In the absence of fraud or bad faith, a person is not
 1202 subject to civil liability for libel, slander, or any other
 1203 relevant tort by virtue of filing reports, without malice, or
 1204 furnishing other information, without malice, required by this
 1205 section or required by the bureau, and no civil cause of action
 1206 of any nature shall arise against such person:

1207 1. For any information relating to suspected fraudulent
 1208 acts furnished to or received from law enforcement officials,
 1209 their agents, or employees;

1210 2. For any information relating to suspected fraudulent
 1211 acts furnished to or received from other persons subject to the
 1212 provisions of this chapter; or

1213 3. For any such information relating to suspected
 1214 fraudulent acts furnished in reports to the bureau, or the
 1215 National Association of Insurance Commissioners.

1216 (2) Whoever violates any provision of this subsection
 1217 commits a misdemeanor of the first ~~second~~ degree, punishable as
 1218 provided in s. 775.082 or s. 775.083.

1219 (a) It shall be unlawful for any employer to knowingly:



1220 1. Coerce or attempt to coerce, as a precondition to
1221 employment or otherwise, an employee to obtain a certificate of
1222 election of exemption pursuant to s. 440.05.

1223 2. Discharge or refuse to hire an employee or job
1224 applicant because the employee or applicant has filed a claim
1225 for benefits under this chapter.

1226 3. Discharge, discipline, or take any other adverse
1227 personnel action against any employee for disclosing information
1228 to the department or any law enforcement agency relating to any
1229 violation or suspected violation of any of the provisions of
1230 this chapter or rules promulgated hereunder.

1231 4. Violate a stop-work order issued by the department
1232 pursuant to s. 440.107.

1233 (b) It shall be unlawful for any insurance entity to
1234 revoke or cancel a workers' compensation insurance policy or
1235 membership because an employer has returned an employee to work
1236 or hired an employee who has filed a workers' compensation
1237 claim.

1238 (3) Whoever violates any provision of this subsection
1239 commits a misdemeanor of the first degree, punishable as
1240 provided in s. 775.082 or s. 775.083.

1241 (a) It shall be unlawful for any employer to knowingly
1242 fail to update applications for coverage as required by s.
1243 440.381(1) and department ~~of insurance~~ rules within 7 days after
1244 the reporting date for any change in the required information,
1245 or to post notice of coverage pursuant to s. 440.40.

1246 (b) It is unlawful for any attorney or other person, in
1247 his or her individual capacity or in his or her capacity as a



1248 public or private employee, or for any firm, corporation,
 1249 partnership, or association to receive any fee or other
 1250 consideration or any gratuity from a person on account of
 1251 services rendered for a person in connection with any
 1252 proceedings arising under this chapter, unless such fee,
 1253 consideration, or gratuity is approved by a judge of
 1254 compensation claims or by the Deputy Chief Judge of Compensation
 1255 Claims.

1256 (4) Whoever violates any provision of this subsection
 1257 commits insurance fraud, punishable as provided in paragraph
 1258 (f).

1259 (a) It shall be unlawful for any employer to knowingly:

1260 1. Present or cause to be presented any false, fraudulent,
 1261 or misleading oral or written statement to any person as
 1262 evidence of compliance with s. 440.38.

1263 2. Make a deduction from the pay of any employee entitled
 1264 to the benefits of this chapter for the purpose of requiring the
 1265 employee to pay any portion of premium paid by the employer to a
 1266 carrier or to contribute to a benefit fund or department
 1267 maintained by such employer for the purpose of providing
 1268 compensation or medical services and supplies as required by
 1269 this chapter.

1270 3. Fail to secure payment of compensation if required to
 1271 do so by this chapter.

1272 (b) It shall be unlawful for any person:

1273 1. To knowingly make, or cause to be made, any false,
 1274 fraudulent, or misleading oral or written statement for the



1275 | purpose of obtaining or denying any benefit or payment under
 1276 | this chapter.

1277 | 2. To present or cause to be presented any written or oral
 1278 | statement as part of, or in support of, a claim for payment or
 1279 | other benefit pursuant to any provision of this chapter, knowing
 1280 | that such statement contains any false, incomplete, or
 1281 | misleading information concerning any fact or thing material to
 1282 | such claim.

1283 | 3. To prepare or cause to be prepared any written or oral
 1284 | statement that is intended to be presented to any employer,
 1285 | insurance company, or self-insured program in connection with,
 1286 | or in support of, any claim for payment or other benefit
 1287 | pursuant to any provision of this chapter, knowing that such
 1288 | statement contains any false, incomplete, or misleading
 1289 | information concerning any fact or thing material to such claim.

1290 | 4. To knowingly assist, conspire with, or urge any person
 1291 | to engage in activity prohibited by this section.

1292 | 5. To knowingly make any false, fraudulent, or misleading
 1293 | oral or written statement, or to knowingly omit or conceal
 1294 | material information, required by s. 440.185 or s. 440.381, for
 1295 | the purpose of obtaining workers' compensation coverage or for
 1296 | the purpose of avoiding, delaying, or diminishing the amount of
 1297 | payment of any workers' compensation premiums.

1298 | 6. To knowingly misrepresent or conceal payroll,
 1299 | classification of workers, or information regarding an
 1300 | employer's loss history which would be material to the
 1301 | computation and application of an experience rating modification



1302 factor for the purpose of avoiding or diminishing the amount of
 1303 payment of any workers' compensation premiums.

1304 7. To knowingly present or cause to be presented any
 1305 false, fraudulent, or misleading oral or written statement to
 1306 any person as evidence of compliance with s. 440.38, as evidence
 1307 of eligibility for a certificate of exemption under s. 440.05.

1308 8. To knowingly violate a stop-work order issued by the
 1309 department pursuant to s. 440.107.

1310 9. To knowingly present or cause to be presented any
 1311 false, fraudulent, or misleading oral or written statement to
 1312 any person as evidence of identity for the purpose of obtaining
 1313 employment or filing or supporting a claim for workers'
 1314 compensation benefits.

1315 (c) It shall be unlawful for any physician licensed under
 1316 chapter 458, osteopathic physician licensed under chapter 459,
 1317 chiropractic physician licensed under chapter 460, podiatric
 1318 physician licensed under chapter 461, optometric physician
 1319 licensed under chapter 463, or any other practitioner licensed
 1320 under the laws of this state to knowingly and willfully assist,
 1321 conspire with, or urge any person to fraudulently violate any of
 1322 the provisions of this chapter.

1323 (d) It shall be unlawful for any person or governmental
 1324 entity licensed under chapter 395 to maintain or operate a
 1325 hospital in such a manner so that such person or governmental
 1326 entity knowingly and willfully allows the use of the facilities
 1327 of such hospital by any person, in a scheme or conspiracy to
 1328 fraudulently violate any of the provisions of this chapter.



1329 (e) It shall be unlawful for any attorney or other person,
 1330 in his or her individual capacity or in his or her capacity as a
 1331 public or private employee, or any firm, corporation,
 1332 partnership, or association, to knowingly assist, conspire with,
 1333 or urge any person to fraudulently violate any of the provisions
 1334 of this chapter.

1335 (f) If the monetary value amount of any ~~claim or workers'~~
 1336 ~~compensation insurance premium involved in any~~ violation of this
 1337 subsection:

1338 1. Is less than \$20,000, the offender commits a felony of
 1339 the third degree, punishable as provided in s. 775.082, s.
 1340 775.083, or s. 775.084.

1341 2. Is \$20,000 or more, but less than \$100,000, the
 1342 offender commits a felony of the second degree, punishable as
 1343 provided in s. 775.082, . 775.083, or s. 775.084.

1344 3. Is \$100,000 or more, the offender commits a felony of
 1345 the first degree, punishable as provided in s. 775.082, s.
 1346 775.083, or s. 775.084.

1347 (5) It shall be unlawful for any attorney or other person,
 1348 in his or her individual capacity or in his or her capacity as a
 1349 public or private employee or for any firm, corporation,
 1350 partnership, or association, to unlawfully solicit any business
 1351 in and about city or county hospitals, courts, or any public
 1352 institution or public place; in and about private hospitals or
 1353 sanitariums; in and about any private institution; or upon
 1354 private property of any character whatsoever for the purpose of
 1355 making workers' compensation claims. Whoever violates any
 1356 provision of this subsection commits a felony of the second



1357 ~~third~~ degree, punishable as provided in s. 775.082, s. 775.083,
1358 or s. 775.085.

1359 (6) This section shall not be construed to preclude the
1360 applicability of any other provision of criminal law that
1361 applies or may apply to any transaction.

1362 ~~(7) For the purpose of the section, the term "statement"~~
1363 ~~includes, but is not limited to, any notice, representation,~~
1364 ~~statement, proof of injury, bill for services, diagnosis,~~
1365 ~~prescription, hospital or doctor records, X ray, test result, or~~
1366 ~~other evidence of loss, injury, or expense.~~

1367 (7)(8) An injured employee or any other party making a
1368 claim under this chapter shall provide his or her personal
1369 signature attesting that he or she has reviewed, understands,
1370 and acknowledges ~~All claim forms as provided for in this chapter~~
1371 ~~shall contain a notice that clearly states in substance the~~
1372 ~~following~~ statement: "Any person who, knowingly and with intent
1373 to injure, defraud, or deceive any employer or employee,
1374 insurance company, or self-insured program, files a statement of
1375 claim containing any false or misleading information commits
1376 insurance fraud, punishable as provided in s. 817.234." If the
1377 injured employee or other party refuses to sign the document
1378 attesting ~~Each claimant shall personally sign the claim form and~~
1379 ~~attest~~ that he or she has reviewed, understands, and
1380 acknowledges the statement, benefits or payments under this
1381 chapter shall be suspended until such signature is obtained
1382 ~~foregoing notice.~~

1383 Section 12. Subsection (3) of section 440.1051, Florida
1384 Statutes, is amended to read:



1385 440.1051 Fraud reports; civil immunity; criminal
 1386 penalties.--

1387 (2) Any person who reports workers' compensation fraud to
 1388 the division under subsection (1) is immune from civil liability
 1389 for doing so, and the person or entity alleged to have committed
 1390 the fraud may not retaliate against him or her for providing
 1391 such report, unless the person making the report knows it to be
 1392 false.

1393 (3) A person who calls and, knowingly and falsely, reports
 1394 workers' compensation fraud or who, in violation of subsection
 1395 (2) retaliates against a person for making such report, commits
 1396 ~~is guilty of a felony misdemeanor~~ of the third ~~first~~ degree,
 1397 punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s.
 1398 775.084 both.

1399 Section 13. Section 440.107, Florida Statutes, is amended
 1400 to read:

1401 440.107 Department powers to enforce employer compliance
 1402 with coverage requirements.--

1403 (1) The Legislature finds that the failure of an employer
 1404 to comply with the workers' compensation coverage requirements
 1405 under this chapter poses an immediate danger to public health,
 1406 safety, and welfare. ~~The Legislature authorizes the department~~
 1407 ~~to secure employer compliance with the workers' compensation~~
 1408 ~~coverage requirements and authorizes the department to conduct~~
 1409 ~~investigations for the purpose of ensuring employer compliance.~~

1410 (2) For the purposes of this section, "securing the
 1411 payment of workers' compensation" means obtaining coverage that
 1412 meets the requirements of this chapter and the Florida Insurance



1413 Code. However, if at any time an employer materially understates
1414 or conceals payroll, materially misrepresents or conceals
1415 employee duties so as to avoid proper classification for premium
1416 calculations, or materially misrepresents or conceals
1417 information pertinent to the computation and application of an
1418 experience rating modification factor, such employer shall be
1419 deemed to have failed to secure payment of workers' compensation
1420 and shall be subject to the sanctions set forth in this section.
1421 A stop-work order issued because an employer is deemed to have
1422 failed to secure the payment of workers' compensation required
1423 under this chapter because the employer has materially
1424 understated or concealed payroll, materially misrepresented or
1425 concealed employee duties so as to avoid proper classification
1426 for premium calculations, or materially misrepresented or
1427 concealed information pertinent to the computation and
1428 application of an experience rating modification factor shall
1429 have no effect upon an employer's or carrier's duty to provide
1430 benefits under this chapter or upon any of the employer's or
1431 carrier's rights and defenses under this chapter, including
1432 exclusive remedy. The department and its authorized
1433 representatives may enter and inspect any place of business at
1434 any reasonable time for the limited purpose of investigating
1435 compliance with workers' compensation coverage requirements
1436 under this chapter. Each employer shall keep true and accurate
1437 business records that contain such information as the department
1438 prescribes by rule. The business records must contain
1439 information necessary for the department to determine compliance
1440 with workers' compensation coverage requirements and must be



1441 ~~maintained within this state by the business, in such a manner~~
1442 ~~as to be accessible within a reasonable time upon request by the~~
1443 ~~department. The business records must be open to inspection and~~
1444 ~~be available for copying by the department at any reasonable~~
1445 ~~time and place and as often as necessary. The department may~~
1446 ~~require from any employer any sworn or unsworn reports,~~
1447 ~~pertaining to persons employed by that employer, deemed~~
1448 ~~necessary for the effective administration of the workers'~~
1449 ~~compensation coverage requirements.~~

1450 (3) The department shall enforce workers' compensation
1451 coverage requirements, including the requirement that the
1452 employer secure the payment of workers' compensation, and the
1453 requirement that the employer provide the carrier with
1454 information to accurately determine payroll and correctly assign
1455 classification codes. In addition to any other powers under this
1456 chapter, the department shall have the power to:

1457 (a) Conduct investigations for the purpose of ensuring
1458 employer compliance.

1459 (b) Enter and inspect any place of business at any
1460 reasonable time for the purpose of investigating employer
1461 compliance.

1462 (c) Examine and copy business records.

1463 (d) Administer oaths and affirmations.

1464 (e) Certify to official acts.

1465 (f) Issue and serve subpoenas for attendance of witnesses
1466 or production of business records, books, papers,
1467 correspondence, memoranda, and other records.



1468 (g) Issue stop-work orders, penalty assessment orders, and
1469 any other orders necessary for the administration of this
1470 section.

1471 (h) Enforce the terms of a stop-work order.

1472 (i) Levy and pursue actions to recover penalties.

1473 (j) Seek injunctions and other appropriate relief. In
1474 ~~discharging its duties, the department may administer oaths and~~
1475 ~~affirmations, certify to official acts, issue subpoenas to~~
1476 ~~compel the attendance of witnesses and the production of books,~~
1477 ~~papers, correspondence, memoranda, and other records deemed~~
1478 ~~necessary by the department as evidence in order to ensure~~
1479 ~~proper with the coverage provisions of this chapter.~~

1480 (4) The department shall designate representatives who may
1481 serve subpoenas and other process of the department issued under
1482 this section.

1483 (5) The department shall specify by rule the business
1484 records that employers must maintain and produce to comply with
1485 this section.

1486 (6)~~(4)~~ If a person has refused to obey a subpoena to
1487 appear before the department or its authorized representative or
1488 ~~and~~ produce evidence requested by the department or to give
1489 testimony about the matter that is under investigation, a court
1490 has jurisdiction to issue an order requiring compliance with the
1491 subpoena if the court has jurisdiction in the geographical area
1492 where the inquiry is being carried on or in the area where the
1493 person who has refused the subpoena is found, resides, or
1494 transacts business. Failure to obey such a court order may be
1495 punished by the court as contempt, either civilly or criminally.



1496 Costs, including reasonable attorney's fees, incurred by the
 1497 department to obtain an order granting, in whole or in part, a
 1498 petition to enforce a subpoena or a subpoena duces tecum shall
 1499 be taxed against the subpoenaed party.

1500 (7)(a)(5) Whenever the department determines that an
 1501 employer who is required to secure the payment to his or her
 1502 employees of the compensation provided for by this chapter has
 1503 failed to secure the payment of workers' compensation required
 1504 by this chapter or produce the required business records under
 1505 subsection (5) within 5 business days after receipt of the
 1506 written request of the department ~~do so~~, such failure shall be
 1507 deemed an immediate serious danger to public health, safety, or
 1508 welfare sufficient to justify service by the department of a
 1509 stop-work order on the employer, requiring the cessation of all
 1510 business operations ~~at the place of employment or job site~~. If
 1511 the department ~~division~~ makes such a determination, the
 1512 department ~~division~~ shall issue a stop-work order within 72
 1513 hours. The order shall take effect when served upon the ~~date of~~
 1514 service upon the employer or, for a particular employer
 1515 worksite, when served at that worksite. In addition to serving a
 1516 stop-work order, which shall be effective immediately, at a
 1517 particular worksite, the department shall immediately proceed
 1518 with service upon the employer which shall be effective upon all
 1519 employer worksites in the state. A stop-work order may be served
 1520 with regard to an employer's worksite by posting a copy of the
 1521 stop-work order in a conspicuous location at such site. The
 1522 order shall remain in effect until the department issues an
 1523 order releasing the stop-work order upon a finding that the



1524 employer has come into compliance with the coverage requirements
1525 of this chapter and has paid any penalty assessed under this
1526 section. The department may require an employer who is found to
1527 have failed to comply with the coverage requirements of s.
1528 440.38 to file with the department, as a condition of release
1529 from a stop-work order, periodic reports that demonstrate the
1530 employer's continued compliance with this chapter for a
1531 probationary period that shall not exceed 2 years. The
1532 department shall by rule specify the reports required and the
1533 time for filing under this subsection unless the employer
1534 ~~provides evidence satisfactory to the department of having~~
1535 ~~secured any necessary insurance or self-insurance and pays a~~
1536 ~~civil penalty to the department, to be deposited by the~~
1537 ~~department into the Workers' Compensation Administration Trust~~
1538 ~~Fund, in the amount of \$100 per day for each day the employer~~
1539 ~~was not in compliance with this chapter.~~

1540 (b) Stop-work orders and penalty assessment orders issued
1541 under this section against a corporation, partnership, or sole
1542 proprietorship shall be in effect against any successor
1543 corporation or business entity that has one or more of the same
1544 principals or officers as the corporation or partnership against
1545 which the stop-work order was issued and is engaged in the same
1546 or related enterprise.

1547 (c) The department shall assess a penalty of \$1,000 per
1548 day against an employer for each day that the employer conducts
1549 business operations that are in violation of a stop-work order.

1550 (d)1. In addition to any penalty, stop-work order, or
1551 injunction, the department shall assess against any employer who



1552 has failed to secure the payment of compensation as required by
1553 this chapter a penalty equal to 1.5 times the amount the
1554 employer would have paid in premium when applying approved
1555 manual rates to the employer's payroll during periods for which
1556 it failed to secure the payment of workers' compensation
1557 required by this chapter within the preceding 3-year period or
1558 \$1,000, whichever is greater.

1559 2. Any subsequent violation within 5 years after the most
1560 recent violation shall, in addition to the penalties set forth
1561 in this subsection, be deemed a knowing act within the meaning
1562 of s. 440.105.

1563 (e) When an employer fails to provide business records
1564 sufficient to enable the department to determine the employer's
1565 payroll for the period requested for the calculation of the
1566 penalty provided in paragraph (d), for penalty calculation
1567 purposes, the imputed weekly payroll for each employee,
1568 corporate officer, sole proprietor, or partner shall be the
1569 statewide average weekly wage as defined in s. 440.12(2)
1570 multiplied by 1.5.

1571 (f) In addition to any other penalties provided for in
1572 this chapter, the department may assess against the employer a
1573 penalty of \$5,000 for each employee of that employer who the
1574 employer represents to the department or carrier as an
1575 independent contractor but who is determined by the department
1576 not to be an independent contractor as defined in s. 440.02.

1577 (8)(6) In addition to the issuance of a stop-work order
1578 under subsection (7), the department may file a complaint in the
1579 circuit court in and for Leon County to enjoin any employer, who



1580 has failed to secure the payment of workers' compensation as
1581 required by this chapter, from employing individuals and from
1582 conducting business until the employer presents evidence
1583 satisfactory to the department of having secured the payment of
1584 workers' for compensation required by this chapter and pays a
1585 civil penalty assessed by ~~to~~ the department under this section,
1586 ~~to be deposited by the department into the Workers' Compensation~~
1587 ~~Administration Trust Fund, in the amount of \$100 per day for~~
1588 ~~each day the employer was not in compliance with this chapter.~~

1589 ~~(9)(7) In addition to any penalty, stop work order, or~~
1590 ~~injunction, the department shall assess against any employer,~~
1591 ~~who has failed to secure the payment of compensation as required~~
1592 ~~by this chapter, a penalty in the following amount:~~

1593 ~~(a) An amount equal to at least the amount that the~~
1594 ~~employer would have paid or up to twice the amount the employer~~
1595 ~~would have paid during periods it illegally failed to secure~~
1596 ~~payment of compensation in the preceding 3-year period based on~~
1597 ~~the employer's payroll during the preceding 3-year period; or~~

1598 ~~(b) One thousand dollars, whichever is greater. Any~~
1599 ~~penalty assessed under this subsection is due within 30 days~~
1600 ~~after the date on which the employer is notified, except that,~~
1601 ~~if the department has posted a stop work order or obtained~~
1602 ~~injunctive relief against the employer, payment is due, in~~
1603 ~~addition to those conditions set forth in this section, as a~~
1604 ~~condition to relief from a stop work order or an injunction.~~
1605 ~~Interest shall accrue on amounts not paid when due at the rate~~
1606 ~~of 1 percent per month. The department division shall adopt~~
1607 ~~rules to administer this section.~~



1608 (10)~~(8)~~ The department may bring an action in circuit
1609 court to recover penalties assessed under this section,
1610 including any interest owed to the department pursuant to this
1611 section. In any action brought by the department pursuant to
1612 this section in which it prevails, the circuit court shall award
1613 costs, including the reasonable costs of investigation and a
1614 reasonable attorney's fee.

1615 (11)~~(9)~~ Any judgment obtained by the department and any
1616 penalty due pursuant to the service of a stop-work order or
1617 otherwise due under this section shall, until collected,
1618 constitute a lien upon the entire interest of the employer,
1619 legal or equitable, in any property, real or personal, tangible
1620 or intangible; however, such lien is subordinate to claims for
1621 unpaid wages and any prior recorded liens, and a lien created by
1622 this section is not valid against any person who, subsequent to
1623 such lien and in good faith and for value, purchases real or
1624 personal property from such employer or becomes the mortgagee on
1625 real or personal property of such employer, or against a
1626 subsequent attaching creditor, unless, with respect to real
1627 estate of the employer, a notice of the lien is recorded in the
1628 public records of the county where the real estate is located,
1629 and with respect to personal property of the employer, notice is
1630 recorded with the Secretary of State.

1631 (12)~~(10)~~ Any law enforcement agency in the state may, at
1632 the request of the department, render any assistance necessary
1633 to carry out the provisions of this section, including, but not
1634 limited to, preventing any employee or other person from



1635 remaining at a place of employment or job site after a stop-work
 1636 order or injunction has taken effect.

1637 ~~(13)(11)~~ Agency action ~~Actions~~ by the department under
 1638 this section, if contested, must be contested as provided in
 1639 chapter 120. All ~~civil~~ penalties assessed by the department must
 1640 be paid into the Workers' Compensation Administration Trust
 1641 Fund. ~~The department shall return any sums previously paid, upon~~
 1642 ~~conclusion of an action, if the department fails to prevail and~~
 1643 ~~if so directed by an order of court or an administrative hearing~~
 1644 ~~officer. The requirements of this subsection may be met by~~
 1645 ~~posting a bond in an amount equal to twice the penalty and in a~~
 1646 ~~form approved by the department.~~

1647 ~~(14)(12)~~ If the department ~~division~~ finds that an employer
 1648 who is certified or registered under part I or part II of
 1649 chapter 489 and who is required to secure the payment of
 1650 workers' ~~the~~ compensation under ~~provided for by~~ this chapter to
 1651 his or her employees has failed to do so, the department
 1652 ~~division~~ shall immediately notify the Department of Business and
 1653 Professional Regulation.

1654 Section 14. Subsections (1) and (3) of section 440.11,
 1655 Florida Statutes, are amended to read:

1656 440.11 Exclusiveness of liability.--

1657 (1) The liability of an employer prescribed in s. 440.10
 1658 shall be exclusive and in place of all other liability,
 1659 including vicarious liability, of such employer to any third-
 1660 party tortfeasor and to the employee, the legal representative
 1661 thereof, husband or wife, parents, dependents, next of kin, and
 1662 anyone otherwise entitled to recover damages from such employer



1663 at law or in admiralty on account of such injury or death,
 1664 except as follows: ~~that~~

1665 (a) If an employer fails to secure payment of compensation
 1666 as required by this chapter, an injured employee, or the legal
 1667 representative thereof in case death results from the injury,
 1668 may elect to claim compensation under this chapter or to
 1669 maintain an action at law or in admiralty for damages on account
 1670 of such injury or death. In such action the defendant may not
 1671 plead as a defense that the injury was caused by negligence of a
 1672 fellow employee, that the employee assumed the risk of the
 1673 employment, or that the injury was due to the comparative
 1674 negligence of the employee.

1675 (b) When an employer commits an intentional tort that
 1676 causes the injury or death of the employee. For purposes of this
 1677 paragraph, an employer's actions shall be deemed to constitute
 1678 an intentional tort and not an accident only when the employee
 1679 proves, by clear and convincing evidence, that:

1680 1. The employer deliberately intended to injure the
 1681 employee; or

1682 2. The employer engaged in conduct that the employer knew,
 1683 based on prior similar accidents or on explicit warnings
 1684 specifically identifying a known danger, was certain to result
 1685 in injury or death to the employee, and the employee was not
 1686 aware of the risk because the danger was not apparent and the
 1687 employer deliberately concealed or misrepresented the danger so
 1688 as to prevent the employee from exercising informed judgment
 1689 about whether to perform the work.

1690



1691 The same immunities from liability enjoyed by an employer shall
1692 extend as well to each employee of the employer when such
1693 employee is acting in furtherance of the employer's business and
1694 the injured employee is entitled to receive benefits under this
1695 chapter. Such fellow-employee immunities shall not be applicable
1696 to an employee who acts, with respect to a fellow employee, with
1697 willful and wanton disregard or unprovoked physical aggression
1698 or with gross negligence when such acts result in injury or
1699 death or such acts proximately cause such injury or death, nor
1700 shall such immunities be applicable to employees of the same
1701 employer when each is operating in the furtherance of the
1702 employer's business but they are assigned primarily to unrelated
1703 works within private or public employment. The same immunity
1704 provisions enjoyed by an employer shall also apply to any sole
1705 proprietor, partner, corporate officer or director, supervisor,
1706 or other person who in the course and scope of his or her duties
1707 acts in a managerial or policymaking capacity and the conduct
1708 which caused the alleged injury arose within the course and
1709 scope of said managerial or policymaking duties and was not a
1710 violation of a law, whether or not a violation was charged, for
1711 which the maximum penalty which may be imposed does not exceed
1712 60 days' imprisonment as set forth in s. 775.082. The immunity
1713 from liability provided in this subsection extends to county
1714 governments with respect to employees of county constitutional
1715 officers whose offices are funded by the board of county
1716 commissioners.

1717 (3) An employer's workers' compensation carrier, service
1718 agent, or safety consultant shall not be liable as a third-party



1719 tortfeasor to employees of the employer or employees of its
1720 subcontractors for assisting the employer and its
1721 subcontractors, if any, in carrying out the employer's rights
1722 and responsibilities under this chapter by furnishing any safety
1723 inspection, safety consultative service, or other safety service
1724 incidental to the workers' compensation or employers' liability
1725 coverage or to the workers' compensation or employer's liability
1726 servicing contract. Without limitation, a safety consultant may
1727 include an owner, as defined in chapter 713, or an owner's
1728 related, affiliated, or subsidiary companies and the employees
1729 of each. The exclusion from liability under this subsection
1730 shall not apply in any case in which injury or death is
1731 proximately caused by the willful and unprovoked physical
1732 aggression, or by the negligent operation of a motor vehicle, by
1733 employees, officers, or directors of the employer's workers'
1734 compensation carrier, service agent, or safety consultant.

1735 Section 15. Section 440.13, Florida Statutes, is amended
1736 to read:

1737 440.13 Medical services and supplies; penalty for
1738 violations; limitations.--

1739 (1) DEFINITIONS.--As used in this section, the term:

1740 (a) "Alternate medical care" means a change in treatment
1741 or health care provider.

1742 (b) "Attendant care" means care rendered by trained
1743 professional attendants which is beyond the scope of household
1744 duties. Family members may provide nonprofessional attendant
1745 care, but may not be compensated under this chapter for care
1746 that falls within the scope of household duties and other



1747 services normally and gratuitously provided by family members.
1748 "Family member" means a spouse, father, mother, brother, sister,
1749 child, grandchild, father-in-law, mother-in-law, aunt, or uncle.

1750 (c) "Carrier" means, for purposes of this section,
1751 insurance carrier, self-insurance fund or individually self-
1752 insured employer, assessable mutual insurer.

1753 (d) "Catastrophic injury" means an injury as defined in s.
1754 440.02.

1755 (e) "Certified health care provider" means a health care
1756 provider who has been certified by the agency or who has entered
1757 an agreement with a licensed managed care organization to
1758 provide treatment to injured workers under this section.

1759 Certification of such health care provider must include
1760 documentation that the health care provider has read and is
1761 familiar with the portions of the statute, impairment guides,
1762 practice parameters, protocols of treatment, and rules which
1763 govern the provision of remedial treatment, care, and
1764 attendance.

1765 (f) "Compensable" means a determination by a carrier or
1766 judge of compensation claims that a condition suffered by an
1767 employee results from an injury arising out of and in the course
1768 of employment.

1769 (g) "Emergency services and care" means emergency services
1770 and care as defined in s. 395.002.

1771 (h) "Health care facility" means any hospital licensed
1772 under chapter 395 and any health care institution licensed under
1773 chapter 400.



1774 (i) "Health care provider" means a physician or any
 1775 recognized practitioner who provides skilled services pursuant
 1776 to a prescription or under the supervision or direction of a
 1777 physician and who has been certified by the agency as a health
 1778 care provider. The term "health care provider" includes a health
 1779 care facility.

1780 (j) "Independent medical examiner" means a physician
 1781 selected by either an employee or a carrier to render one or
 1782 more independent medical examinations in connection with a
 1783 dispute arising under this chapter.

1784 (k) "Independent medical examination" means an objective
 1785 evaluation of the injured employee's medical condition,
 1786 including, but not limited to, impairment or work status,
 1787 performed by a physician or an expert medical advisor at the
 1788 request of a party, a judge of compensation claims, or the
 1789 agency to assist in the resolution of a dispute arising under
 1790 this chapter.

1791 (l) "Instance of overutilization" means a specific
 1792 inappropriate service or level of service provided to an injured
 1793 employee that includes the provision of treatment in excess of
 1794 established practice parameters and protocols of treatment
 1795 established in accordance with this chapter.

1796 (m) "Medically necessary" or "medical necessity" means any
 1797 medical service or medical supply which is used to identify or
 1798 treat an illness or injury, is appropriate to the patient's
 1799 diagnosis and status of recovery, and is consistent with the
 1800 location of service, the level of care provided, and applicable
 1801 practice parameters. The service should be widely accepted among



1802 practicing health care providers, based on scientific criteria,
1803 and determined to be reasonably safe. The service must not be of
1804 an experimental, investigative, or research nature, ~~except in~~
1805 ~~those instances in which prior approval of the Agency for Health~~
1806 ~~Care Administration has been obtained. The Agency for Health~~
1807 ~~Care Administration shall adopt rules providing for such~~
1808 ~~approval on a case-by-case basis when the service or supply is~~
1809 ~~shown to have significant benefits to the recovery and well-~~
1810 ~~being of the patient.~~

1811 (n) "Medicine" means a drug prescribed by an authorized
1812 health care provider and includes only generic drugs or single-
1813 source patented drugs for which there is no generic equivalent,
1814 unless the authorized health care provider writes or states that
1815 the brand-name drug as defined in s. 465.025 is medically
1816 necessary, or is a drug appearing on the schedule of drugs
1817 created pursuant to s. 465.025(6), or is available at a cost
1818 lower than its generic equivalent.

1819 (o) "Palliative care" means noncurative medical services
1820 that mitigate the conditions, effects, or pain of an injury.

1821 (p) "Pattern or practice of overutilization" means
1822 repetition of instances of overutilization within a specific
1823 medical case or multiple cases by a single health care provider.

1824 (q) "Peer review" means an evaluation by two or more
1825 physicians licensed under the same authority and with the same
1826 or similar specialty as the physician under review, of the
1827 appropriateness, quality, and cost of health care and health
1828 services provided to a patient, based on medically accepted
1829 standards.



1830 (r) "Physician" or "doctor" means a physician licensed
 1831 under chapter 458, an osteopathic physician licensed under
 1832 chapter 459, a chiropractic physician licensed under chapter
 1833 460, a podiatric physician licensed under chapter 461, an
 1834 optometrist licensed under chapter 463, or a dentist licensed
 1835 under chapter 466, each of whom must be certified by the agency
 1836 as a health care provider.

1837 (s) "Reimbursement dispute" means any disagreement between
 1838 a health care provider or health care facility and carrier
 1839 concerning payment for medical treatment.

1840 (t) "Utilization control" means a systematic process of
 1841 implementing measures that assure overall management and cost
 1842 containment of services delivered, including compliance with
 1843 practice parameters and protocols of treatment as provided for
 1844 in this chapter.

1845 (u) "Utilization review" means the evaluation of the
 1846 appropriateness of both the level and the quality of health care
 1847 and health services provided to a patient, including, but not
 1848 limited to, evaluation of the appropriateness of treatment,
 1849 hospitalization, or office visits based on medically accepted
 1850 standards. Such evaluation must be accomplished by means of a
 1851 system that identifies the utilization of medical services based
 1852 on practice parameters and protocols of treatment as provided
 1853 for in this chapter ~~medically accepted standards as established~~
 1854 ~~by medical consultants with qualifications similar to those~~
 1855 ~~providing the care under review, and that refers patterns and~~
 1856 ~~practices of overutilization to the agency.~~

1857 (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.--



1858 (a) Subject to the limitations specified elsewhere in this
1859 chapter, the employer shall furnish to the employee such
1860 medically necessary remedial treatment, care, and attendance for
1861 such period as the nature of the injury or the process of
1862 recovery may require, which is in accordance with established
1863 practice parameters and protocols of treatment as provided for
1864 in this chapter, including medicines, medical supplies, durable
1865 medical equipment, orthoses, prostheses, and other medically
1866 necessary apparatus. Remedial treatment, care, and attendance,
1867 including work-hardening programs or pain-management programs
1868 accredited by the Commission on Accreditation of Rehabilitation
1869 Facilities or Joint Commission on the Accreditation of Health
1870 Organizations or pain-management programs affiliated with
1871 medical schools, shall be considered as covered treatment only
1872 when such care is given based on a referral by a physician as
1873 defined in this chapter. ~~Each facility shall maintain outcome~~
1874 ~~data, including work status at discharges, total program~~
1875 ~~charges, total number of visits, and length of stay. The~~
1876 ~~department shall utilize such data and report to the President~~
1877 ~~of the Senate and the Speaker of the House of Representatives~~
1878 ~~regarding the efficacy and cost-effectiveness of such program,~~
1879 ~~no later than October 1, 1994.~~ Medically necessary treatment,
1880 care, and attendance does not include chiropractic services in
1881 excess of 24 ~~18~~ treatments or rendered 12 ~~8~~ weeks beyond the
1882 date of the initial chiropractic treatment, whichever comes
1883 first, unless the carrier authorizes additional treatment or the
1884 employee is catastrophically injured.



1885 (b) The employer shall provide appropriate professional or
1886 nonprofessional attendant care performed only at the direction
1887 and control of a physician when such care is medically
1888 necessary. The physician shall prescribe such care in writing.
1889 The employer or carrier shall not be responsible for such care
1890 until the prescription for attendant care is received by the
1891 employer and carrier, which shall specify the time periods for
1892 such care, the level of care required, and the type of
1893 assistance required. A prescription for attendant care shall not
1894 prescribe such care retroactively. The value of nonprofessional
1895 attendant care provided by a family member must be determined as
1896 follows:

1897 1. If the family member is not employed or if the family
1898 member is employed and is providing attendant care services
1899 during hours that he or she is not engaged in employment, the
1900 per-hour value equals the federal minimum hourly wage.

1901 2. If the family member is employed and elects to leave
1902 that employment to provide attendant or custodial care, the per-
1903 hour value of that care equals the per-hour value of the family
1904 member's former employment, not to exceed the per-hour value of
1905 such care available in the community at large. A family member
1906 or a combination of family members providing nonprofessional
1907 attendant care under this paragraph may not be compensated for
1908 more than a total of 12 hours per day.

1909 3. If the family member remains employed while providing
1910 attendant or custodial care, the per-hour value of that care
1911 equals the per-hour value of the family member's employment, not



1912 | to exceed the per-hour value of such care available in the
1913 | community at large.

1914 | (c) If the employer fails to provide initial treatment or
1915 | care required by this section after request by the injured
1916 | employee, the employee may obtain such initial treatment at the
1917 | expense of the employer, if the initial treatment or care is
1918 | compensable and medically necessary and is in accordance with
1919 | established practice parameters and protocols of treatment as
1920 | provided for in this chapter. There must be a specific request
1921 | for the initial treatment or care, and the employer or carrier
1922 | must be given a reasonable time period within which to provide
1923 | the initial treatment or care. However, the employee is not
1924 | entitled to recover any amount personally expended for the
1925 | initial treatment or care ~~service~~ unless he or she has requested
1926 | the employer to furnish that initial treatment or service and
1927 | the employer has failed, refused, or neglected to do so within a
1928 | reasonable time or unless the nature of the injury requires such
1929 | initial treatment, nursing, and services and the employer or his
1930 | or her superintendent or foreman, having knowledge of the
1931 | injury, has neglected to provide the initial treatment or care
1932 | ~~service~~.

1933 | (d) The carrier has the right to transfer the care of an
1934 | injured employee from the attending health care provider if an
1935 | independent medical examination determines that the employee is
1936 | not making appropriate progress in recuperation.

1937 | (e) Except in emergency situations and for treatment
1938 | rendered by a managed care arrangement, after any initial
1939 | examination and diagnosis by a physician providing remedial



1940 treatment, care, and attendance, and before a proposed course of
1941 medical treatment begins, each insurer shall review, in
1942 accordance with the requirements of this chapter, the proposed
1943 course of treatment, to determine whether such treatment would
1944 be recognized as reasonably prudent. The review must be in
1945 accordance with all applicable workers' compensation practice
1946 parameters and protocols of treatment established in accordance
1947 with this chapter. The insurer must accept any such proposed
1948 course of treatment unless the insurer notifies the physician of
1949 its specific objections to the proposed course of treatment by
1950 the close of the tenth business day after notification by the
1951 physician, or a supervised designee of the physician, of the
1952 proposed course of treatment.

1953 (f) Upon the written request of the employee, the carrier
1954 shall give the employee the opportunity for one change of
1955 physician during the course of treatment for any one accident.
1956 Upon the granting of a change of physician, the originally
1957 authorized physician in the same specialty as the changed
1958 physician shall become deauthorized upon written notification by
1959 the employer or carrier. The carrier shall authorize an
1960 alternative physician who shall not be professionally affiliated
1961 with the previous physician within 5 days after receipt of the
1962 request. If the carrier fails to provide a change of physician
1963 as requested by the employee, the employee may select the
1964 physician and such physician shall be considered authorized if
1965 the treatment being provided is compensable and medically
1966 necessary.

1967



1968 Failure of the carrier to timely comply with this subsection
 1969 shall be a violation of this chapter and the carrier shall be
 1970 subject to penalties as provided for in s. 440.525. The employee
 1971 ~~shall be entitled to select another physician from among not~~
 1972 ~~fewer than three carrier-authorized physicians who are not~~
 1973 ~~professionally affiliated.~~

1974 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

1975 (a) As a condition to eligibility for payment under this
 1976 chapter, a health care provider who renders services must be a
 1977 certified health care provider and must receive authorization
 1978 from the carrier before providing treatment. This paragraph does
 1979 not apply to emergency care. The agency shall adopt rules to
 1980 implement the certification of health care providers.

1981 (b) A health care provider who renders emergency care must
 1982 notify the carrier by the close of the third business day after
 1983 it has rendered such care. If the emergency care results in
 1984 admission of the employee to a health care facility, the health
 1985 care provider must notify the carrier by telephone within 24
 1986 hours after initial treatment. Emergency care is not compensable
 1987 under this chapter unless the injury requiring emergency care
 1988 arose as a result of a work-related accident. Pursuant to
 1989 chapter 395, all licensed physicians and health care providers
 1990 in this state shall be required to make their services available
 1991 for emergency treatment of any employee eligible for workers'
 1992 compensation benefits. To refuse to make such treatment
 1993 available is cause for revocation of a license.

1994 (c) A health care provider may not refer the employee to
 1995 another health care provider, diagnostic facility, therapy



1996 center, or other facility without prior authorization from the
 1997 carrier, except when emergency care is rendered. Any referral
 1998 must be to a health care provider that has been certified by the
 1999 agency, unless the referral is for emergency treatment, and the
 2000 referral must be made in accordance with practice parameters and
 2001 protocols of treatment as provided for in this chapter.

2002 (d) A carrier must respond, by telephone or in writing, to
 2003 a request for authorization from an authorized health care
 2004 provider by the close of the third business day after receipt of
 2005 the request. A carrier who fails to respond to a written request
 2006 for authorization for referral for medical treatment by the
 2007 close of the third business day after receipt of the request
 2008 consents to the medical necessity for such treatment. All such
 2009 requests must be made to the carrier. Notice to the carrier does
 2010 not include notice to the employer.

2011 (e) Carriers shall adopt procedures for receiving,
 2012 reviewing, documenting, and responding to requests for
 2013 authorization. Such procedures shall be for a health care
 2014 provider certified under this section.

2015 (f) By accepting payment under this chapter for treatment
 2016 rendered to an injured employee, a health care provider consents
 2017 to the jurisdiction of the agency as set forth in subsection
 2018 (11) and to the submission of all records and other information
 2019 concerning such treatment to the agency in connection with a
 2020 reimbursement dispute, audit, or review as provided by this
 2021 section. The health care provider must further agree to comply
 2022 with any decision of the agency rendered under this section.



2023 (g) The employee is not liable for payment for medical
 2024 treatment or services provided pursuant to this section except
 2025 as otherwise provided in this section.

2026 (h) The provisions of s. 456.053 are applicable to
 2027 referrals among health care providers, as defined in subsection
 2028 (1), treating injured workers.

2029 (i) Notwithstanding paragraph (d), a claim for specialist
 2030 consultations, surgical operations, physiotherapeutic or
 2031 occupational therapy procedures, X-ray examinations, or special
 2032 diagnostic laboratory tests that cost more than \$1,000 and other
 2033 specialty services that the agency identifies by rule is not
 2034 valid and reimbursable unless the services have been expressly
 2035 authorized by the carrier, or unless the carrier has failed to
 2036 respond within 10 days to a written request for authorization,
 2037 or unless emergency care is required. The insurer shall ~~not~~
 2038 ~~refuse to~~ authorize such consultation or procedure unless the
 2039 health care provider or facility is not authorized or certified,
 2040 unless such treatment is not in accordance with practice
 2041 parameters and protocols of treatment established in this
 2042 chapter, or unless a judge of compensation claims an expert
 2043 ~~medical adviser~~ has determined that the consultation or
 2044 procedure is not medically necessary, not in accordance with the
 2045 practice parameters and protocols of treatment established in
 2046 this chapter, or otherwise not compensable under this chapter.
 2047 Authorization of a treatment plan does not constitute express
 2048 authorization for purposes of this section, except to the extent
 2049 the carrier provides otherwise in its authorization procedures.



2050 This paragraph does not limit the carrier's obligation to
 2051 identify and disallow overutilization or billing errors.

2052 ~~(j) Notwithstanding anything in this chapter to the~~
 2053 ~~contrary, a sick or injured employee shall be entitled, at all~~
 2054 ~~times, to free, full, and absolute choice in the selection of~~
 2055 ~~the pharmacy or pharmacist dispensing and filling prescriptions~~
 2056 ~~for medicines required under this chapter. It is expressly~~
 2057 ~~forbidden for the agency, an employer, or a carrier, or any~~
 2058 ~~agent or representative of the agency, an employer, or a~~
 2059 ~~carrier to select the pharmacy or pharmacist which the sick or~~
 2060 ~~injured employee must use; condition coverage or payment on the~~
 2061 ~~basis of the pharmacy or pharmacist utilized; or to otherwise~~
 2062 ~~interfere in the selection by the sick or injured employee of a~~
 2063 ~~pharmacy or pharmacist.~~

2064 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
 2065 DEPARTMENT.--

2066 (a) Any health care provider providing necessary remedial
 2067 treatment, care, or attendance to any injured worker shall
 2068 submit treatment reports to the carrier in a format prescribed
 2069 by the department ~~in consultation with the agency~~. A claim for
 2070 medical or surgical treatment is not valid or enforceable
 2071 against such employer or employee, unless, by the close of the
 2072 third business day following the first treatment, the physician
 2073 providing the treatment furnishes to the employer or carrier a
 2074 preliminary notice of the injury and treatment in a format ~~on~~
 2075 ~~forms~~ prescribed by the department ~~in consultation with the~~
 2076 ~~agency~~ and, within 15 days thereafter, furnishes to the employer
 2077 or carrier a complete report, and subsequent thereto furnishes



2078 progress reports, if requested by the employer or insurance
2079 carrier, at intervals of not less than 3 weeks apart or at less
2080 frequent intervals if requested in a format ~~on forms~~ prescribed
2081 by the department ~~in consultation with the agency~~.

2082 (b) Upon the request of the department ~~or agency~~, each
2083 medical report or bill obtained or received by the employer, the
2084 carrier, or the injured employee, or the attorney for the
2085 employer, carrier, or injured employee, with respect to the
2086 remedial treatment, care, and attendance of the injured
2087 employee, including any report of an examination, diagnosis, or
2088 disability evaluation, must be produced by the health care
2089 provider to filed with the department ~~or agency~~ pursuant to
2090 rules adopted by the department ~~in consultation with the agency~~.
2091 The health care provider shall also furnish to the injured
2092 employee or ~~to~~ his or her attorney and the employer or carrier
2093 or its attorney, on demand, a copy of his or her office chart,
2094 records, and reports, and may charge the injured employee no
2095 more than 50 cents per page for copying the records and the
2096 actual direct cost to the health care provider or health care
2097 facility for X rays, microfilm, or other nonpaper records ~~an~~
2098 ~~amount authorized by the department for the copies~~. Each such
2099 health care provider shall provide to the ~~agency or~~ department
2100 information about the remedial treatment, care, and attendance
2101 which the ~~agency or~~ department reasonably requests.

2102 (c) It is the policy for the administration of the
2103 workers' compensation system that there shall be reasonable
2104 access to medical information by all parties to facilitate the
2105 self-executing features of the law. An employee who reports an



2106 injury or illness alleged to be work-related waives any
2107 physician-patient privilege with respect to any condition or
2108 complaint reasonably related to the condition for which the
2109 employee claims compensation. Notwithstanding the limitations in
2110 s. 456.057 and subject to the limitations in s. 381.004, upon
2111 the request of the employer, the carrier, an authorized
2112 qualified rehabilitation provider, or the attorney for the
2113 employer or carrier, the medical records, reports, and
2114 information of an injured employee relevant to the particular
2115 injury or illness for which compensation is sought must be
2116 furnished to those persons and the medical condition of the
2117 injured employee must be discussed with those persons, if the
2118 records and the discussions are restricted to conditions
2119 relating to the workplace injury. Release of medical information
2120 by the health care provider or other physician does not require
2121 the authorization of the injured employee. If medical records,
2122 reports, and information of an injured employee are sought from
2123 health care providers who are not subject to the jurisdiction of
2124 the state, the injured employee shall sign an authorization
2125 allowing for the employer or carrier to obtain the medical
2126 records, reports, or information. Any such discussions or
2127 release of information may be held before or after the filing of
2128 a claim or petition for benefits without the knowledge, consent,
2129 or presence of any other party or his or her agent or
2130 representative. A health care provider who willfully refuses to
2131 provide medical records or to discuss the medical condition of
2132 the injured employee, after a reasonable request is made for
2133 such information pursuant to this subsection, shall be subject



2134 by the ~~department agency~~ to one or more of the penalties set
 2135 forth in paragraph (8)(b). The department may adopt rules to
 2136 carry out this subsection.

2137 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

2138 (a) In any dispute concerning overutilization, medical
 2139 benefits, compensability, or disability under this chapter, the
 2140 carrier or the employee may select an independent medical
 2141 examiner. If the parties agree, the examiner may be a health
 2142 care provider treating or providing other care to the employee.
 2143 An independent medical examiner may not render an opinion
 2144 outside his or her area of expertise, as demonstrated by
 2145 licensure and applicable practice parameters. The employer and
 2146 employee shall be entitled to only one independent medical
 2147 examination per accident and not one independent medical
 2148 examination per medical specialty. The party requesting and
 2149 selecting the independent medical examination shall be
 2150 responsible for all expenses associated with said examination,
 2151 including, but not limited to, medically necessary diagnostic
 2152 testing performed and physician or medical care provider fees
 2153 for the evaluation. The party selecting the independent medical
 2154 examination shall identify the choice of the independent medical
 2155 examiner to all other parties within 15 days after the date the
 2156 independent medical examination is to take place. Failure to
 2157 timely provide such notification shall preclude the requesting
 2158 party from submitting the findings of such independent medical
 2159 examiner in a proceeding before a judge of compensation claims.
 2160 The independent medical examiner may not provide followup care
 2161 if such recommendation for care is found to be medically



2162 necessary. If the employee prevails in a medical dispute as
2163 determined in an order by a judge of compensation claims or if
2164 benefits are paid or treatment provided after the employee has
2165 obtained an independent medical examination based upon the
2166 examiner's findings, the costs of such examination shall be paid
2167 by the employer or carrier.

2168 (b) Each party is bound by his or her selection of an
2169 independent medical examiner, including the selection of the
2170 independent medical examiner in accordance with s. 440.134 and
2171 the opinions of such independent medical examiner. Each party
2172 ~~and~~ is entitled to an alternate examiner only if:

2173 1. The examiner is not qualified to render an opinion upon
2174 an aspect of the employee's illness or injury which is material
2175 to the claim or petition for benefits;

2176 2. The examiner ceases to practice in the specialty
2177 relevant to the employee's condition;

2178 3. The examiner is unavailable due to injury, death, or
2179 relocation outside a reasonably accessible geographic area; or

2180 4. The parties agree to an alternate examiner.

2181
2182 ~~Any party may request, or a judge of compensation claims may~~
2183 ~~require, designation of an agency medical advisor as an~~
2184 ~~independent medical examiner. The opinion of the advisors acting~~
2185 ~~as examiners shall not be afforded the presumption set forth in~~
2186 ~~paragraph (9)(c).~~

2187 (c) The carrier may, at its election, contact the claimant
2188 directly to schedule a reasonable time for an independent
2189 medical examination. The carrier must confirm the scheduling



2190 agreement in writing with the claimant and the ~~within 5 days and~~
2191 ~~notify~~ claimant's counsel, if any, at least 7 days before the
2192 date upon which the independent medical examination is scheduled
2193 to occur. An attorney representing a claimant is not authorized
2194 to schedule the self-insured employer's or carrier's independent
2195 medical evaluations under this subsection. Neither the self-
2196 insured employer nor the carrier shall be responsible for
2197 scheduling any independent medical examination other than an
2198 employer or carrier independent medical examination.

2199 (d) If the employee fails to appear for the independent
2200 medical examination scheduled by the employer or carrier without
2201 good cause and fails to advise the physician at least 24 hours
2202 before the scheduled date for the examination that he or she
2203 cannot appear, the employee is barred from recovering
2204 compensation for any period during which he or she has refused
2205 to submit to such examination. Further, the employee shall
2206 reimburse the employer or carrier 50 percent of the physician's
2207 cancellation or no-show fee unless the employer or carrier that
2208 schedules the examination fails to timely provide to the
2209 employee a written confirmation of the date of the examination
2210 pursuant to paragraph (c) which includes an explanation of why
2211 he or she failed to appear. The employee may appeal to a judge
2212 of compensation claims for reimbursement when the employer or
2213 carrier withholds payment in excess of the authority granted by
2214 this section.

2215 (e) No medical opinion other than the opinion of a medical
2216 advisor appointed by the judge of compensation claims or the
2217 department ~~agency~~, an independent medical examiner, or an



2218 authorized treating provider is admissible in proceedings before
 2219 the judges of compensation claims.

2220 (f) Attorney's fees incurred by an injured employee in
 2221 connection with delay of or opposition to an independent medical
 2222 examination, including, but not limited to, motions for
 2223 protective orders, are not recoverable under this chapter.

2224 (g) When a medical dispute arises, the parties may
 2225 mutually agree to refer the employee to a licensed physician
 2226 specializing in the diagnosis and treatment of the medical
 2227 condition at issue for an independent medical examination and
 2228 report. Such medical examination shall be referred to as a
 2229 "consensus independent medical examination." The findings and
 2230 conclusions of such mutually agreed upon consensus independent
 2231 medical examination shall be binding on the parties and shall
 2232 constitute resolution of the medical dispute addressed in the
 2233 independent consensus medical examination and in any proceeding.
 2234 Agreement by the parties to a consensus independent medical
 2235 examination shall not affect the employer's, carrier's, or
 2236 employee's entitlement to one independent medical examination
 2237 per accident as provided for in this subsection.

2238 (6) UTILIZATION REVIEW.--Carriers shall review all bills,
 2239 invoices, and other claims for payment submitted by health care
 2240 providers in order to identify overutilization and billing
 2241 errors, including compliance with practice parameters and
 2242 protocols of treatment established in accordance with this
 2243 chapter, and may hire peer review consultants or conduct
 2244 independent medical evaluations. Such consultants, including
 2245 peer review organizations, are immune from liability in the



2246 execution of their functions under this subsection to the extent
 2247 provided in s. 766.101. If a carrier finds that overutilization
 2248 of medical services or a billing error has occurred, or there is
 2249 a violation of the practice parameters and protocols of
 2250 treatment established in accordance with this chapter, it must
 2251 disallow or adjust payment for such services or error without
 2252 order of a judge of compensation claims or the agency, if the
 2253 carrier, in making its determination, has complied with this
 2254 section and rules adopted by the agency.

2255 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

2256 (a) Any health care provider, carrier, or employer who
 2257 elects to contest the disallowance or adjustment of payment by a
 2258 carrier under subsection (6) must, within 30 days after receipt
 2259 of notice of disallowance or adjustment of payment, petition the
 2260 agency to resolve the dispute. The petitioner must serve a copy
 2261 of the petition on the carrier and on all affected parties by
 2262 certified mail. The petition must be accompanied by all
 2263 documents and records that support the allegations contained in
 2264 the petition. Failure of a petitioner to submit such
 2265 documentation to the agency results in dismissal of the
 2266 petition.

2267 (b) The carrier must submit to the agency within 10 days
 2268 after receipt of the petition all documentation substantiating
 2269 the carrier's disallowance or adjustment. Failure of the carrier
 2270 to timely submit the requested documentation to the agency
 2271 within 10 days constitutes a waiver of all objections to the
 2272 petition.



2273 (c) Within 60 days after receipt of all documentation, the
 2274 agency must provide to the petitioner, the carrier, and the
 2275 affected parties a written determination of whether the carrier
 2276 properly adjusted or disallowed payment. The agency must be
 2277 guided by standards and policies set forth in this chapter,
 2278 including all applicable reimbursement schedules, practice
 2279 parameters, and protocols of treatment, in rendering its
 2280 determination.

2281 (d) If the agency finds an improper disallowance or
 2282 improper adjustment of payment by an insurer, the insurer shall
 2283 reimburse the health care provider, facility, insurer, or
 2284 employer within 30 days, subject to the penalties provided in
 2285 this subsection.

2286 (e) The agency shall adopt rules to carry out this
 2287 subsection. The rules may include provisions for consolidating
 2288 petitions filed by a petitioner and expanding the timetable for
 2289 rendering a determination upon a consolidated petition.

2290 (f) Any carrier that engages in a pattern or practice of
 2291 arbitrarily or unreasonably disallowing or reducing payments to
 2292 health care providers may be subject to one or more of the
 2293 following penalties imposed by the agency:

2294 1. Repayment of the appropriate amount to the health care
 2295 provider.

2296 2. An administrative fine assessed by the agency in an
 2297 amount not to exceed \$5,000 per instance of improperly
 2298 disallowing or reducing payments.

2299 3. Award of the health care provider's costs, including a
 2300 reasonable attorney's fee, for prosecuting the petition.



2301 (8) PATTERN OR PRACTICE OF OVERUTILIZATION.--

2302 (a) Carriers must report to the agency all instances of

2303 overutilization including, but not limited to, all instances in

2304 which the carrier disallows or adjusts payment or a

2305 determination has been made that the provided or recommended

2306 treatment is in excess of the practice parameters and protocols

2307 of treatment established in this chapter. The agency shall

2308 determine whether a pattern or practice of overutilization

2309 exists.

2310 (b) If the agency determines that a health care provider

2311 has engaged in a pattern or practice of overutilization or a

2312 violation of this chapter or rules adopted by the agency,

2313 including a pattern or practice of providing treatment in excess

2314 of the practice parameters or protocols of treatment, it may

2315 impose one or more of the following penalties:

2316 1. An order of the agency barring the provider from

2317 payment under this chapter;

2318 2. Deauthorization of care under review;

2319 3. Denial of payment for care rendered in the future;

2320 4. Decertification of a health care provider certified as

2321 an expert medical advisor under subsection (9) or of a

2322 rehabilitation provider certified under s. 440.49;

2323 5. An administrative fine assessed by the agency in an

2324 amount not to exceed \$5,000 per instance of overutilization or

2325 violation; and

2326 6. Notification of and review by the appropriate licensing

2327 authority pursuant to s. 440.106(3).

2328 (9) EXPERT MEDICAL ADVISORS.--



2329 (a) The agency shall certify expert medical advisors in
2330 each specialty to assist the agency and the judges of
2331 compensation claims within the advisor's area of expertise as
2332 provided in this section. The agency shall, in a manner
2333 prescribed by rule, in certifying, recertifying, or decertifying
2334 an expert medical advisor, consider the qualifications,
2335 training, impartiality, and commitment of the health care
2336 provider to the provision of quality medical care at a
2337 reasonable cost. As a prerequisite for certification or
2338 recertification, the agency shall require, at a minimum, that
2339 an expert medical advisor have specialized workers' compensation
2340 training or experience under the workers' compensation system of
2341 this state and board certification or board eligibility.

2342 (b) The agency shall contract with one or more entities
2343 that employ, contract with, or otherwise secure ~~or employ~~ expert
2344 medical advisors to provide peer review or expert medical
2345 consultation, opinions, and testimony to the agency or to a
2346 judge of compensation claims in connection with resolving
2347 disputes relating to reimbursement, differing opinions of health
2348 care providers, and health care and physician services rendered
2349 under this chapter, including utilization issues. The agency
2350 shall by rule establish the qualifications of expert medical
2351 advisors, including training and experience in the workers'
2352 compensation system in the state and the expert medical
2353 advisor's knowledge of and commitment to the standards of care,
2354 practice parameters, and protocols established pursuant to this
2355 chapter. Expert medical advisors contracting with the agency
2356 shall, as a term of such contract, agree to provide consultation



2357 or services in accordance with the timetables set forth in this
2358 chapter and to abide by rules adopted by the agency, including,
2359 but not limited to, rules pertaining to procedures for review of
2360 the services rendered by health care providers and preparation
2361 of reports and testimony or recommendations for submission to
2362 the agency or the judge of compensation claims.

2363 (c) If there is disagreement in the opinions of the health
2364 care providers, if two health care providers disagree on medical
2365 evidence supporting the employee's complaints or the need for
2366 additional medical treatment, or if two health care providers
2367 disagree that the employee is able to return to work, the agency
2368 may, and the judge of compensation claims shall, upon his or her
2369 own motion or within 15 days after receipt of a written request
2370 by either the injured employee, the employer, or the carrier,
2371 order the injured employee to be evaluated by an expert medical
2372 advisor. The opinion of the expert medical advisor is presumed
2373 to be correct unless there is clear and convincing evidence to
2374 the contrary as determined by the judge of compensation claims.
2375 The expert medical advisor appointed to conduct the evaluation
2376 shall have free and complete access to the medical records of
2377 the employee. An employee who fails to report to and cooperate
2378 with such evaluation forfeits entitlement to compensation during
2379 the period of failure to report or cooperate.

2380 (d) The expert medical advisor must complete his or her
2381 evaluation and issue his or her report to the agency or to the
2382 judge of compensation claims within 15 ~~45~~ days after receipt of
2383 all medical records. The expert medical advisor must furnish a
2384 copy of the report to the carrier and to the employee.



2385 (e) An expert medical advisor is not liable under any
2386 theory of recovery for evaluations performed under this section
2387 without a showing of fraud or malice. The protections of s.
2388 766.101 apply to any officer, employee, or agent of the agency
2389 and to any officer, employee, or agent of any entity with which
2390 the agency has contracted under this subsection.

2391 (f) If the agency or a judge of compensation claims orders
2392 ~~determines that~~ the services of a certified expert medical
2393 advisor ~~are required~~ to resolve a dispute under this section,
2394 the party requesting such examination ~~carrier~~ must compensate
2395 the advisor for his or her time in accordance with a schedule
2396 adopted by the agency. If the employee prevails in a dispute as
2397 determined in an order by a judge of compensation claims based
2398 upon the expert medical advisor's findings, the employer or
2399 carrier shall pay for the costs of such expert medical advisor.
2400 If a judge of compensation claims, upon his or her motion, finds
2401 that an expert medical advisor is needed to resolve the dispute,
2402 the carrier must compensate the advisor for his or her time in
2403 accordance with a schedule adopted by the agency. The agency may
2404 assess a penalty not to exceed \$500 against any carrier that
2405 fails to timely compensate an advisor in accordance with this
2406 section.

2407 (10) WITNESS FEES.-- Any health care provider who gives a
2408 deposition shall be allowed a witness fee. The amount charged by
2409 the witness may not exceed \$200 per hour. An expert witness who
2410 has never provided direct professional services to a party but
2411 has merely reviewed medical records and provided an expert
2412 opinion or has provided only direct professional services that



2413 | were unrelated to the workers' compensation case may not be
 2414 | allowed a witness fee in excess of \$200 per day.

2415 | (11) AUDITS BY AGENCY FOR HEALTH CARE ADMINISTRATION AND
 2416 | THE DEPARTMENT OF INSURANCE; JURISDICTION.--

2417 | (a) The Agency for Health Care Administration may
 2418 | investigate health care providers to determine whether providers
 2419 | are complying with this chapter and with rules adopted by the
 2420 | agency, whether the providers are engaging in overutilization,
 2421 | ~~and~~ whether providers are engaging in improper billing
 2422 | practices, and whether providers are adhering to practice
 2423 | parameters and protocols established in accordance with this
 2424 | chapter. If the agency finds that a health care provider has
 2425 | improperly billed, overutilized, or failed to comply with agency
 2426 | rules or the requirements of this chapter, including, but not
 2427 | limited to, practice parameters and protocols established in
 2428 | accordance with this chapter, it must notify the provider of its
 2429 | findings and may determine that the health care provider may not
 2430 | receive payment from the carrier or may impose penalties as set
 2431 | forth in subsection (8) or other sections of this chapter. If
 2432 | the health care provider has received payment from a carrier for
 2433 | services that were improperly billed, that constitute
 2434 | overutilization, or that were outside practice parameters or
 2435 | protocols established in accordance with this chapter ~~or for~~
 2436 | ~~overutilization~~, it must return those payments to the carrier.
 2437 | The agency may assess a penalty not to exceed \$500 for each
 2438 | overpayment that is not refunded within 30 days after
 2439 | notification of overpayment by the agency or carrier.



2440 (b) The department shall fine or otherwise discipline an
2441 employer or carrier, pursuant to this chapter, the insurance
2442 code, or rules adopted by the department, for each late payment
2443 of compensation that is below the minimum 95-percent ~~90-percent~~
2444 performance standard. Any carrier that is found to be not in
2445 compliance in subsequent consecutive quarters must implement a
2446 medical-bill review program approved by the division, and the
2447 carrier is subject to disciplinary action by the Department of
2448 Insurance.

2449 (c) The agency has exclusive jurisdiction to decide any
2450 matters concerning reimbursement, to resolve any overutilization
2451 dispute under subsection (7), and to decide any question
2452 concerning overutilization under subsection (8), which question
2453 or dispute arises after January 1, 1994.

2454 (d) The following agency actions do not constitute agency
2455 action subject to review under ss. 120.569 and 120.57 and do not
2456 constitute actions subject to s. 120.56: referral by the entity
2457 responsible for utilization review; a decision by the agency to
2458 refer a matter to a peer review committee; establishment by a
2459 health care provider or entity of procedures by which a peer
2460 review committee reviews the rendering of health care services;
2461 and the review proceedings, report, and recommendation of the
2462 peer review committee.

2463 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
2464 REIMBURSEMENT ALLOWANCES.--

2465 (a) A three-member panel is created, consisting of the
2466 Insurance Commissioner, or the Insurance Commissioner's
2467 designee, and two members to be appointed by the Governor,



2468 subject to confirmation by the Senate, one member who, on
2469 account of present or previous vocation, employment, or
2470 affiliation, shall be classified as a representative of
2471 employers, the other member who, on account of previous
2472 vocation, employment, or affiliation, shall be classified as a
2473 representative of employees. The panel shall determine statewide
2474 schedules of maximum reimbursement allowances for medically
2475 necessary treatment, care, and attendance provided by
2476 physicians, hospitals, ambulatory surgical centers, work-
2477 hardening programs, pain programs, and durable medical
2478 equipment. The maximum reimbursement allowances for inpatient
2479 hospital care shall be based on a schedule of per diem rates, to
2480 be approved by the three-member panel no later than March 1,
2481 1994, to be used in conjunction with a precertification manual
2482 as determined by the department, including maximum hours in
2483 which an outpatient may remain in observation status, which
2484 shall not exceed 23 hours agency. All compensable charges for
2485 hospital outpatient care shall be reimbursed at 75 percent of
2486 usual and customary charges, except as otherwise provided by
2487 this subsection. ~~Until the three-member panel approves a~~
2488 ~~schedule of per diem rates for inpatient hospital care and it~~
2489 ~~becomes effective, all compensable charges for hospital~~
2490 ~~inpatient care must be reimbursed at 75 percent of their usual~~
2491 ~~and customary charges~~. Annually, the three-member panel shall
2492 adopt schedules of maximum reimbursement allowances for
2493 physicians, hospital inpatient care, hospital outpatient care,
2494 ambulatory surgical centers, work-hardening programs, and pain
2495 programs. ~~However, the maximum percentage of increase in the~~



2496 ~~individual reimbursement allowance may not exceed the percentage~~
2497 ~~of increase in the Consumer Price Index for the previous year.~~
2498 An individual physician, hospital, ambulatory surgical center,
2499 pain program, or work-hardening program shall be reimbursed
2500 either ~~the usual and customary charge for treatment, care, and~~
2501 ~~attendance,~~ the agreed-upon contract price, or the maximum
2502 reimbursement allowance in the appropriate schedule, ~~whichever~~
2503 ~~is less.~~

2504 (b) It is the intent of the Legislature to increase the
2505 schedule of maximum reimbursement allowances for selected
2506 physicians effective January 1, 2004, and to pay for the
2507 increases through reductions in payments to hospitals. Revisions
2508 developed pursuant to this subsection are limited to the
2509 following:

2510 1. Payments for outpatient physical, occupational, and
2511 speech therapy provided by hospitals shall be reduced to the
2512 schedule of maximum reimbursement allowances for these services
2513 which applies to nonhospital providers.

2514 2. Payments for scheduled outpatient nonemergency
2515 radiological and clinical laboratory services that are not
2516 provided in conjunction with a surgical procedure shall be
2517 reduced to the schedule of maximum reimbursement allowances for
2518 these services which applies to nonhospital providers.

2519 3. Outpatient reimbursement for scheduled surgeries shall
2520 be reduced from 75 percent of charges to 60 percent of charges.

2521 4. Maximum reimbursement for a physician licensed under
2522 chapter 458 or chapter 459 shall be increased to 110 percent of
2523 the reimbursement allowed by Medicare, using appropriate codes



2524 and modifiers or the medical reimbursement level adopted by the
 2525 three-member panel as of January 1, 2003, whichever is greater.

2526 5. Maximum reimbursement for surgical procedures shall be
 2527 increased to 140 percent of the reimbursement allowed by
 2528 Medicare or the medical reimbursement level adopted by the
 2529 three-member panel as of January 1, 2003, whichever is greater.

2530 (c)(b) As to reimbursement for a prescription medication,
 2531 the reimbursement amount for a prescription shall be the average
 2532 wholesale price times 0.86 ~~1.2~~ plus \$4.26 ~~\$4.18~~ for the
 2533 dispensing fee, except where the carrier has contracted for a
 2534 lower amount. Fees for pharmaceuticals and pharmaceutical
 2535 services shall be reimbursable at the applicable fee schedule
 2536 amount. Where the employer or carrier has contracted for such
 2537 services and the employee elects to obtain them through a
 2538 provider not a party to the contract, the carrier shall
 2539 reimburse at the schedule, negotiated, or contract price,
 2540 whichever is lower. No such contract shall rely on a provider
 2541 that is not reasonably accessible to the employee.

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



2552 first approve the data which it finds representative of
2553 prevailing charges in the state for similar treatment, care, and
2554 attendance of injured persons. Each health care provider, health
2555 care facility, ambulatory surgical center, work-hardening
2556 program, or pain program receiving workers' compensation
2557 payments shall maintain records verifying their usual charges.
2558 In establishing the uniform schedule of maximum reimbursement
2559 allowances, the panel must consider:

2560 1. The levels of reimbursement for similar treatment,
2561 care, and attendance made by other health care programs or
2562 third-party providers;

2563 2. The impact upon cost to employers for providing a level
2564 of reimbursement for treatment, care, and attendance which will
2565 ensure the availability of treatment, care, and attendance
2566 required by injured workers;

2567 3. The financial impact of the reimbursement allowances
2568 upon health care providers and health care facilities, including
2569 trauma centers as defined in s. 395.4001, and its effect upon
2570 their ability to make available to injured workers such
2571 medically necessary remedial treatment, care, and attendance.
2572 The uniform schedule of maximum reimbursement allowances must be
2573 reasonable, must promote health care cost containment and
2574 efficiency with respect to the workers' compensation health care
2575 delivery system, and must be sufficient to ensure availability
2576 of such medically necessary remedial treatment, care, and
2577 attendance to injured workers; and



2578 4. The most recent average maximum allowable rate of
 2579 increase for hospitals determined by the Health Care Board under
 2580 chapter 408.

2581 (e)~~(d)~~ In addition to establishing the uniform schedule of
 2582 maximum reimbursement allowances, the panel shall:

2583 1. Take testimony, receive records, and collect data to
 2584 evaluate the adequacy of the workers' compensation fee schedule,
 2585 nationally recognized fee schedules and alternative methods of
 2586 reimbursement to certified health care providers and health care
 2587 facilities for inpatient and outpatient treatment and care.

2588 2. Survey certified health care providers and health care
 2589 facilities to determine the availability and accessibility of
 2590 workers' compensation health care delivery systems for injured
 2591 workers.

2592 3. Survey carriers to determine the estimated impact on
 2593 carrier costs and workers' compensation premium rates by
 2594 implementing changes to the carrier reimbursement schedule or
 2595 implementing alternative reimbursement methods.

2596 4. Submit recommendations on or before January 1, 2003,
 2597 and biennially thereafter, to the President of the Senate and
 2598 the Speaker of the House of Representatives on methods to
 2599 improve the workers' compensation health care delivery system.

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



2606 The division shall provide administrative support and service to
 2607 the panel to the extent requested by the panel.

2608 (13) REMOVAL OF PHYSICIANS FROM LISTS OF THOSE AUTHORIZED
 2609 TO RENDER MEDICAL CARE.-- The agency shall remove from the list
 2610 of physicians or facilities authorized to provide remedial
 2611 treatment, care, and attendance under this chapter the name of
 2612 any physician or facility found after reasonable investigation
 2613 to have:

2614 (a) Engaged in professional or other misconduct or
 2615 incompetency in connection with medical services rendered under
 2616 this chapter;

2617 (b) Exceeded the limits of his or her or its professional
 2618 competence in rendering medical care under this chapter, or to
 2619 have made materially false statements regarding his or her or
 2620 its qualifications in his or her application;

2621 (c) Failed to transmit copies of medical reports to the
 2622 employer or carrier, or failed to submit full and truthful
 2623 medical reports of all his or her or its findings to the
 2624 employer or carrier as required under this chapter;

2625 (d) Solicited, or employed another to solicit for himself
 2626 or herself or itself or for another, professional treatment,
 2627 examination, or care of an injured employee in connection with
 2628 any claim under this chapter;

2629 (e) Refused to appear before, or to answer upon request
 2630 of, the agency or any duly authorized officer of the state, any
 2631 legal question, or to produce any relevant book or paper
 2632 concerning his or her conduct under any authorization granted to
 2633 him or her under this chapter;



2634 (f) Self-referred in violation of this chapter or other
 2635 laws of this state; or

2636 (g) Engaged in a pattern of practice of overutilization or
 2637 a violation of this chapter or rules adopted by the agency,
 2638 including failure to adhere to practice parameters and protocols
 2639 established in accordance with this chapter.

2640 (14) PAYMENT OF MEDICAL FEES.--

2641 (a) Except for emergency care treatment, fees for medical
 2642 services are payable only to a health care provider certified
 2643 and authorized to render remedial treatment, care, or attendance
 2644 under this chapter. Carriers shall pay, disallow, or deny
 2645 payment to health care providers in the manner and at times set
 2646 forth in this chapter. A health care provider may not collect or
 2647 receive a fee from an injured employee within this state, except
 2648 as otherwise provided by this chapter. Such providers have
 2649 recourse against the employer or carrier for payment for
 2650 services rendered in accordance with this chapter. Payment to
 2651 health care providers or physicians shall be subject to the
 2652 medical fee schedule and applicable practice parameters and
 2653 protocols, regardless of whether the health care provider or
 2654 claimant is asserting that the payment should be made.

2655 (b) Fees charged for remedial treatment, care, and
 2656 attendance, except for independent medical examinations and
 2657 consensus independent medical examinations, may not exceed the
 2658 applicable fee schedules adopted under this chapter and
 2659 department rule. Notwithstanding any other provision in this
 2660 chapter, if a physician or health care provider specifically
 2661 agrees in writing to follow identified procedures aimed at



2662 providing quality medical care to injured workers at reasonable
2663 costs, deviations from established fee schedules shall be
2664 permitted. Written agreements warranting deviations may include,
2665 but are not limited to, the timely scheduling of appointments
2666 for injured workers, participating in return-to-work programs
2667 with injured workers' employers, expediting the reporting of
2668 treatments provided to injured workers, and agreeing to
2669 continuing education, utilization review, quality assurance,
2670 precertification, and case management systems that are designed
2671 to provide needed treatment for injured workers.

2672 (c) Notwithstanding any other provision of this chapter,
2673 following overall maximum medical improvement from an injury
2674 compensable under this chapter, the employee is obligated to pay
2675 a copayment of \$10 per visit for medical services. The copayment
2676 shall not apply to emergency care provided to the employee.

2677 (15) PRACTICE PARAMETERS.—The practice parameters and
2678 protocols mandated under this chapter shall be the Workers'
2679 Compensation Utilization Management Standards adopted by the
2680 American Accreditation Health Care Commission in effect on
2681 January 1, 2003.

2682 ~~(a) The Agency for Health Care Administration, in~~
2683 ~~conjunction with the department and appropriate health~~
2684 ~~professional associations and health-related organizations shall~~
2685 ~~develop and may adopt by rule scientifically sound practice~~
2686 ~~parameters for medical procedures relevant to workers'~~
2687 ~~compensation claimants. Practice parameters developed under this~~
2688 ~~section must focus on identifying effective remedial treatments~~
2689 ~~and promoting the appropriate utilization of health care~~



2690 ~~resources. Priority must be given to those procedures that~~
2691 ~~involve the greatest utilization of resources either because~~
2692 ~~they are the most costly or because they are the most frequently~~
2693 ~~performed. Practice parameters for treatment of the 10 top~~
2694 ~~procedures associated with workers' compensation injuries~~
2695 ~~including the remedial treatment of lower-back injuries must be~~
2696 ~~developed by December 31, 1994.~~

2697 ~~(b) The guidelines may be initially based on guidelines~~
2698 ~~prepared by nationally recognized health care institutions and~~
2699 ~~professional organizations but should be tailored to meet the~~
2700 ~~workers' compensation goal of returning employees to full~~
2701 ~~employment as quickly as medically possible, taking into~~
2702 ~~consideration outcomes data collected from managed care~~
2703 ~~providers and any other inpatient and outpatient facilities~~
2704 ~~serving workers' compensation claimants.~~

2705 ~~(c) Procedures must be instituted which provide for the~~
2706 ~~periodic review and revision of practice parameters based on the~~
2707 ~~latest outcomes data, research findings, technological~~
2708 ~~advancements, and clinical experiences, at least once every 3~~
2709 ~~years.~~

2710 ~~(d) Practice parameters developed under this section must~~
2711 ~~be used by carriers and the agency in evaluating the~~
2712 ~~appropriateness and overutilization of medical services provided~~
2713 ~~to injured employees.~~

2714 (16) STANDARDS OF CARE.--The following standards of care
2715 shall be followed in providing medical care under this chapter:

2716 (a) Abnormal anatomical findings alone, in the absence of
2717 objective relevant medical findings, shall not be an indicator



2718 of injury or illness, a justification for the provision of
2719 remedial medical care or the assignment of restrictions, or a
2720 foundation for limitations.

2721 (b) At all times during evaluation and treatment, the
2722 provider shall act on the premise that returning to work is an
2723 integral part of the treatment plan. The goal of removing all
2724 restrictions and limitations as early as appropriate shall be
2725 part of the treatment plan on a continuous basis. The assignment
2726 of restrictions and limitations shall be reviewed with each
2727 patient exam and upon receipt of new information, such as
2728 progress reports from physical therapists and other providers.
2729 Consideration shall be given to upgrading or removing the
2730 restrictions and limitations with each patient exam, based upon
2731 the presence or absence of objective relevant medical findings.

2732 (c) Reasonable necessary medical care of injured employees
2733 shall in all situations:

2734 1. Utilize a high intensity, short duration treatment
2735 approach that focuses on early activation and restoration of
2736 function whenever possible.

2737 2. Include reassessment of the treatment plans, regimes,
2738 therapies, prescriptions, and functional limitations or
2739 restrictions prescribed by the provider every 30 days.

2740 3. Be focused on treatment of the individual employee's
2741 specific clinical dysfunction or status and shall not be based
2742 upon nondescript diagnostic labels.

2743
2744 All treatment shall be inherently scientifically logical and the
2745 evaluation or treatment procedure must match the documented



2746 physiologic and clinical problem. Treatment shall match the
 2747 type, intensity, and duration of service required by the problem
 2748 identified.

2749 (17) Failure to comply with this section shall be
 2750 considered a violation of this chapter and is subject to
 2751 penalties as provided for in s. 440.525.

2752 Section 16. Paragraphs (d) and (i) of subsection (1) and
 2753 subsections (2), (6), (7), (8), (9), (10), (11), (17), and (25)
 2754 of section 440.134, Florida Statutes, are amended to read:

2755 440.134 Workers' compensation managed care arrangement.--

2756 (1) As used in this section, the term:

2757 (d) "Grievance" means a written complaint, other than a
 2758 petition for benefits, filed by the injured worker pursuant to
 2759 the requirements of the managed care arrangement, expressing
 2760 dissatisfaction with the ~~medical care provided by an insurer's~~
 2761 workers' compensation managed care arrangement's refusal to
 2762 provide medical care or the medical care provided ~~arrangement~~
 2763 health care providers, expressed in writing by an injured
 2764 worker.

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



2773 licensed under chapter 460, or a podiatric physician licensed
 2774 under chapter 461.

2775 (2)(a) The self-insured employer or carrier may, subject
 2776 to the terms and limitations specified elsewhere in this section
 2777 and chapter, furnish to the employee solely through managed care
 2778 arrangements such medically necessary remedial treatment, care,
 2779 and attendance for such period as the nature of the injury or
 2780 the process of recovery requires and which shall be in
 2781 accordance with practice parameters and protocols established
 2782 pursuant to this chapter. For any self-insured employer or
 2783 carrier who elects to deliver the medical benefits required by
 2784 this chapter through a method other than a workers' compensation
 2785 managed care arrangement, the discontinuance of the use of the
 2786 workers' compensation managed care arrangement shall be without
 2787 regard to the date of the accident, notwithstanding any other
 2788 provision of law or rule.

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



2801 be renewed upon application for renewal and payment of a renewal
 2802 fee of \$1,000, provided that the insurer is in compliance with
 2803 the requirements of this section and any rules adopted
 2804 hereunder. An application for renewal of the authorization shall
 2805 be made 90 days prior to expiration of the authorization, on
 2806 forms provided by the agency. Renewal application shall not
 2807 require the resubmission of any documents previously filed with
 2808 the agency if such documents have remained valid and unchanged
 2809 since their original filing.

2810 (6) The proposed managed care plan of operation must
 2811 include:

2812 (a) A statement or map providing a clear description of
 2813 the service area.

2814 (b) A description of the grievance procedure to be used.

2815 (c) A description of the quality assurance program which
 2816 assures that the health care services provided to workers shall
 2817 be rendered under reasonable standards of quality of care
 2818 consistent with the prevailing standards of medical practice in
 2819 the medical community. The program shall include, but not be
 2820 limited to:

2821 1. A written statement of goals and objectives that
 2822 stresses health and return-to-work outcomes as the principal
 2823 criteria for the evaluation of the quality of care rendered to
 2824 injured workers.

2825 2. A written statement describing how methodology has been
 2826 incorporated into an ongoing system for monitoring of care that
 2827 is individual case oriented and, when implemented, can provide



2828 interpretation and analysis of patterns of care rendered to
2829 individual patients by individual providers.

2830 3. Written procedures for taking appropriate remedial
2831 action whenever, as determined under the quality assurance
2832 program, inappropriate or substandard services have been
2833 provided or services that should have been furnished have not
2834 been provided.

2835 4. A written plan, which includes ongoing review, for
2836 providing review of physicians and other licensed medical
2837 providers.

2838 5. Appropriate financial incentives to reduce service
2839 costs and utilization without sacrificing the quality of
2840 service.

2841 6. Adequate methods of peer review and utilization review.
2842 The utilization review process shall include a health care
2843 facility's ~~facilities~~ precertification mechanism, including, but
2844 not limited to, all elective admissions and nonemergency
2845 surgeries and adherence to practice parameters and protocols
2846 established in accordance with this chapter.

2847 7. Provisions for resolution of disputes arising between a
2848 health care provider and an insurer regarding reimbursements and
2849 utilization review.

2850 8. Availability of a process for aggressive medical care
2851 coordination, as well as a program involving cooperative efforts
2852 by the workers, the employer, and the workers' compensation
2853 managed care arrangement to promote early return to work for
2854 injured workers.



2855 9. A written plan allowing for the independent medical
2856 examination provided for in s. 440.13(5). Notwithstanding any
2857 provision to the contrary, the costs for the independent medical
2858 examination shall be paid by the carrier if such examination is
2859 performed by a physician in the provider network. Otherwise,
2860 such costs shall be paid in accordance with s. 440.13(5). An
2861 independent medical examination requested by a claimant and paid
2862 for by the carrier shall constitute the claimant's one
2863 independent medical examination per accident under s. 440.13(5).
2864 ~~A process allowing employees to obtain one second medical~~
2865 ~~opinion in the same specialty and within the provider network~~
2866 ~~during the course of treatment for a work-related injury.~~

2867 10. A provision for the selection of a primary care
2868 provider by the employee from among primary providers in the
2869 provider network.

2870 11. The written information proposed to be used by the
2871 insurer to comply with subparagraph 8.

2872 (7) Written procedures to provide the insurer with timely
2873 medical records and information including, but not limited to,
2874 work status, work restrictions, date of maximum medical
2875 improvement, permanent impairment ratings, and other information
2876 as required, including information demonstrating compliance with
2877 the practice parameters and protocols of treatment established
2878 pursuant to this chapter.

2879 (8) Evidence that appropriate health care providers and
2880 administrative staff of the insurer's workers' compensation
2881 managed care arrangement have received training and education on
2882 the provisions of this chapter; ~~and~~ the administrative rules



2883 that govern the provision of remedial treatment, care, and
2884 attendance of injured workers; and the practice parameters and
2885 protocols of treatment established pursuant to this chapter.

2886 (9) Written procedures and methods to prevent
2887 inappropriate or excessive treatment that are in accordance with
2888 the practice parameters and protocols of treatment established
2889 pursuant to this chapter.

2890 (10) Written procedures and methods for the management of
2891 an injured worker's medical care by a medical care coordinator
2892 including:

2893 (a) The mechanism for assuring that covered employees
2894 receive all initial covered services from a primary care
2895 provider participating in the provider network, except for
2896 emergency care.

2897 (b) The mechanism for assuring that all continuing covered
2898 services be received from the same primary care provider
2899 participating in the provider network that provided the initial
2900 covered services, except when services from another provider are
2901 authorized by the medical care coordinator pursuant to paragraph
2902 (d).

2903 (c) The policies and procedures for allowing an employee
2904 one change to another provider within the ~~same specialty and~~
2905 provider network as the authorized treating physician during the
2906 course of treatment for a work-related injury, in accordance
2907 with the procedures provided in s. 440.13(2)(f), ~~if a request is~~
2908 ~~made to the medical care coordinator by the employee; and~~
2909 ~~requiring that special provision be made for more than one such~~
2910 ~~referral through the arrangement's grievance procedures.~~



2911 (d) The process for assuring that all referrals authorized
 2912 by a medical care coordinator, in accordance with the practice
 2913 parameters and protocols of treatment established pursuant to
 2914 this chapter, are made to the participating network providers,
 2915 unless medically necessary treatment, care, and attendance are
 2916 not available and accessible to the injured worker in the
 2917 provider network.

2918 (e) Assignment of a medical care coordinator licensed
 2919 under chapter 458 or chapter 459 to manage care by physicians
 2920 licensed under chapter 458 or chapter 459, a medical care
 2921 coordinator licensed under chapter 460 to manage care by
 2922 physicians licensed under chapter 460, and a medical care
 2923 coordinator licensed under chapter 461 to manage care by
 2924 physicians licensed under chapter 461 upon request by an injured
 2925 employee for care by a physician licensed under chapter 458,
 2926 chapter 459, chapter 460, or chapter 461.

2927 (11) A description of the use of workers' compensation
 2928 practice parameters and protocols of treatment for health care
 2929 services ~~when adopted by the agency.~~

2930 (17) Notwithstanding any other provisions of this chapter,
 2931 when a carrier provides medical care through a workers'
 2932 compensation managed care arrangement, pursuant to this section,
 2933 those workers who are subject to the arrangement must receive
 2934 medical services for work-related injuries and diseases as
 2935 prescribed in the contract, provided the employer and carrier
 2936 have provided notice to the employees of the arrangement in a
 2937 manner approved by the agency and the medical services are in
 2938 accordance with the practice parameters and protocols



2939 established pursuant to this chapter. Treatment received outside
2940 the workers' compensation managed care arrangement is not
2941 compensable, regardless of the purpose of the treatment,
2942 including, but not limited to, evaluations, examinations, or
2943 diagnostic studies to determine causation between medical
2944 findings and a compensable accident, the existence or extent of
2945 impairments or disabilities, and whether the injured employee
2946 has reached maximum medical improvement, unless authorized by
2947 the carrier prior to the treatment date.

2948 (25) The agency shall adopt rules that specify:

2949 (a) Procedures for authorization and examination of
2950 workers' compensation managed care arrangements by the agency.

2951 (b) Requirements and procedures for authorization of
2952 workers' compensation arrangement provider networks and
2953 procedures for the agency to grant exceptions from accessibility
2954 of services.

2955 (c) Requirements and procedures for case management,
2956 utilization management, and peer review.

2957 (d) Requirements and procedures for quality assurance and
2958 medical records.

2959 (e) Requirements and procedures for dispute resolution in
2960 conformance with this chapter.

2961 (f) Requirements and procedures for employee and provider
2962 education.

2963 (g) Requirements and procedures for reporting data
2964 regarding grievances, return-to-work outcomes, and provider
2965 networks.



2966 Section 17. Subsections (1) and (4) and paragraph (b) of
 2967 subsection (5) of section 440.14, Florida Statutes, are amended
 2968 to read:

2969 440.14 Determination of pay.--

2970 (1) Except as otherwise provided in this chapter, the
 2971 average weekly wages of the injured employee on the date of the
 2972 accident ~~at the time of the injury~~ shall be taken as the basis
 2973 upon which to compute compensation and shall be determined,
 2974 subject to the limitations of s. 440.12(2), as follows:

2975 (a) If the injured employee has worked in the employment
 2976 in which she or he was working on the date of the accident ~~at~~
 2977 ~~the time of the injury~~, whether for the same or another
 2978 employer, during substantially the whole of 13 weeks immediately
 2979 preceding the accident ~~injury~~, her or his average weekly wage
 2980 shall be one-thirteenth of the total amount of wages earned in
 2981 such employment during the 13 weeks. As used in this paragraph,
 2982 the term "substantially the whole of 13 weeks" means the
 2983 calendar ~~shall be deemed to mean and refer to a constructive~~
 2984 period of 13 weeks as a whole, which shall be defined as the 13
 2985 calendar weeks before the date of the accident, excluding the
 2986 week during which the accident occurred. ~~a consecutive period of~~
 2987 ~~91 days, and~~ The term "during substantially the whole of 13
 2988 weeks" shall be deemed to mean during not less than 75 ~~90~~
 2989 percent of the total customary ~~full-time~~ hours of employment
 2990 within such period considered as a whole.

2991 (b) If the injured employee has not worked in such
 2992 employment during substantially the whole of 13 weeks
 2993 immediately preceding the accident ~~injury~~, the wages of a



2994 similar employee in the same employment who has worked
 2995 substantially the whole of such 13 weeks shall be used in making
 2996 the determination under the preceding paragraph.

2997 (c) If an employee is a seasonal worker and the foregoing
 2998 method cannot be fairly applied in determining the average
 2999 weekly wage, then the employee may use, instead of the 13 weeks
 3000 immediately preceding the accident ~~injury~~, the calendar year or
 3001 the 52 weeks immediately preceding the accident ~~injury~~. The
 3002 employee will have the burden of proving that this method will
 3003 be more reasonable and fairer than the method set forth in
 3004 paragraphs (a) and (b) and, further, must document prior
 3005 earnings with W-2 forms, written wage statements, or income tax
 3006 returns. The employer shall have 30 days following the receipt
 3007 of this written proof to adjust the compensation rate, including
 3008 the making of any additional payment due for prior weekly
 3009 payments, based on the lower rate compensation.

3010 (d) If any of the foregoing methods cannot reasonably and
 3011 fairly be applied, the full-time weekly wages of the injured
 3012 employee shall be used, except as otherwise provided in
 3013 paragraph (e) or paragraph (f).

3014 (e) If it is established that the injured employee was
 3015 under 22 years of age when the accident occurred ~~injured~~ and
 3016 that under normal conditions her or his wages should be expected
 3017 to increase during the period of disability, the fact may be
 3018 considered in arriving at her or his average weekly wages.

3019 (f) If it is established that the injured employee was a
 3020 part-time worker on the date of the accident ~~at the time of the~~
 3021 ~~injury~~, that she or he had adopted part-time employment as a



3022 customary practice, and that under normal working conditions she
3023 or he probably would have remained a part-time worker during the
3024 period of disability, these factors shall be considered in
3025 arriving at her or his average weekly wages. For the purpose of
3026 this paragraph, the term "part-time worker" means an individual
3027 who customarily works less than the full-time hours or full-time
3028 workweek of a similar employee in the same employment.

3029 (g) If compensation is due for a fractional part of the
3030 week, the compensation for such fractional part shall be
3031 determined by dividing the weekly compensation rate by the
3032 number of days employed per week to compute the amount due for
3033 each day.

3034 (4) Upon termination of the employee or upon termination
3035 of the payment of fringe benefits of any employee who is
3036 collecting indemnity benefits pursuant to s. 440.15(2) or
3037 (3)~~(b)~~, the employer shall within 7 days of such termination
3038 file a corrected 13-week wage statement reflecting the wages
3039 paid and the fringe benefits that had been paid to the injured
3040 employee, as provided in s. 440.02(27).

3041 (5)

3042 (b) The employee waives any entitlement to interest,
3043 penalties, and attorney's fees during the period in which the
3044 employee has not provided information concerning the loss of
3045 earnings from concurrent employment. Carriers are not subject to
3046 penalties by the division under s. 440.20(8)(b) ~~and (c)~~ for
3047 unpaid compensation related to concurrent employment during the
3048 period in which the employee has not provided information
3049 concerning the loss of earnings from concurrent employment.



3050 Section 18. Section 440.15, Florida Statutes, is amended
3051 to read:

3052 440.15 Compensation for disability.-- Compensation for
3053 disability shall be paid to the employee, subject to the limits
3054 provided in s. 440.12(2), as follows:

3055 (1) PERMANENT TOTAL DISABILITY.--

3056 (a) In case of total disability adjudged to be permanent,
3057 $66\frac{2}{3}$ percent of the average weekly wages shall be paid to the
3058 employee during the continuance of such total disability.

3059 (b) ~~Only~~ A catastrophic injury as defined in s. 440.02(38)
3060 shall, in the absence of conclusive proof of a substantial
3061 earning capacity, constitute permanent total disability. In all
3062 other cases, no compensation shall be payable under paragraph
3063 (a) if the employee is engaged in, or is physically capable of
3064 engaging in at least sedentary employment. In order to obtain
3065 permanent total disability benefits, the employee must establish
3066 that he or she is not able uninterruptedly to engage in at least
3067 sedentary employment, within a 50-mile radius of the employee's
3068 residence, due to his or her physical limitation. Such benefits
3069 shall be payable until the employee reaches age 75,
3070 notwithstanding any age limits. If the accident occurred on or
3071 after the employee reaches age 70, benefits shall be payable
3072 during the continuance of permanent total disability, not to
3073 exceed 5 years following the determination of permanent total
3074 disability. Only claimants with catastrophic injuries or
3075 claimants who are incapable of engaging in employment, as
3076 described in this paragraph, are eligible for permanent total



3077 benefits. In no other case may permanent total disability be
 3078 awarded.

3079 (c) In cases of permanent total disability resulting from
 3080 injuries that occurred prior to July 1, 1955, such payments
 3081 shall not be made in excess of 700 weeks.

3082 (d) If an employee who is being paid compensation for
 3083 permanent total disability becomes rehabilitated to the extent
 3084 that she or he establishes an earning capacity, the employee
 3085 shall be paid, instead of the compensation provided in paragraph
 3086 (a), benefits pursuant to subsection (3). The department shall
 3087 adopt rules to enable a permanently and totally disabled
 3088 employee who may have reestablished an earning capacity to
 3089 undertake a trial period of reemployment without prejudicing her
 3090 or his return to permanent total status in the case that such
 3091 employee is unable to sustain an earning capacity.

3092 (e)1. The employer's or carrier's right to conduct
 3093 vocational evaluations or testing by the employer's or carrier's
 3094 chosen rehabilitation advisor or provider pursuant to s. 440.491
 3095 continues even after the employee has been accepted or
 3096 adjudicated as entitled to compensation under this chapter and
 3097 costs for such evaluations and testing shall be borne by the
 3098 employer or carrier, respectively. This right includes, but is
 3099 not limited to, instances in which such evaluations or tests are
 3100 recommended by a treating physician or independent medical-
 3101 examination physician, instances warranted by a change in the
 3102 employee's medical condition, or instances in which the employee
 3103 appears to be making appropriate progress in recuperation. This
 3104 right may not be exercised more than once every calendar year.



3105 2. The carrier must confirm the scheduling of the
3106 vocational evaluation or testing in writing, and must notify the
3107 employee and the employee's counsel, if any, at least 7 days
3108 before the date on which vocational evaluation or testing is
3109 scheduled to occur.

3110 3. ~~Pursuant to an order of the judge of compensation~~
3111 ~~claims,~~ The employer or carrier may withhold payment of benefits
3112 for permanent total disability or supplements for any period
3113 during which the employee willfully fails or refuses to appear
3114 without good cause for the scheduled vocational evaluation or
3115 testing.

3116 (f)1. If permanent total disability results from injuries
3117 that occurred subsequent to June 30, 1955, and for which the
3118 liability of the employer for compensation has not been
3119 discharged under s. 440.20(11), the injured employee shall
3120 receive additional weekly compensation benefits equal to 5
3121 percent of her or his weekly compensation rate, as established
3122 pursuant to the law in effect on the date of her or his injury,
3123 multiplied by the number of calendar years since the date of
3124 injury. The weekly compensation payable and the additional
3125 benefits payable under this paragraph, when combined, may not
3126 exceed the maximum weekly compensation rate in effect at the
3127 time of payment as determined pursuant to s. 440.12(2).

3128 ~~Entitlement to~~ These supplemental payments shall not be paid or
3129 payable after the employee attains ~~age 62,~~ regardless
3130 of whether ~~if~~ the employee has applied for or is eligible to
3131 apply ~~is eligible~~ for social security benefits under 42 U.S.C.
3132 ss. 402 and 423, ~~whether or not the employee has applied for~~



3133 ~~such benefits~~. These supplemental benefits shall be paid by the
3134 department out of the Workers' Compensation Administration Trust
3135 Fund when the injury occurred subsequent to June 30, 1955, and
3136 before July 1, 1984. These supplemental benefits shall be paid
3137 by the employer when the injury occurred on or after July 1,
3138 1984. Supplemental benefits are not payable for any period prior
3139 to October 1, 1974.

3140 2.a. The department shall provide by rule for the periodic
3141 reporting to the department of all earnings of any nature and
3142 social security income by the injured employee entitled to or
3143 claiming additional compensation under subparagraph 1. Neither
3144 the department nor the employer or carrier shall make any
3145 payment of those additional benefits provided by subparagraph 1.
3146 for any period during which the employee willfully fails or
3147 refuses to report upon request by the department in the manner
3148 prescribed by such rules.

3149 b. The department shall provide by rule for the periodic
3150 reporting to the employer or carrier of all earnings of any
3151 nature and social security income by the injured employee
3152 entitled to or claiming benefits for permanent total disability.
3153 The employer or carrier is not required to make any payment of
3154 benefits for permanent total disability for any period during
3155 which the employee willfully fails or refuses to report upon
3156 request by the employer or carrier in the manner prescribed by
3157 such rules or if any employee who is receiving permanent total
3158 disability benefits refuses to apply for or cooperate with the
3159 employer or carrier in applying for social security benefits.



3160 3. When an injured employee receives a full or partial
3161 lump-sum advance of the employee's permanent total disability
3162 compensation benefits, the employee's benefits under this
3163 paragraph shall be computed on the employee's weekly
3164 compensation rate as reduced by the lump-sum advance.

3165 (2) TEMPORARY TOTAL DISABILITY.--

3166 (a) Subject to subsection (7), in case of disability total
3167 in character but temporary in quality, 66 2/3 percent of the
3168 average weekly wages shall be paid to the employee during the
3169 continuance thereof, not to exceed 104 weeks except as provided
3170 in this subsection, s. 440.12(1), and s. 440.14(3). Once the
3171 employee reaches the maximum number of weeks allowed, or the
3172 employee reaches the date of maximum medical improvement,
3173 whichever occurs earlier, temporary disability benefits shall
3174 cease and the injured worker's permanent impairment shall be
3175 determined.

3176 (b) Notwithstanding the provisions of paragraph (a), an
3177 employee who has sustained the loss of an arm, leg, hand, or
3178 foot, has been rendered a paraplegic, paraparetic, quadriplegic,
3179 or quadriparetic, or has lost the sight of both eyes shall be
3180 paid temporary total disability of 80 percent of her or his
3181 average weekly wage. The increased temporary total disability
3182 compensation provided for in this paragraph must not extend
3183 beyond 6 months from the date of the accident; however, such
3184 benefits shall not be due or payable if the employee is eligible
3185 for, entitled to, or collecting permanent total disability
3186 benefits. The compensation provided by this paragraph is not
3187 subject to the limits provided in s. 440.12(2), but instead is



3188 subject to a maximum weekly compensation rate of \$700. If, at
3189 the conclusion of this period of increased temporary total
3190 disability compensation, the employee is still temporarily
3191 totally disabled, the employee shall continue to receive
3192 temporary total disability compensation as set forth in
3193 paragraphs (a) and (c). The period of time the employee has
3194 received this increased compensation will be counted as part of,
3195 and not in addition to, the maximum periods of time for which
3196 the employee is entitled to compensation under paragraph (a) but
3197 not paragraph (c).

3198 (c) Temporary total disability benefits paid pursuant to
3199 this subsection shall include such period as may be reasonably
3200 necessary for training in the use of artificial members and
3201 appliances, and shall include such period as the employee may be
3202 receiving training and education under a program pursuant to s.
3203 440.491. ~~Notwithstanding s. 440.02, the date of maximum medical~~
3204 ~~improvement for purposes of paragraph (3)(b) shall be no earlier~~
3205 ~~than the last day for which such temporary disability benefits~~
3206 ~~are paid.~~

3207 (d) The department shall, by rule, provide for the
3208 periodic reporting to the department, employer, or carrier of
3209 all earned income, including income from social security, by the
3210 injured employee who is entitled to or claiming benefits for
3211 temporary total disability. The employer or carrier is not
3212 required to make any payment of benefits for temporary total
3213 disability for any period during which the employee willfully
3214 fails or refuses to report upon request by the employer or
3215 carrier in the manner prescribed by the rules. The rule must



3216 require the claimant to personally sign the claim form and
 3217 attest that she or he has reviewed, understands, and
 3218 acknowledges the foregoing.

3219 (3) PERMANENT IMPAIRMENT ~~AND WAGE-LOSS~~ BENEFITS.--

3220 (a) ~~Impairment benefits.~~

3221 ~~1.~~ Once the employee has reached the date of maximum
 3222 medical improvement, impairment benefits are due and payable
 3223 within 14 ~~20~~ days after the carrier has knowledge of the
 3224 impairment.

3225 (b)2. The three-member panel, in cooperation with the
 3226 department, shall establish and use a uniform permanent
 3227 impairment rating schedule. This schedule must be based on
 3228 medically or scientifically demonstrable findings as well as the
 3229 systems and criteria set forth in the American Medical
 3230 Association's Guides to the Evaluation of Permanent Impairment;
 3231 the Snellen Charts, published by American Medical Association
 3232 Committee for Eye Injuries; and the Minnesota Department of
 3233 Labor and Industry Disability Schedules. The schedule must
 3234 ~~should~~ be based upon objective findings. The schedule shall be
 3235 more comprehensive than the AMA Guides to the Evaluation of
 3236 Permanent Impairment and shall expand the areas already
 3237 addressed and address additional areas not currently contained
 3238 in the guides. On August 1, 1979, and pending the adoption, by
 3239 rule, of a permanent schedule, Guides to the Evaluation of
 3240 Permanent Impairment, copyright 1977, 1971, 1988, by the
 3241 American Medical Association, shall be the temporary schedule
 3242 and shall be used for the purposes hereof. For injuries after
 3243 July 1, 1990, pending the adoption by rule of a uniform



3244 disability rating agency schedule, the Minnesota Department of
3245 Labor and Industry Disability Schedule shall be used unless that
3246 schedule does not address an injury. In such case, the Guides to
3247 the Evaluation of Permanent Impairment by the American Medical
3248 Association shall be used. Determination of permanent impairment
3249 under this schedule must be made by a physician licensed under
3250 chapter 458, a doctor of osteopathic medicine licensed under
3251 chapters 458 and 459, a chiropractic physician licensed under
3252 chapter 460, a podiatric physician licensed under chapter 461,
3253 an optometrist licensed under chapter 463, or a dentist licensed
3254 under chapter 466, as appropriate considering the nature of the
3255 injury. No other persons are authorized to render opinions
3256 regarding the existence of or the extent of permanent
3257 impairment.

3258 (c)3- All impairment income benefits shall be based on an
3259 impairment rating using the impairment schedule referred to in
3260 paragraph (b) subparagraph 2. Impairment income benefits are
3261 paid biweekly ~~weekly~~ at the rate of 75 ~~50~~ percent of the
3262 employee's average weekly temporary total disability benefit not
3263 to exceed the maximum weekly benefit under s. 440.12; provided,
3264 however, that such benefits shall be reduced by 50 percent for
3265 each week in which the employee has earned income equal to or in
3266 excess of the employee's average weekly wage. An employee's
3267 entitlement to impairment income benefits begins the day after
3268 the employee reaches maximum medical improvement or the
3269 expiration of temporary benefits, whichever occurs earlier, and
3270 continues until the earlier of:



3271 1.a. The expiration of a period computed at the rate of 3
 3272 weeks for each percentage point of impairment; or

3273 2.b. The death of the employee.
 3274

3275 Impairment income benefits as defined by this subsection are
 3276 payable only for impairment ratings for physical impairments. If
 3277 objective medical findings can substantiate a permanent
 3278 psychiatric impairment resulting from the accident, permanent
 3279 impairment benefits are limited for the permanent psychiatric
 3280 impairment to 1-percent permanent impairment.

3281 (d)4. After the employee has been certified by a doctor as
 3282 having reached maximum medical improvement or 6 weeks before the
 3283 expiration of temporary benefits, whichever occurs earlier, the
 3284 certifying doctor shall evaluate the condition of the employee
 3285 and assign an impairment rating, using the impairment schedule
 3286 referred to in paragraph (b) subparagraph 2. ~~Compensation is not~~
 3287 ~~payable for the mental, psychological, or emotional injury~~
 3288 ~~arising out of depression from being out of work.~~ If the
 3289 certification and evaluation are performed by a doctor other
 3290 than the employee's treating doctor, the certification and
 3291 evaluation must be submitted to the treating doctor, the
 3292 employee, and the carrier within 10 days after the evaluation.
 3293 ~~and~~ The treating doctor must indicate to the carrier agreement
 3294 or disagreement with the other doctor's certification and
 3295 evaluation.

3296 1. The certifying doctor shall issue a written report to
 3297 the ~~department, the employee,~~ and the carrier certifying that
 3298 maximum medical improvement has been reached, stating the



3299 | impairment rating to the body as a whole, and providing any
 3300 | other information required by the department by rule. The
 3301 | carrier shall establish an overall maximum medical improvement
 3302 | date and permanent impairment rating, based upon all such
 3303 | reports.

3304 | 2. Within 14 days after the carrier's knowledge of each
 3305 | maximum medical improvement date and impairment rating to the
 3306 | body as a whole upon which the carrier is paying benefits, the
 3307 | carrier shall report such maximum medical improvement date and,
 3308 | when determined, the overall maximum medical improvement date
 3309 | and associated impairment rating to the department in a format
 3310 | as set forth in department rule. If the employee has not been
 3311 | certified as having reached maximum medical improvement before
 3312 | the expiration of 98 ~~102~~ weeks after the date temporary ~~total~~
 3313 | disability benefits begin to accrue, the carrier shall notify
 3314 | the treating doctor of the requirements of this section.

3315 | (e)5. The carrier shall pay the employee impairment income
 3316 | benefits for a period based on the impairment rating.

3317 | (f)6. The department may by rule specify forms and
 3318 | procedures governing the method of payment of ~~wage loss and~~
 3319 | ~~impairment benefits under this section for dates of accidents~~
 3320 | ~~before January 1, 1994, and for dates of accidents on or after~~
 3321 | ~~January 1, 1994.~~

3322 | ~~(b) Supplemental benefits.--~~

3323 | ~~1. All supplemental benefits must be paid in accordance~~
 3324 | ~~with this subsection. An employee is entitled to supplemental~~
 3325 | ~~benefits as provided in this paragraph as of the expiration of~~
 3326 | ~~the impairment period, if:~~



3327 a. ~~The employee has an impairment rating from the~~
3328 ~~compensable injury of 20 percent or more as determined pursuant~~
3329 ~~to this chapter;~~

3330 b. ~~The employee has not returned to work or has returned~~
3331 ~~to work earning less than 80 percent of the employee's average~~
3332 ~~weekly wage as a direct result of the employee's impairment; and~~

3333 c. ~~The employee has in good faith attempted to obtain~~
3334 ~~employment commensurate with the employee's ability to work.~~

3335 2. ~~If an employee is not entitled to supplemental benefits~~
3336 ~~at the time of payment of the final weekly impairment income~~
3337 ~~benefit because the employee is earning at least 80 percent of~~
3338 ~~the employee's average weekly wage, the employee may become~~
3339 ~~entitled to supplemental benefits at any time within 1 year~~
3340 ~~after the impairment income benefit period ends if:~~

3341 a. ~~The employee earns wages that are less than 80 percent~~
3342 ~~of the employee's average weekly wage for a period of at least~~
3343 ~~90 days;~~

3344 b. ~~The employee meets the other requirements of~~
3345 ~~subparagraph 1.; and~~

3346 c. ~~The employee's decrease in earnings is a direct result~~
3347 ~~of the employee's impairment from the compensable injury.~~

3348 3. ~~If an employee earns wages that are at least 80 percent~~
3349 ~~of the employee's average weekly wage for a period of at least~~
3350 ~~90 days during which the employee is receiving supplemental~~
3351 ~~benefits, the employee ceases to be entitled to supplemental~~
3352 ~~benefits for the filing period. Supplemental benefits that have~~
3353 ~~been terminated shall be reinstated when the employee satisfies~~
3354 ~~the conditions enumerated in subparagraph 2. and files the~~



3355 ~~statement required under subparagraph 4. Notwithstanding any~~
3356 ~~other provision, if an employee is not entitled to supplemental~~
3357 ~~benefits for 12 consecutive months, employee ceases to be~~
3358 ~~entitled to any additional income benefits for the compensable~~
3359 ~~injury. If the employee is discharged within 12 months after~~
3360 ~~losing entitlement under this subsection, benefits may be~~
3361 ~~reinstated if the employee was discharged at that time with the~~
3362 ~~intent to deprive the employee of supplemental benefits.~~

3363 ~~4. After the initial determination of supplemental~~
3364 ~~benefits, the employee must file a statement with the carrier~~
3365 ~~stating that the employee has earned less than 80 percent of the~~
3366 ~~employee's average weekly wage as a direct result of the~~
3367 ~~employee's impairment, stating the amount of wages the employee~~
3368 ~~earned in the filing period, and stating that the employee has~~
3369 ~~in good faith sought employment commensurate with the employee's~~
3370 ~~ability to work. The statement must be filed quarterly on a form~~
3371 ~~and in the manner prescribed by the department. The department~~
3372 ~~may modify the filing period as appropriate to an individual~~
3373 ~~case. Failure to file a statement relieves the carrier of~~
3374 ~~liability for supplemental benefits for the period during which~~
3375 ~~a statement is not filed.~~

3376 ~~5. The carrier shall begin payment of supplemental~~
3377 ~~benefits not later than the seventh day after the expiration~~
3378 ~~date of the impairment income benefit period and shall continue~~
3379 ~~to timely pay those benefits. The carrier may request a~~
3380 ~~mediation conference for the purpose of contesting the~~
3381 ~~employee's entitlement to or the amount of supplemental income~~
3382 ~~benefits.~~



3383 ~~6. Supplemental benefits are calculated quarterly and paid~~
3384 ~~monthly. For purposes of calculating supplemental benefits, 80~~
3385 ~~percent of the employee's average weekly wage and the average~~
3386 ~~wages the employee has earned per week are compared quarterly.~~
3387 ~~For purposes of this paragraph, if the employee is offered a~~
3388 ~~bona fide position of employment that the employee is capable of~~
3389 ~~performing, given the physical condition of the employee and the~~
3390 ~~geographic accessibility of the position, the employee's weekly~~
3391 ~~wages are considered equivalent to the weekly wages for the~~
3392 ~~position offered to the employee.~~

3393 ~~7. Supplemental benefits are payable at the rate of 80~~
3394 ~~percent of the difference between 80 percent of the employee's~~
3395 ~~average weekly wage determined pursuant to s. 440.14 and the~~
3396 ~~weekly wages the employee has earned during the reporting~~
3397 ~~period, not to exceed the maximum weekly income benefit under s.~~
3398 ~~440.12.~~

3399 ~~8. The department may by rule define terms that are~~
3400 ~~necessary for the administration of this section and forms and~~
3401 ~~procedures governing the method of payment of supplemental~~
3402 ~~benefits for dates of accidents before January 1, 1994, and for~~
3403 ~~dates of accidents on or after January 1, 1994.~~

3404 ~~(c) Duration of temporary impairment and supplemental~~
3405 ~~income benefits. The employee's eligibility for temporary~~
3406 ~~benefits, impairment income benefits, and supplemental benefits~~
3407 ~~terminates on the expiration of 401 weeks after the date of~~
3408 ~~injury.~~

3409 (g) Notwithstanding paragraph (c), for accidents occurring
3410 on or after October 1, 2003, an employee's entitlement to



3411 impairment income benefits begins the day after the employee
3412 reaches maximum medical improvement or the expiration of
3413 temporary benefits, whichever occurs earlier, and continues for
3414 the following periods:

3415 1. Two weeks of benefits are to be paid to the employee
3416 for each percentage point of impairment from 1 percent up to and
3417 including 10 percent.

3418 2. For each percentage point of impairment from 11 percent
3419 up to and including 15 percent, 3 weeks of benefits are to be
3420 paid.

3421 3. For each percentage point of impairment from 16 percent
3422 up to and including 20 percent, 4 weeks of benefits are to be
3423 paid.

3424 4. For each percentage point of impairment from 21 percent
3425 and higher, 6 weeks of benefits are to be paid.

3426 (4) TEMPORARY PARTIAL DISABILITY.--

3427 (a) Subject to subsection (7), in case of temporary
3428 partial disability, compensation shall be equal to 80 percent of
3429 the difference between 80 percent of the employee's average
3430 weekly wage and the salary, wages, and other remuneration the
3431 employee is able to earn post injury, as compared weekly;
3432 however, ~~the~~ weekly temporary partial disability benefits may
3433 not exceed an amount equal to 66 2/3 percent of the employee's
3434 average weekly wage at the time of accident injury. In order to
3435 simplify the comparison of the preinjury average weekly wage
3436 with the salary, wages, and other remuneration the employee is
3437 able to earn post injury, the department may by rule provide for
3438 payment of the initial installment of temporary partial



3439 disability benefits to be paid as a partial week so that payment
3440 for remaining weeks of temporary partial disability can the
3441 ~~modification of the weekly comparison so as to~~ coincide as
3442 closely as possible with the post injury employer's work week
3443 ~~injured worker's pay periods~~. The amount determined to be the
3444 salary, wages, and other remuneration the employee is able to
3445 earn shall in no case be less than the sum actually being earned
3446 by the employee, including earnings from sheltered employment.
3447 Benefits shall be payable under this subsection only if overall
3448 maximum medical improvement has not been reached and the medical
3449 conditions resulting from the accident create restrictions on
3450 the injured employee's ability to return to work.

3451 (b) Within 5 business days after the carrier's knowledge
3452 of the employee's release to restricted work, the carrier shall
3453 mail to the employee and employer an informational letter,
3454 adopted by department rule, explaining the employee's possible
3455 eligibility and responsibilities for temporary partial
3456 disability benefits.

3457 (c) When an employee returns to work with the restrictions
3458 resulting from the accident and is earning wages less than 80
3459 percent of the preinjury average weekly wage, the first
3460 installment of temporary partial disability benefits is due 7
3461 days after the last date of the post injury employer's first
3462 biweekly work week. Thereafter, payment for temporary partial
3463 benefits shall be paid biweekly no later than the 7th day
3464 following the last day of each biweekly work week.

3465 (d) If the employee is unable to return to work with the
3466 restrictions resulting from the accident and is not earning



3467 wages, salary, or other remuneration, temporary partial
3468 disability benefits shall be paid no later than the last day of
3469 each biweekly period. The employee shall notify the carrier
3470 within 5 business days after returning to work. Failure to
3471 notify the carrier of the establishment of an earning capacity
3472 in the required time shall result in a suspension or nonpayment
3473 of temporary partial disability benefits until the proper
3474 notification is provided.

3475 (e)~~(b)~~ Such benefits shall be paid during the continuance
3476 of such disability, not to exceed a period of 104 weeks, as
3477 provided by this subsection and subsection (2). Once the injured
3478 employee reaches the maximum number of weeks, temporary
3479 disability benefits cease and the injured worker's permanent
3480 impairment must be determined. If the employee is terminated
3481 from post injury employment based on the employee's misconduct,
3482 temporary partial disability benefits are not payable as
3483 provided for in this section. The department shall ~~may~~ by rule
3484 specify forms and procedures governing the method and time for
3485 ~~of~~ payment of temporary disability benefits for dates of
3486 accidents before January 1, 1994, and for dates of accidents on
3487 or after January 1, 1994.

3488 (5) SUBSEQUENT INJURY.--

3489 (a) The fact that an employee has suffered previous
3490 disability, impairment, anomaly, or disease, or received
3491 compensation therefor, shall not preclude her or him from
3492 benefits, as specified in paragraph (b), for a subsequent
3493 aggravation or acceleration of the preexisting condition or ~~not~~
3494 preclude benefits for death resulting therefrom, except that no



3495 benefits shall be payable if the employee, at the time of
3496 entering into the employment of the employer by whom the
3497 benefits would otherwise be payable, falsely represents herself
3498 or himself in writing as not having previously been disabled or
3499 compensated because of such previous disability, impairment,
3500 anomaly, or disease and the employer detrimentally relies on the
3501 misrepresentation. ~~Compensation for temporary disability,~~
3502 ~~medical benefits, and wage-loss benefits shall not be subject to~~
3503 ~~apportionment.~~

3504 (b) If a compensable injury, disability, or need for
3505 medical care ~~permanent impairment~~, or any portion thereof, is a
3506 result of aggravation or acceleration of a preexisting
3507 condition, or is the result of merger with a preexisting
3508 condition, only the disabilities and medical treatment
3509 associated with such compensable injury shall be payable under
3510 this chapter, excluding the degree of disability or medical
3511 conditions existing at the time of the impairment rating or at
3512 the time of the accident, regardless of whether the preexisting
3513 condition was disabling at the time of the accident or at the
3514 time of the impairment rating and without considering whether
3515 the preexisting condition would be disabling without the
3516 compensable accident ~~impairment, an employee eligible to receive~~
3517 ~~impairment benefits under paragraph (3)(a) shall receive such~~
3518 ~~benefits for the total impairment found to result, excluding the~~
3519 ~~degree of impairment existing at the time of the subject~~
3520 ~~accident or injury or which would have existed by the time of~~
3521 ~~the impairment rating without the intervention of the~~
3522 ~~compensable accident or injury.~~ The degree of permanent



3523 impairment or disability attributable to the accident or injury
3524 shall be compensated in accordance with this section,
3525 apportioning out the preexisting condition based on the
3526 anatomical impairment rating attributable to the preexisting
3527 condition. Medical benefits shall be paid apportioning out the
3528 percentage of the need for such care attributable to the
3529 preexisting condition paragraph (3)(a). As used in this
3530 paragraph, "merger" means the combining of a preexisting
3531 permanent impairment or disability with a subsequent compensable
3532 permanent impairment or disability which, when the effects of
3533 both are considered together, result in a permanent impairment
3534 or disability rating which is greater than the sum of the two
3535 permanent impairment or disability ratings when each impairment
3536 or disability is considered individually.

3537 ~~(6) OBLIGATION TO REHIRE. -- If the employer has not in~~
3538 ~~good faith made available to the employee, within a 100-mile~~
3539 ~~radius of the employee's residence, work appropriate to the~~
3540 ~~employee's physical limitations within 30 days after the carrier~~
3541 ~~notifies the employer of maximum medical improvement and the~~
3542 ~~employee's physical limitations, the employer shall pay to the~~
3543 ~~department for deposit into the Workers' Compensation~~
3544 ~~Administration Trust Fund a fine of \$250 for every \$5,000 of the~~
3545 ~~employer's workers' compensation premium or payroll, not to~~
3546 ~~exceed \$2,000 per violation, as the department requires by rule.~~
3547 ~~The employer is not subject to this subsection if the employee~~
3548 ~~is receiving permanent total disability benefits or if the~~
3549 ~~employer has 50 or fewer employees.~~



3550 ~~(6)(7)~~ EMPLOYEE REFUSES EMPLOYMENT.--If an injured
3551 employee refuses employment suitable to the capacity thereof,
3552 offered to or procured therefor, such employee shall not be
3553 entitled to any compensation at any time during the continuance
3554 of such refusal unless at any time in the opinion of the judge
3555 of compensation claims such refusal is justifiable. Time periods
3556 for the payment of benefits in accordance with this section
3557 shall be counted in determining the limitation of benefits as
3558 provided for in paragraphs (2)(a), (3)(c), and (4)(b).

3559 ~~(7)(8)~~ EMPLOYEE LEAVES EMPLOYMENT.-- If an injured
3560 employee, when receiving compensation for temporary partial
3561 disability, leaves the employment of the employer by whom she or
3562 he was employed at the time of the accident for which such
3563 compensation is being paid, the employee shall, upon securing
3564 employment elsewhere, give to such former employer an affidavit
3565 in writing containing the name of her or his new employer, the
3566 place of employment, and the amount of wages being received at
3567 such new employment; and, until she or he gives such affidavit,
3568 the compensation for temporary partial disability will cease.
3569 The employer by whom such employee was employed at the time of
3570 the accident for which such compensation is being paid may also
3571 at any time demand of such employee an additional affidavit in
3572 writing containing the name of her or his employer, the place of
3573 her or his employment, and the amount of wages she or he is
3574 receiving; and if the employee, upon such demand, fails or
3575 refuses to make and furnish such affidavit, her or his right to
3576 compensation for temporary partial disability shall cease until
3577 such affidavit is made and furnished. If the employee leaves her



3578 or his employment while receiving temporary partial benefits
 3579 without just cause as determined by the judge of compensation
 3580 claims, temporary partial benefits shall be payable based on the
 3581 deemed earnings of the employee as if she or he had remained
 3582 employed.

3583 (8)(9) EMPLOYEE BECOMES INMATE OF INSTITUTION.--In case an
 3584 employee becomes an inmate of a public institution, then no
 3585 compensation shall be payable unless she or he has dependent
 3586 upon her or him for support a person or persons defined as
 3587 dependents elsewhere in this chapter, whose dependency shall be
 3588 determined as if the employee were deceased and to whom
 3589 compensation would be paid in case of death; and such
 3590 compensation as is due such employee shall be paid such
 3591 dependents during the time she or he remains such inmate.

3592 (9)(10) EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
 3593 AND FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE ACT.--

3594 (a) Weekly compensation benefits payable under this
 3595 chapter for disability resulting from injuries to an employee
 3596 who becomes eligible for benefits under 42 U.S.C. s. 423 shall
 3597 be reduced to an amount whereby the sum of such compensation
 3598 benefits payable under this chapter and such total benefits
 3599 otherwise payable for such period to the employee and her or his
 3600 dependents, had such employee not been entitled to benefits
 3601 under this chapter, under 42 U.S.C. ss. 402 and 423, does not
 3602 exceed 80 percent of the employee's average weekly wage.
 3603 However, this provision shall not operate to reduce an injured
 3604 worker's benefits under this chapter to a greater extent than
 3605 such benefits would have otherwise been reduced under 42 U.S.C.



3606 s. 424(a). This reduction of compensation benefits is not
3607 applicable to any compensation benefits payable for any week
3608 subsequent to the week in which the injured worker reaches the
3609 age of 62 years.

3610 (b) If the provisions of 42 U.S.C. s. 424(a) are amended
3611 to provide for a reduction or increase of the percentage of
3612 average current earnings that the sum of compensation benefits
3613 payable under this chapter and the benefits payable under 42
3614 U.S.C. ss. 402 and 423 can equal, the amount of the reduction of
3615 benefits provided in this subsection shall be reduced or
3616 increased accordingly. The department may by rule specify forms
3617 and procedures governing the method for calculating and
3618 administering the offset of benefits payable under this chapter
3619 and benefits payable under 42 U.S.C. ss. 402 and 423. The
3620 department shall have first priority in taking any available
3621 social security offsets on dates of accidents occurring before
3622 July 1, 1984.

3623 (c) No disability compensation benefits payable for any
3624 week, including those benefits provided by paragraph (1)(f),
3625 shall be reduced pursuant to this subsection until the Social
3626 Security Administration determines the amount otherwise payable
3627 to the employee under 42 U.S.C. ss. 402 and 423 and the employee
3628 has begun receiving such social security benefit payments. The
3629 employee shall, upon demand by the department, the employer, or
3630 the carrier, authorize the Social Security Administration to
3631 release disability information relating to her or him and
3632 authorize the Division of Unemployment Compensation to release
3633 unemployment compensation information relating to her or him, in



3634 accordance with rules to be adopted by the department
3635 prescribing the procedure and manner for requesting the
3636 authorization and for compliance by the employee. Neither the
3637 department nor the employer or carrier shall make any payment of
3638 benefits for total disability or those additional benefits
3639 provided by paragraph (1)(f) for any period during which the
3640 employee willfully fails or refuses to authorize the release of
3641 information in the manner and within the time prescribed by such
3642 rules. The authority for release of disability information
3643 granted by an employee under this paragraph shall be effective
3644 for a period not to exceed 12 months, such authority to be
3645 renewable as the department may prescribe by rule.

3646 (d) If compensation benefits are reduced pursuant to this
3647 subsection, the minimum compensation provisions of s. 440.12(2)
3648 do not apply.

3649 (10)~~(11)~~ EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
3650 WHO HAS RECEIVED OR IS ENTITLED TO RECEIVE UNEMPLOYMENT
3651 COMPENSATION.--

3652 (a) No compensation benefits shall be payable for
3653 temporary total disability or permanent total disability under
3654 this chapter for any week in which the injured employee has
3655 received, or is receiving, unemployment compensation benefits.

3656 (b) If an employee is entitled to temporary partial
3657 benefits pursuant to subsection (4) and unemployment
3658 compensation benefits, such unemployment compensation benefits
3659 shall be primary and the temporary partial benefits shall be
3660 supplemental only, the sum of the two benefits not to exceed the



3661 amount of temporary partial benefits which would otherwise be
 3662 payable.

3663 (11)~~(12)~~ FULL-PAY STATUS FOR CERTAIN LAW ENFORCEMENT
 3664 OFFICERS.--Any law enforcement officer as defined in s.
 3665 943.10(1), (2), or (3) who, while acting within the course of
 3666 employment as provided by s. 440.091, is maliciously or
 3667 intentionally injured and who thereby sustains a job-connected
 3668 disability compensable under this chapter shall be carried in
 3669 full-pay status rather than being required to use sick, annual,
 3670 or other leave. Full-pay status shall be granted only after
 3671 submission to the employing agency's head of a medical report
 3672 which gives a current diagnosis of the employee's recovery and
 3673 ability to return to work. In no case shall the employee's
 3674 salary and workers' compensation benefits exceed the amount of
 3675 the employee's regular salary requirements.

3676 (12)~~(13)~~ REPAYMENT.--If an employee has received a sum as
 3677 an indemnity benefit under any classification or category of
 3678 benefit under this chapter to which she or he is not entitled,
 3679 the employee is liable to repay that sum to the employer or the
 3680 carrier or to have that sum deducted from future benefits,
 3681 regardless of the classification of benefits, payable to the
 3682 employee under this chapter; however, a partial payment of the
 3683 total repayment may not exceed 20 percent of the amount of the
 3684 biweekly payment.

3685 Section 19. Subsections (1), (2), and (3) of section
 3686 440.151, Florida Statutes, are amended to read:
 3687 440.151 Occupational diseases.--



3688 (1)(a) Where the employer and employee are subject to the
3689 provisions of the Workers' Compensation Law, the disablement or
3690 death of an employee resulting from an occupational disease as
3691 hereinafter defined shall be treated as the happening of an
3692 injury by accident, notwithstanding any other provisions of this
3693 chapter, and the employee or, in case of death, the employee's
3694 dependents shall be entitled to compensation as provided by this
3695 chapter, except as hereinafter otherwise provided; and the
3696 practice and procedure prescribed by this chapter shall apply to
3697 all proceedings under this section, except as hereinafter
3698 otherwise provided. Provided, however, that in no case shall an
3699 employer be liable for compensation under the provisions of this
3700 section unless such disease has resulted from the nature of the
3701 employment in which the employee was engaged under such
3702 employer, ~~and~~ and was actually contracted while so engaged, and the
3703 nature of the employment was the major contributing cause of the
3704 disease. Major contributing cause must be shown by medical
3705 evidence only, as demonstrated by physical examination findings
3706 and diagnostic testing. ~~meaning by~~ "Nature of the employment"
3707 means that in ~~to~~ the occupation in which the employee was so
3708 engaged there is attached a particular hazard of such disease
3709 that distinguishes it from the usual run of occupations, or the
3710 incidence of such disease is substantially higher in the
3711 occupation in which the employee was so engaged than in the
3712 usual run of occupations. In claims for death under s. 440.16,
3713 death must occur ~~or, in case of death, unless death follows~~
3714 ~~continuous disability from such disease, commencing within the~~
3715 ~~period above limited, for which compensation has been paid or~~



3716 ~~awarded, or timely claim made as provided in this section, and~~
3717 ~~results~~ within 350 weeks after ~~such~~ last exposure. Both
3718 causation and sufficient exposure to a specific harmful
3719 substance shown to be present in the workplace to support
3720 causation shall be proven by clear and convincing evidence.

3721 (b) No compensation shall be payable for an occupational
3722 disease if the employee, at the time of entering into the
3723 employment of the employer by whom the compensation would
3724 otherwise be payable, falsely represents herself or himself in
3725 writing as not having previously been disabled, laid off or
3726 compensated in damages or otherwise, because of such disease.

3727 (c) Where an occupational disease is aggravated by any
3728 other disease or infirmity, not itself compensable, or where
3729 disability or death from any other cause, not itself
3730 compensable, is aggravated, prolonged, accelerated or in anywise
3731 contributed to by an occupational disease, the compensation
3732 shall be payable only if the occupational disease is the major
3733 contributing cause of the injury. Any compensation shall be
3734 reduced and limited to such proportion only of the compensation
3735 that would be payable if the occupational disease were the sole
3736 cause of the disability or death as such occupational disease,
3737 as a causative factor, bears to all the causes of such
3738 disability or death, such reduction in compensation to be
3739 effected by reducing the number of weekly or monthly payments or
3740 the amounts of such payments, as under the circumstances of the
3741 particular case may be for the best interest of the claimant or
3742 claimants. Major contributing cause must be demonstrated by



3743 medical evidence based on physical examination findings and
3744 diagnostic testing.

3745 (d) No compensation for death from an occupational disease
3746 shall be payable to any person whose relationship to the
3747 deceased, which under the provisions of this Workers'
3748 Compensation Law would give right to compensation, arose
3749 subsequent to the beginning of the first compensable disability,
3750 save only to afterborn children of a marriage existing at the
3751 beginning of such disability.

3752 (e) No compensation shall be payable for disability or
3753 death resulting from tuberculosis arising out of and in the
3754 course of employment by the Department of Health at a state
3755 tuberculosis hospital, or aggravated by such employment, when
3756 the employee had suffered from said disease at any time prior to
3757 the commencement of such employment.

3758 (2) Whenever used in this section the term "occupational
3759 disease" shall be construed to mean only a disease which is due
3760 to causes and conditions which are characteristic of and
3761 peculiar to a particular trade, occupation, process, or
3762 employment, and to exclude all ordinary diseases of life to
3763 which the general public is exposed, unless the incidence of the
3764 disease is substantially higher in the particular trade,
3765 occupation, process, or employment than for the general public.
3766 "Occupational disease" means only a disease for which there are
3767 epidemiological studies showing that exposure to the specific
3768 substance involved, at the levels to which the employee was
3769 exposed, may cause the precise disease sustained by the
3770 employee.



3771 (3) Except as ~~hereinafter~~ otherwise provided in this
 3772 section, "disablement" means disability as described in s.
 3773 440.02(13) ~~the event of an employee's becoming actually~~
 3774 ~~incapacitated, partially or totally, because of an occupational~~
 3775 ~~disease, from performing her or his work in the last occupation~~
 3776 ~~in which injuriously exposed to the hazards of such disease; and~~
 3777 ~~"disability" means the state of being so incapacitated.~~

3778 Section 20. Subsections (1) and (7) of section 440.16,
 3779 Florida Statutes, are amended to read:

3780 440.16 Compensation for death.--

3781 (1) If death results from the accident within 1 year
 3782 thereafter or follows continuous disability and results from the
 3783 accident within 5 years thereafter, the employer shall pay:

3784 (a) Within 14 days after receiving the bill, actual
 3785 funeral expenses not to exceed \$7,500 ~~\$5,000~~.

3786 (b) Compensation, in addition to the above, in the
 3787 following percentages of the average weekly wages to the
 3788 following persons entitled thereto on account of dependency upon
 3789 the deceased, and in the following order of preference, subject
 3790 to the limitation provided in subparagraph 2., but such
 3791 compensation shall be subject to the limits provided in s.
 3792 440.12(2), shall not exceed \$150,000 ~~\$100,000~~, and may be less
 3793 than, but shall not exceed, for all dependents or persons
 3794 entitled to compensation, 66²/₃ percent of the average wage:

3795 1. To the spouse, if there is no child, 50 percent of the
 3796 average weekly wage, such compensation to cease upon the
 3797 spouse's death.



3798 2. To the spouse, if there is a child or children, the
3799 compensation payable under subparagraph 1. and, in addition,
3800 $16\frac{2}{3}$ percent on account of the child or children. However, when
3801 the deceased is survived by a spouse and also a child or
3802 children, whether such child or children are the product of the
3803 union existing at the time of death or of a former marriage or
3804 marriages, the judge of compensation claims may provide for the
3805 payment of compensation in such manner as may appear to the
3806 judge of compensation claims just and proper and for the best
3807 interests of the respective parties and, in so doing, may
3808 provide for the entire compensation to be paid exclusively to
3809 the child or children; and, in the case of death of such spouse,
3810 $33\frac{1}{3}$ percent for each child. However, upon the surviving
3811 spouse's remarriage, the spouse shall be entitled to a lump-sum
3812 payment equal to 26 weeks of compensation at the rate of 50
3813 percent of the average weekly wage as provided in s. 440.12(2),
3814 unless the \$150,000 ~~\$100,000~~ limit provided in this paragraph is
3815 exceeded, in which case the surviving spouse shall receive a
3816 lump-sum payment equal to the remaining available benefits in
3817 lieu of any further indemnity benefits. In no case shall a
3818 surviving spouse's acceptance of a lump-sum payment affect
3819 payment of death benefits to other dependents.

3820 3. To the child or children, if there is no spouse, $33\frac{1}{3}$
3821 percent for each child.

3822 4. To the parents, 25 percent to each, such compensation
3823 to be paid during the continuance of dependency.

3824 5. To the brothers, sisters, and grandchildren, 15 percent
3825 for each brother, sister, or grandchild.



3826 (c) To the surviving spouse, payment of postsecondary
3827 student fees for instruction at any area technical center
3828 established under s. 1001.44 for up to 1,800 classroom hours or
3829 payment of student fees at any community college established
3830 under part III of chapter 1004 for up to 80 semester hours. The
3831 spouse of a deceased state employee shall be entitled to a full
3832 waiver of such fees as provided in ss. 1009.22 and 1009.23 in
3833 lieu of the payment of such fees. The benefits provided for in
3834 this paragraph shall be in addition to other benefits provided
3835 for in this section and shall terminate 7 years after the death
3836 of the deceased employee, or when the total payment in eligible
3837 compensation under paragraph (b) has been received. To qualify
3838 for the educational benefit under this paragraph, the spouse
3839 shall be required to meet and maintain the regular admission
3840 requirements of, and be registered at, such area technical
3841 center or community college, and make satisfactory academic
3842 progress as defined by the educational institution in which the
3843 student is enrolled.

3844 (7) Compensation under this chapter to aliens not
3845 residents (or about to become nonresidents) of the United States
3846 or Canada shall be the same in amount as provided for residents,
3847 except that dependents in any foreign country shall be limited
3848 to surviving spouse and child or children, or if there be no
3849 surviving spouse or child or children, to surviving father or
3850 mother whom the employee has supported, either wholly or in
3851 part, for the period of 1 year prior to the date of the injury,
3852 and except that the judge of compensation claims may, at the
3853 option of the judge of compensation claims, or upon the



3854 application of the insurance carrier, commute all future
3855 installments of compensation to be paid to such aliens by paying
3856 or causing to be paid to them one-half of the commuted amount of
3857 such future installments of compensation as determined by the
3858 judge of compensation claims, and provided further that
3859 compensation to dependents referred to in this subsection shall
3860 in no case exceed \$75,000 ~~\$50,000~~.

3861 Section 21. Subsection (9) of section 440.185, Florida
3862 Statutes, is amended, and subsection (12) is added to said
3863 section, to read:

3864 440.185 Notice of injury or death; reports; penalties for
3865 violations.--

3866 (9) Any employer or carrier who fails or refuses to timely
3867 send any form, report, or notice required by this section shall
3868 be subject to an administrative fine by the department ~~a civil~~
3869 ~~penalty~~ not to exceed \$1,000 ~~\$500~~ for each such failure or
3870 refusal. If, within 1 calendar year, an employer fails to timely
3871 submit to the carrier more than 10 percent of its notices of
3872 injury or death, the employer shall be subject to an
3873 administrative fine by the department not to exceed \$2,000 for
3874 each such failure or refusal. However, any employer who fails to
3875 notify the carrier of the injury on the prescribed form or by
3876 letter within the 7 days required in subsection (2) shall be
3877 liable for the administrative fine ~~civil penalty~~, which shall be
3878 paid by the employer and not the carrier. Failure by the
3879 employer to meet its obligations under subsection (2) shall not
3880 relieve the carrier from liability for the administrative fine



3881 ~~civil penalty~~ if it fails to comply with subsections (4) and
 3882 (5).

3883 (12) Upon receiving notice of an injury from an employee
 3884 under subsection (1), the employer or carrier shall provide the
 3885 employee with a written notice, in the form and manner
 3886 determined by the department by rule, of the availability of
 3887 services from the Employee Assistance and Ombudsman Office. The
 3888 substance of the notice to the employee shall include:

3889 (a) A description of the scope of services provided by the
 3890 office.

3891 (b) A listing of the toll-free telephone number of, the
 3892 email address, and the postal address of the office.

3893 (c) A statement that the informational brochure referred
 3894 to in subsection (4) will be mailed to the employee within 3
 3895 days after the carrier receives notice of the injury.

3896 (d) Any other information regarding access to assistance
 3897 that the department finds is immediately necessary for an
 3898 injured employee.

3899 Section 22. Subsections (1) and (2) of section 440.192,
 3900 Florida Statutes, are amended, and subsection (9) is added to
 3901 said section, to read:

3902 440.192 Procedure for resolving benefit disputes.—

3903 (1) ~~Subject to s. 440.191,~~ Any employee may, for any
 3904 benefit that is ripe, due, and owing, who has not received a
 3905 benefit to which the employee believes she or he is entitled
 3906 under this chapter shall file by certified mail, or by
 3907 electronic means approved by the Deputy Chief Judge, with the
 3908 Office of the Judges of Compensation Claims a petition for



3909 | benefits which meets the requirements of this section and the
 3910 | definition of specificity in s. 440.02. The department shall
 3911 | inform employees of the location of the Office of the Judges of
 3912 | Compensation Claims for purposes of filing a petition for
 3913 | benefits. The employee shall also serve copies of the petition
 3914 | for benefits by certified mail, or by electronic means approved
 3915 | by the Deputy Chief Judge, upon the employer and the employer's
 3916 | carrier. The ~~Deputy~~ Chief Judge shall refer the petitions to the
 3917 | judges of compensation claims.

3918 | (2) Upon receipt, the Office of the Judges of Compensation
 3919 | Claims shall review each petition and shall dismiss each
 3920 | petition or any portion of such a petition, ~~upon the judge's own~~
 3921 | ~~motion or upon the motion of any party~~, that does not on its
 3922 | face specifically identify or itemize the following:

3923 | (a) Name, address, telephone number, and social security
 3924 | number of the employee.

3925 | (b) Name, address, and telephone number of the employer.

3926 | (c) A detailed description of the injury and cause of the
 3927 | injury, including the location of the occurrence and the date or
 3928 | dates of the accident.

3929 | (d) A detailed description of the employee's job, work
 3930 | responsibilities, and work the employee was performing when the
 3931 | injury occurred.

3932 | (e) The time period for which compensation and the
 3933 | specific classification of compensation were not timely
 3934 | provided.



3935 (f) Date of maximum medical improvement, character of
3936 disability, specific statement of all benefits or compensation
3937 that the employee is seeking.

3938 (g) All specific travel costs to which the employee
3939 believes she or he is entitled, including dates of travel and
3940 purpose of travel, means of transportation, and mileage and
3941 including the date the request for mileage was filed with the
3942 carrier and a copy of the request filed with the carrier.

3943 (h) Specific listing of all medical charges alleged
3944 unpaid, including the name and address of the medical provider,
3945 the amounts due, and the specific dates of treatment.

3946 (i) The type or nature of treatment care or attendance
3947 sought and the justification for such treatment. If the employee
3948 is under the care of a physician for an injury identified under
3949 paragraph (c), a copy of the physician's request, authorization,
3950 or recommendation for treatment, care, or attendance must
3951 accompany the petition.

3952 (j) Specific explanation of any other disputed issue that
3953 a judge of compensation claims will be called to rule upon.

3954
3955 The dismissal of any petition or portion of such a petition
3956 under this section is without prejudice and does not require a
3957 hearing.

3958 (9) A petition for benefits must contain claims for all
3959 benefits that are ripe, due, and owing on the date the petition
3960 is filed. Unless stipulated in writing by the parties, only
3961 claims which have been properly raised in a petition for



3962 benefits and have undergone mediation may be considered for
 3963 adjudication by a judge of compensation claims.

3964 Section 23. Section 440.1926, Florida Statutes, is created
 3965 to read:

3966 440.1926 Alternate dispute resolution; claim
 3967 arbitration.--Notwithstanding any other provision of this
 3968 chapter, the employer, carrier, and employee may mutually agree
 3969 to seek consent from a judge of compensation claims to enter
 3970 into binding claim arbitration in lieu of any other remedy
 3971 provided for in this chapter to resolve all issues in dispute
 3972 regarding an injury. Arbitrations agreed to pursuant to this
 3973 section shall be governed by chapter 682, the Florida
 3974 Arbitration Code, except that, notwithstanding any provision in
 3975 chapter 682, the term "court" shall mean a judge of compensation
 3976 claims. An arbitration award in accordance with this section
 3977 shall be enforceable in the same manner and with the same powers
 3978 as any final compensation order.

3979 Section 24. Subsections (2), (3), (4), (6), and (8) and
 3980 paragraph (d) of subsection (11) of section 440.20, Florida
 3981 Statutes, are amended to read:

3982 440.20 Time for payment of compensation and medical bills;
 3983 penalties for late payment.--

3984 (2)(a) The carrier must pay the first installment of
 3985 compensation for total disability or death benefits or deny
 3986 compensability no later than the 14th calendar day after the
 3987 employer receives notification ~~notiee~~ of the injury or death,
 3988 when disability is immediate and continuous for 8 calendar days
 3989 or more after the injury. If the first 7 days after disability



3990 are nonconsecutive or delayed, the first installment of
 3991 compensation is due on the 6th day after the first 8 calendar
 3992 days of disability. The carrier shall thereafter pay
 3993 compensation in biweekly installments or as otherwise provided
 3994 in s. 440.15, unless the judge of compensation claims determines
 3995 or the parties agree that an alternate installment schedule is
 3996 in the best interests of the employee.

3997 (b) The carrier must pay, disallow, or deny all medical,
 3998 dental, pharmacy, and hospital bills submitted to the carrier in
 3999 accordance with department rule no later than 45 calendar days
 4000 after the carrier's receipt of the bill.

4001 (3) Upon making initial payment of indemnity benefits, or
 4002 upon suspension or cessation of payment for any reason, the
 4003 carrier shall immediately notify the injured employee, the
 4004 employer, and the department that it has commenced, suspended,
 4005 or ceased payment of compensation. The department may require
 4006 such notification to the injured employee, employer, and the
 4007 department in a ~~any~~ format and manner it deems necessary to
 4008 obtain accurate and timely notification ~~reporting~~.

4009 (4) If the carrier is uncertain of its obligation to
 4010 provide all benefits or compensation, ~~it may initiate payment~~
 4011 ~~without prejudice and without admitting liability.~~ the carrier
 4012 shall immediately and in good faith commence investigation of
 4013 the employee's entitlement to benefits under this chapter and
 4014 shall admit or deny compensability within 120 days after the
 4015 initial provision of compensation or benefits as required under
 4016 subsection (2) or s. 440.192(8). Additionally, the carrier shall
 4017 initiate payment and continue the provision of all benefits and



4018 compensation as if the claim had been accepted as compensable,
4019 without prejudice and without admitting liability. Upon
4020 commencement of payment as required under subsection (2) or s.
4021 440.192 (8), the carrier shall provide written notice to the
4022 employee that it is has elected to pay ~~all or part of~~ the claim
4023 pending further investigation, and that it will advise the
4024 employee of claim acceptance or denial within 120 days. A
4025 carrier that fails to deny compensability within 120 days after
4026 the initial provision of benefits or payment of compensation as
4027 required under subsection (2) or s. 440.192(8) waives the right
4028 to deny compensability, unless the carrier can establish
4029 material facts relevant to the issue of compensability that it
4030 could not have discovered through reasonable investigation
4031 within the 120-day period. The initial provision of compensation
4032 or benefits, for purposes of this subsection, means the first
4033 installment of compensation or benefits to be paid by the
4034 carrier under subsection (2) or pursuant to a petition for
4035 benefits under s. 440.192(8).

4036 (6)(a) If any installment of compensation for death or
4037 dependency benefits, or compensation for disability benefits,
4038 ~~permanent impairment, or wage loss~~ payable without an award is
4039 not paid within 7 days after it becomes due, as provided in
4040 subsection (2), subsection (3), or subsection (4), there shall
4041 be added to such unpaid installment a ~~punitive~~ penalty of an
4042 amount equal to 20 percent of the unpaid installment ~~or \$5,~~
4043 which shall be paid at the same time as, but in addition to,
4044 such installment of compensation. This penalty shall not apply
4045 for late payments resulting ~~, unless notice is filed under~~



4046 ~~subsection (4) or unless such nonpayment results~~ from conditions
4047 over which the employer or carrier had no control. When any
4048 installment of compensation payable without an award has not
4049 been paid within 7 days after it became due and the claimant
4050 concludes the prosecution of the claim before a judge of
4051 compensation claims without having specifically claimed
4052 additional compensation in the nature of a penalty under this
4053 section, the claimant will be deemed to have acknowledged that,
4054 owing to conditions over which the employer or carrier had no
4055 control, such installment could not be paid within the period
4056 prescribed for payment and to have waived the right to claim
4057 such penalty. However, during the course of a hearing, the judge
4058 of compensation claims shall on her or his own motion raise the
4059 question of whether such penalty should be awarded or excused.
4060 The department may assess without a hearing the ~~punitive~~ penalty
4061 against either the employer or the ~~insurance~~ carrier, depending
4062 upon who was at fault in causing the delay. The insurance policy
4063 cannot provide that this sum will be paid by the carrier if the
4064 department or the judge of compensation claims determines that
4065 the ~~punitive~~ penalty should be paid ~~made~~ by the employer rather
4066 than the carrier. Any additional installment of compensation
4067 paid by the carrier pursuant to this section shall be paid
4068 directly to the employee by check or, if authorized by the
4069 employee, by direct deposit into the employee's account at a
4070 financial institution. ~~As used in this subsection, the term~~
4071 ~~"financial institution" means a financial institution as defined~~
4072 ~~in s. 655.005(1)(h).~~



4073 (b) For medical services provided on or after January 1,
4074 2004, the department shall require that all medical, hospital,
4075 pharmacy, or dental bills properly submitted by the provider,
4076 except for bills that are disallowed or denied by the carrier or
4077 its authorized vendor in accordance with department rule, are
4078 timely paid within 45 calendar days after the carrier's receipt
4079 of the bill. The department shall impose penalties for late
4080 payments or disallowances or denials of medical, hospital,
4081 pharmacy, or dental bills that are below a minimum 95 percent
4082 timely performance standard. The carrier shall pay to the
4083 Workers' Compensation Administration Trust Fund a penalty of:

4084 1. Twenty-five dollars for each bill below the 95 percent
4085 timely performance standard, but meeting a 90 percent timely
4086 standard.

4087 2. Fifty dollars for each bill below a 90 percent timely
4088 performance standard.

4089 (8)(a) In addition to any other penalties provided by this
4090 chapter for late payment, if any installment of compensation is
4091 not paid when it becomes due, the employer, carrier, or
4092 servicing agent shall pay interest thereon at the rate of 12
4093 percent per year from the date the installment becomes due until
4094 it is paid, whether such installment is payable without an order
4095 or terms of an order. The interest payment shall be the greater
4096 of the amount due or \$5.

4097 ~~(a) Within 30 days after final payment of compensation has~~
4098 ~~been made, the employer, carrier, or servicing agent shall send~~
4099 ~~to the department a notice, in accordance with a format and~~
4100 ~~manner prescribed by the department, stating that such final~~



4101 ~~payment has been made and stating the total amount of~~
4102 ~~compensation paid, the name of the employee and of any other~~
4103 ~~person to whom compensation has been paid, the date of the~~
4104 ~~injury or death, and the date to which compensation has been~~
4105 ~~paid.~~

4106 ~~(b) If the employer, carrier, or servicing agent fails to~~
4107 ~~so notify the department within such time, the department shall~~
4108 ~~assess against such employer, carrier, or servicing agent a~~
4109 ~~civil penalty in an amount not over \$100.~~

4110 (b)(e) In order to ensure carrier compliance under this
4111 chapter and provisions of the Insurance Code, the department
4112 shall monitor, audit, and investigate the performance of
4113 carriers ~~by conducting market conduct examinations, as provided~~
4114 ~~in s. 624.3161, and conducting investigations, as provided in s.~~
4115 ~~624.317. The department shall require establish by rule a~~
4116 ~~minimum performance standards for carriers to ensure that a~~
4117 ~~minimum of 90 percent of all compensation benefits are timely~~
4118 ~~paid in accordance with this section. The department shall~~
4119 ~~impose penalties fine a carrier as provided in s. 440.13(11)(b)~~
4120 ~~up to \$50 for each late payments payment of compensation that~~
4121 ~~are is below a the minimum 95 90 percent timely payment~~
4122 ~~performance standard. The carrier shall pay to the Workers'~~
4123 ~~Compensation Administration Trust Fund a penalty of:~~

4124 1. Fifty dollars per number of installments of
4125 compensation below the 95 percent timely payment performance
4126 standard and equal to or greater than a 90 percent timely
4127 payment performance standard.



4128 2. One hundred dollars per number of installments of
 4129 compensation below a 90 percent timely payment performance
 4130 standard.

4131
 4132 This section does not affect the imposition of any penalties or
 4133 interest due to the claimant. If a carrier contracts with a
 4134 servicing agent to fulfill its administrative responsibilities
 4135 under this chapter, the payment practices of the servicing agent
 4136 are deemed the payment practices of the carrier for the purpose
 4137 of assessing penalties against the carrier.

4138 (11)

4139 (d)1. With respect to any lump-sum settlement under this
 4140 subsection, a judge of compensation claims must consider at the
 4141 time of the settlement, whether the settlement allocation
 4142 provides for the appropriate recovery of child support
 4143 arrearages. An employer or carrier does not have a duty to
 4144 investigate or collect information regarding child support
 4145 arrearsages.

4146 2. When reviewing any settlement of lump-sum payment
 4147 pursuant to this subsection, judges of compensation claims shall
 4148 consider the interests of the worker and the worker's family
 4149 when approving the settlement, which must consider and provide
 4150 for appropriate recovery of past due support.

4151 Section 25. Section 440.25, Florida Statutes, is amended
 4152 to read:

4153 440.25 Procedures for mediation and hearings.--

4154 (1) Forty days ~~Within 90 days~~ after a petition for
 4155 benefits is filed under s. 440.192, ~~a mediation conference~~



4156 ~~concerning such petition shall be held. Within 40 days after~~
4157 ~~such petition is filed,~~ the judge of compensation claims shall
4158 notify the interested parties by order that a mediation
4159 conference concerning such petition has been scheduled ~~will be~~
4160 ~~held~~ unless the parties have notified the judge ~~Office of the~~
4161 ~~Judges~~ of compensation claims that a private mediation has been
4162 held or is scheduled to be held. A mediation, whether private
4163 or public, shall be held within 130 days after the filing of the
4164 petition. Such order must give the date ~~by which~~ the mediation
4165 conference is to ~~must~~ be held. Such order may be served
4166 personally upon the interested parties or may be sent to the
4167 interested parties by mail. If multiple petitions are pending,
4168 or if additional petitions are filed after the scheduling of a
4169 mediation, the judge of compensation claims shall consolidate
4170 all petitions into one mediation. The claimant or the adjuster
4171 of the employer or carrier may, at the mediator's discretion,
4172 attend the mediation conference by telephone or, if agreed to by
4173 the parties, other electronic means. A continuance may be
4174 granted upon the agreement of the parties or if the requesting
4175 party demonstrates to the judge of compensation claims that the
4176 reason for requesting the continuance arises from circumstances
4177 beyond the party's control. Any order granting a continuance
4178 must set forth the date of the rescheduled mediation conference.
4179 A mediation conference may not be used solely for the purpose of
4180 mediating attorney's fees.

4181 (2) Any party who participates in a mediation conference
4182 shall not be precluded from requesting a hearing following the
4183 mediation conference should both parties not agree to be bound



4184 by the results of the mediation conference. A mediation
4185 conference is required to be held unless this requirement is
4186 waived by the Deputy Chief Judge. ~~No later than 3 days prior to~~
4187 ~~the mediation conference, all parties must submit any applicable~~
4188 ~~motions, including, but not limited to, a motion to waive the~~
4189 ~~mediation conference, to the judge of compensation claims.~~

4190 (3)(a) Such mediation conference shall be conducted
4191 informally and does not require the use of formal rules of
4192 evidence or procedure. Any information from the files, reports,
4193 case summaries, mediator's notes, or other communications or
4194 materials, oral or written, relating to a mediation conference
4195 under this section obtained by any person performing mediation
4196 duties is privileged and confidential and may not be disclosed
4197 without the written consent of all parties to the conference.
4198 Any research or evaluation effort directed at assessing the
4199 mediation program activities or performance must protect the
4200 confidentiality of such information. Each party to a mediation
4201 conference has a privilege during and after the conference to
4202 refuse to disclose and to prevent another from disclosing
4203 communications made during the conference whether or not the
4204 contested issues are successfully resolved. This subsection and
4205 paragraphs (4)(a) and (b) shall not be construed to prevent or
4206 inhibit the discovery or admissibility of any information that
4207 is otherwise subject to discovery or that is admissible under
4208 applicable law or rule of procedure, except that any conduct or
4209 statements made during a mediation conference or in negotiations
4210 concerning the conference are inadmissible in any proceeding
4211 under this chapter.



4212 (a)1. Unless the parties conduct a private mediation under
4213 paragraph (b) subparagraph 2., mediation shall be conducted by a
4214 mediator selected by the Director of the Division of
4215 Administrative Hearings from among mediators employed on a full-
4216 time basis by the Office of the Judges of Compensation Claims. A
4217 mediator must be a member of The Florida Bar for at least 5
4218 years and must complete a mediation training program approved by
4219 the Deputy Chief Judge ~~Director of the Division of~~
4220 ~~Administrative Hearings~~. Adjunct mediators may be employed by
4221 the Office of the Judges of Compensation Claims on an as-needed
4222 basis and shall be selected from a list prepared by the Director
4223 of the Division of Administrative Hearings. An adjunct mediator
4224 must be independent of all parties participating in the
4225 mediation conference. An adjunct mediator must be a member of
4226 The Florida Bar for at least 5 years and must complete a
4227 mediation training program approved by the Office of the Judges
4228 of Compensation Claims ~~Director of the Division of~~
4229 ~~Administrative Hearings~~. An adjunct mediator shall have access
4230 to the office, equipment, and supplies of the judge of
4231 compensation claims in each district.

4232 (b)2. With respect to any private mediation ~~occurring on~~
4233 ~~or after January 1, 2003~~, if the parties agree or if mediators
4234 are not available under paragraph (a), pursuant to notice from
4235 the judge of compensation claims ~~subparagraph 1.~~, to conduct the
4236 required mediation within the period specified in this section,
4237 the parties shall hold a mediation conference at the carrier's
4238 expense within the 130-day ~~90-day~~ period set for mediation. The
4239 mediation conference shall be conducted by a mediator certified



4240 under s. 44.106. If the parties do not agree upon a mediator
4241 within 10 days after the date of the order, the claimant shall
4242 notify the judge in writing and the judge shall appoint a
4243 mediator under this subparagraph within 7 days. In the event
4244 both parties agree, the results of the mediation conference
4245 shall be binding and neither party shall have a right to appeal
4246 the results. In the event either party refuses to agree to the
4247 results of the mediation conference, the results of the
4248 mediation conference as well as the testimony, witnesses, and
4249 evidence presented at the conference shall not be admissible at
4250 any subsequent proceeding on the claim. The mediator shall not
4251 be called in to testify or give deposition to resolve any claim
4252 for any hearing before the judge of compensation claims. The
4253 employer may be represented by an attorney at the mediation
4254 conference if the employee is also represented by an attorney at
4255 the mediation conference.

4256 ~~(b) The parties shall complete the pretrial stipulations~~
4257 ~~before the conclusion of the mediation conference if the claims,~~
4258 ~~except for attorney's fees and costs, have not been settled and~~
4259 ~~if any claims in any filed petition remain unresolved. The judge~~
4260 ~~of compensation claims may impose sanctions against a party or~~
4261 ~~both parties for failing to complete the pretrial stipulations~~
4262 ~~before the conclusion of the mediation conference.~~

4263 (4)(a) If the parties fail to agree to ~~upon~~ written
4264 submission of pretrial stipulations ~~at the mediation conference,~~
4265 the judge of compensation claims shall conduct a live ~~order a~~
4266 pretrial hearing ~~to occur within 14 days after the date of~~
4267 ~~mediation ordered by the judge of compensation claims.~~ The judge



4268 of compensation claims shall give the interested parties at
4269 least 14 7 days' advance notice of the pretrial hearing by mail.
4270 ~~At the pretrial hearing, the judge of compensation claims shall,~~
4271 ~~subject to paragraph (b), set a date for the final hearing that~~
4272 ~~allows the parties at least 60 days to conduct discovery unless~~
4273 ~~the parties consent to an earlier hearing date.~~

4274 (b) The final hearing must be held and concluded within 90
4275 days after the mediation conference is held, allowing the
4276 parties sufficient time to complete discovery. Except as set
4277 forth in this section, continuances may be granted only if the
4278 requesting party demonstrates to the judge of compensation
4279 claims that the reason for requesting the continuance arises
4280 from circumstances beyond the party's control. The written
4281 consent of the claimant must be obtained before any request from
4282 a claimant's attorney is granted for an additional continuance
4283 after the initial continuance has been granted. Any order
4284 granting a continuance must set forth the date and time of the
4285 rescheduled hearing. A continuance may be granted only if the
4286 requesting party demonstrates to the judge of compensation
4287 claims that the reason for requesting the continuance arises
4288 from circumstances beyond the control of the parties. The judge
4289 of compensation claims shall report any grant of two or more
4290 continuances to the Deputy Chief Judge.

4291 (c) The judge of compensation claims shall give the
4292 interested parties at least 14 7 days' advance notice of the
4293 final hearing, served upon the interested parties by mail.

4294 (d) The final hearing shall be held within 210 days after
4295 receipt of the petition for benefits in the county where the



4296 injury occurred, if the injury occurred in this state, unless
4297 otherwise agreed to between the parties and authorized by the
4298 judge of compensation claims in the county where the injury
4299 occurred; However, the claimant may waive the timeframes within
4300 this section for good cause shown. If the injury occurred
4301 outside the state and is one for which compensation is payable
4302 under this chapter, then the final hearing may be held in the
4303 county of the employer's residence or place of business, or in
4304 any other county of the state that will, in the discretion of
4305 the Deputy Chief Judge, be the most convenient for a hearing.
4306 The final hearing shall be conducted by a judge of compensation
4307 claims, who shall, within 30 days after final hearing or closure
4308 of the hearing record, unless otherwise agreed by the parties,
4309 enter a final order on the merits of the disputed issues. The
4310 judge of compensation claims may enter an abbreviated final
4311 order in cases in which compensability is not disputed. Either
4312 party may request separate findings of fact and conclusions of
4313 law. At the final hearing, the claimant and employer may each
4314 present evidence with respect to the claims presented by the
4315 petition for benefits and may be represented by any attorney
4316 authorized in writing for such purpose. When there is a conflict
4317 in the medical evidence submitted at the hearing, the provisions
4318 of s. 440.13 shall apply. The report or testimony of the expert
4319 medical advisor shall be admitted into evidence in a ~~made a part~~
4320 ~~of the record of the proceeding and shall be given the same~~
4321 ~~consideration by the judge of compensation claims as is accorded~~
4322 ~~other medical evidence submitted in the proceeding;~~ and all
4323 costs incurred in connection with such examination and testimony



4324 may be assessed as costs in the proceeding, subject to the
4325 provisions of s. 440.13. No judge of compensation claims may
4326 make a finding of a degree of permanent impairment that is
4327 greater than the greatest permanent impairment rating given the
4328 claimant by any examining or treating physician, except upon
4329 stipulation of the parties. Any benefit due but not raised at
4330 the final hearing which was ripe, due, or owing at the time of
4331 the final hearing is waived.

4332 (e) The order making an award or rejecting the claim,
4333 referred to in this chapter as a "compensation order," shall set
4334 forth the findings of ultimate facts and the mandate; and the
4335 order need not include any other reason or justification for
4336 such mandate. The compensation order shall be filed in the
4337 Office of the Judges of Compensation Claims at Tallahassee. A
4338 copy of such compensation order shall be sent by mail to the
4339 parties and attorneys of record at the last known address of
4340 each, with the date of mailing noted thereon.

4341 ~~(f) Each judge of compensation claims is required to~~
4342 ~~submit a special report to the Deputy Chief Judge in each~~
4343 ~~contested workers' compensation case in which the case is not~~
4344 ~~determined within 30 days of final hearing or closure of the~~
4345 ~~hearing record. Said form shall be provided by the director of~~
4346 ~~the Division of Administrative Hearings and shall contain the~~
4347 ~~names of the judge of compensation claims and of the attorneys~~
4348 ~~involved and a brief explanation by the judge of compensation~~
4349 ~~claims as to the reason for such a delay in issuing a final~~
4350 ~~order.~~



4351 ~~(f)~~~~(g)~~ Notwithstanding any other provision of this
 4352 section, the judge of compensation claims may require the
 4353 appearance of the parties and counsel before her or him without
 4354 written notice for an emergency conference where there is a bona
 4355 fide emergency involving the health, safety, or welfare of an
 4356 employee. An emergency conference under this section may result
 4357 in the entry of an order or the rendering of an adjudication by
 4358 the judge of compensation claims.

4359 ~~(g)~~~~(h)~~ To expedite dispute resolution and to enhance the
 4360 self-executing features of the Workers' Compensation Law, the
 4361 Deputy Chief Judge shall make provision by rule or order for the
 4362 resolution of appropriate motions by judges of compensation
 4363 claims without oral hearing upon submission of brief written
 4364 statements in support and opposition, and for expedited
 4365 discovery and docketing. Unless the judge of compensation
 4366 claims, for good cause, orders a hearing under paragraph ~~(h)~~~~(i)~~,
 4367 each claim in a petition relating to the determination of the
 4368 average weekly wage pay under s. 440.14 shall be resolved under
 4369 this paragraph without oral hearing.

4370 ~~(h)~~~~(i)~~ To further expedite dispute resolution and to
 4371 enhance the self-executing features of the system, those
 4372 petitions filed in accordance with s. 440.192 that involve a
 4373 claim for benefits of \$5,000 or less shall, in the absence of
 4374 compelling evidence to the contrary, be presumed to be
 4375 appropriate for expedited resolution under this paragraph; and
 4376 any other claim filed in accordance with s. 440.192, upon the
 4377 written agreement of both parties and application by either
 4378 party, may similarly be resolved under this paragraph. A claim



4379 | in a petition or \$5,000 or less for medical benefits only or a
4380 | petition for reimbursement for mileage for medical purposes
4381 | shall, in the absence of compelling evidence to the contrary, be
4382 | resolved through the expedited dispute resolution process
4383 | provided in this paragraph. For purposes of expedited resolution
4384 | pursuant to this paragraph, the Deputy Chief Judge shall make
4385 | provision by rule or order for expedited and limited discovery
4386 | and expedited docketing in such cases. At least 15 days prior to
4387 | hearing, the parties shall exchange and file with the judge of
4388 | compensation claims a pretrial outline of all issues, defenses,
4389 | and witnesses on a form adopted by the Deputy Chief Judge;
4390 | provided, in no event shall such hearing be held without 15
4391 | days' written notice to all parties. No pretrial hearing shall
4392 | be held and no mediation scheduled unless requested by a party.
4393 | The judge of compensation claims shall limit all argument and
4394 | presentation of evidence at the hearing to a maximum of 30
4395 | minutes, and such hearings shall not exceed 30 minutes in
4396 | length. Neither party shall be required to be represented by
4397 | counsel. The employer or carrier may be represented by an
4398 | adjuster or other qualified representative. The employer or
4399 | carrier and any witness may appear at such hearing by telephone.
4400 | The rules of evidence shall be liberally construed in favor of
4401 | allowing introduction of evidence.

4402 | ~~(i)-(j)~~ A judge of compensation claims may, upon the motion
4403 | of a party or the judge's own motion, dismiss a petition for
4404 | lack of prosecution if a petition, response, motion, order,
4405 | request for hearing, or notice of deposition has not been filed
4406 | during the previous 12 months unless good cause is shown. A



4407 dismissal for lack of prosecution is without prejudice and does
4408 not require a hearing.

4409 (j)~~(k)~~ A judge of compensation claims may not award
4410 interest on unpaid medical bills and the amount of such bills
4411 may not be used to calculate the amount of interest awarded.
4412 Regardless of the date benefits were initially requested,
4413 attorney's fees do not attach under this subsection until 30
4414 days after the date the carrier or self-insured employer
4415 receives the petition.

4416 (5)(a) Procedures with respect to appeals from orders of
4417 judges of compensation claims shall be governed by rules adopted
4418 by the Supreme Court. Such an order shall become final 30 days
4419 after mailing of copies of such order to the parties, unless
4420 appealed pursuant to such rules.

4421 (b) An appellant may be relieved of any necessary filing
4422 fee by filing a verified petition of indigency for approval as
4423 provided in s. 57.081(1) and may be relieved in whole or in part
4424 from the costs for preparation of the record on appeal if,
4425 within 15 days after the date notice of the estimated costs for
4426 the preparation is served, the appellant files with the judge of
4427 compensation claims a copy of the designation of the record on
4428 appeal, and a verified petition to be relieved of costs. A
4429 verified petition filed prior to the date of service of the
4430 notice of the estimated costs shall be deemed not timely filed.
4431 The verified petition relating to record costs shall contain a
4432 sworn statement that the appellant is insolvent and a complete,
4433 detailed, and sworn financial affidavit showing all the
4434 appellant's assets, liabilities, and income. Failure to state in



4435 the affidavit all assets and income, including marital assets
4436 and income, shall be grounds for denying the petition with
4437 prejudice. The Office of the Judges of Compensation Claims shall
4438 adopt rules as may be required pursuant to this subsection,
4439 including forms for use in all petitions brought under this
4440 subsection. The appellant's attorney, or the appellant if she or
4441 he is not represented by an attorney, shall include as a part of
4442 the verified petition relating to record costs an affidavit or
4443 affirmation that, in her or his opinion, the notice of appeal
4444 was filed in good faith and that there is a probable basis for
4445 the District Court of Appeal, First District, to find reversible
4446 error, and shall state with particularity the specific legal and
4447 factual grounds for the opinion. Failure to so affirm shall be
4448 grounds for denying the petition. A copy of the verified
4449 petition relating to record costs shall be served upon all
4450 interested parties. The judge of compensation claims shall
4451 promptly conduct a hearing on the verified petition relating to
4452 record costs, giving at least 15 days' notice to the appellant,
4453 the department, and all other interested parties, all of whom
4454 shall be parties to the proceedings. The judge of compensation
4455 claims may enter an order without such hearing if no objection
4456 is filed by an interested party within 20 days from the service
4457 date of the verified petition relating to record costs. Such
4458 proceedings shall be conducted in accordance with the provisions
4459 of this section and with the workers' compensation rules of
4460 procedure, to the extent applicable. In the event an insolvency
4461 petition is granted, the judge of compensation claims shall
4462 direct the department to pay record costs and filing fees from



4463 the Workers' Compensation Administration Trust Fund pending
4464 final disposition of the costs of appeal. The department may
4465 transcribe or arrange for the transcription of the record in any
4466 proceeding for which it is ordered to pay the cost of the
4467 record.

4468 (c) As a condition of filing a notice of appeal to the
4469 District Court of Appeal, First District, an employer who has
4470 not secured the payment of compensation under this chapter in
4471 compliance with s. 440.38 shall file with the notice of appeal a
4472 good and sufficient bond, as provided in s. 59.13, conditioned
4473 to pay the amount of the demand and any interest and costs
4474 payable under the terms of the order if the appeal is dismissed,
4475 or if the District Court of Appeal, First District, affirms the
4476 award in any amount. Upon the failure of such employer to file
4477 such bond with ~~the judge of compensation claims or~~ the District
4478 Court of Appeal, First District, along with the notice of
4479 appeal, the District Court of Appeal, First District, shall
4480 dismiss the notice of appeal.

4481 (6) An award of compensation for disability may be made
4482 after the death of an injured employee.

4483 ~~(7) An injured employee claiming or entitled to~~
4484 ~~compensation shall submit to such physical examination by a~~
4485 ~~certified expert medical advisor approved by the agency or the~~
4486 ~~judge of compensation claims as the agency or the judge of~~
4487 ~~compensation claims may require. The place or places shall be~~
4488 ~~reasonably convenient for the employee. Such physician or~~
4489 ~~physicians as the employee, employer, or carrier may select and~~
4490 ~~pay for may participate in an examination if the employee,~~



4491 ~~employer, or carrier so requests. Proceedings shall be suspended~~
4492 ~~and no compensation shall be payable for any period during which~~
4493 ~~the employee may refuse to submit to examination.~~ Any interested
4494 party shall have the right in any case of death to require an
4495 autopsy, the cost thereof to be borne by the party requesting
4496 it; and the judge of compensation claims shall have authority to
4497 order and require an autopsy and may, in her or his discretion,
4498 withhold her or his findings and award until an autopsy is held.

4499 Section 26. Subsections (1), (2), and (3) of section
4500 440.34, Florida Statutes, are amended to read:

4501 440.34 Attorney's fees; costs.--

4502 (1) A fee, gratuity, or other consideration may not be
4503 paid for ~~services rendered for~~ a claimant in connection with any
4504 proceedings arising under this chapter, unless approved as
4505 reasonable by the judge of compensation claims or court having
4506 jurisdiction over such proceedings. ~~Except as provided by this~~
4507 ~~subsection,~~ Any attorney's fee approved by a judge of
4508 compensation claims for benefits secured on behalf of services
4509 ~~rendered to~~ a claimant must equal to 20 percent of the first
4510 \$5,000 of the amount of the benefits secured, 15 percent of the
4511 next \$5,000 of the amount of the benefits secured, 10 percent of
4512 the remaining amount of the benefits secured to be provided
4513 during the first 10 years after the date the claim is filed, and
4514 5 percent of the benefits secured after 10 years. The judge of
4515 compensation claims shall not approve a compensation order, a
4516 joint stipulation for lump-sum settlement, a stipulation or
4517 agreement between a claimant and his or her attorney, or any
4518 other agreement related to benefits under this chapter that



4519 provides for an attorney's fee in excess of the amount permitted
4520 by this section. The judge of compensation claims is not
4521 required to approve any retainer agreement between the claimant
4522 and his or her attorney. The retainer agreement as to fees and
4523 costs may not be for compensation in excess of the amount
4524 allowed under this section. ~~However, The judge of compensation~~
4525 ~~claims shall consider the following factors in each case and may~~
4526 ~~increase or decrease the attorney's fee if, in her or his~~
4527 ~~judgment, the circumstances of the particular case warrant such~~
4528 ~~action:~~

4529 ~~(a) The time and labor required, the novelty and~~
4530 ~~difficulty of the questions involved, and the skill requisite to~~
4531 ~~perform the legal service properly.~~

4532 ~~(b) The fee customarily charged in the locality for~~
4533 ~~similar legal services.~~

4534 ~~(c) The amount involved in the controversy and the~~
4535 ~~benefits resulting to the claimant.~~

4536 ~~(d) The time limitation imposed by the claimant or the~~
4537 ~~circumstances.~~

4538 ~~(e) The experience, reputation, and ability of the lawyer~~
4539 ~~or lawyers performing services.~~

4540 ~~(f) The contingency or certainty of a fee.~~

4541 (2) In awarding a reasonable claimant's attorney's fee,
4542 the judge of compensation claims shall consider only those
4543 benefits secured by ~~to the claimant that~~ the attorney is
4544 ~~responsible for securing.~~ The amount, statutory basis, and type
4545 of benefits obtained through legal representation shall be
4546 listed on all attorney's fees awarded by the judge of



4547 compensation claims. For purposes of this section, the term
4548 "benefits secured" ~~means benefits obtained as a result of the~~
4549 ~~claimant's attorney's legal services rendered in connection with~~
4550 ~~the claim for benefits. However, such term does not include~~
4551 future medical benefits to be provided on any date more than 5
4552 years after the date the claim is filed. In the event an offer
4553 to settle an issue pending before a judge of compensation claims
4554 is communicated in writing to the claimant or the claimant's
4555 attorney at least 30 days prior to the trial date on such issue,
4556 benefits secured shall be only that amount awarded above that
4557 specified in the offer to settle. If multiple issues are pending
4558 before the judge of compensation claims, said offer of
4559 settlement shall address each issue pending and shall state
4560 explicitly whether or not the offer on each issue is severable.
4561 The written offer shall also unequivocally state whether or not
4562 it includes medical witness fees and expenses and all other
4563 costs associated with the claim.

4564 (3) If any party ~~the claimant~~ should prevail in any
4565 proceedings before a judge of compensation claims or court,
4566 there shall be taxed against the nonprevailing party ~~employer~~
4567 the reasonable costs of such proceedings, not to include ~~the~~
4568 attorney's fees ~~of the claimant~~. A claimant shall be
4569 responsible for the payment of her or his own attorney's fees,
4570 except that a claimant shall be entitled to recover a reasonable
4571 attorney's fee from a carrier or employer:

4572 (a) Against whom she or he successfully asserts a petition
4573 for medical benefits only, if the claimant has not filed or is
4574 not entitled to file at such time a claim for disability,



4575 permanent impairment, wage-loss, or death benefits, arising out
 4576 of the same accident;

4577 (b) In any case in which the employer or carrier files a
 4578 response to petition denying benefits with the Office of the
 4579 Judges of Compensation Claims and the injured person has
 4580 employed an attorney in the successful prosecution of the
 4581 petition;

4582 (c) In a proceeding in which a carrier or employer denies
 4583 that an accident occurred for which compensation benefits are
 4584 payable, and the claimant prevails on the issue of
 4585 compensability; or

4586 (d) In cases where the claimant successfully prevails in
 4587 proceedings filed under s. 440.24 or s. 440.28.

4588
 4589 Regardless of the date benefits were initially requested,
 4590 attorney's fees shall not attach under this subsection until 30
 4591 days after the date the carrier or employer, if self-insured,
 4592 receives the petition. ~~In applying the factors set forth in~~
 4593 ~~subsection (1) to cases arising under paragraphs (a), (b), (c),~~
 4594 ~~and (d), the judge of compensation claims must only consider~~
 4595 ~~only such benefits and the time reasonably spent in obtaining~~
 4596 ~~them as were secured for the claimant within the scope of~~
 4597 ~~paragraphs (a), (b), (c), and (d).~~

4598 Section 27. Subsection (7) is added to section 440.38,
 4599 Florida Statutes, to read:

4600 440.38 Security for compensation; insurance carriers and
 4601 self-insurers.—



4602 (7) Any employer who meets the requirements of subsection
4603 (1) through a policy of insurance issued outside of this state
4604 must at all times, with respect to all employees working in this
4605 state, maintain the required coverage under a Florida
4606 endorsement using Florida rates and rules pursuant to payroll
4607 reporting that accurately reflects the work performed in this
4608 state by such employees.

4609 Section 28. Subsections (2) and (6) of section 440.381,
4610 Florida Statutes, are amended to read:

4611 440.381 Application for coverage; reporting payroll;
4612 payroll audit procedures; penalties.--

4613 (2) Submission of an application that contains false,
4614 misleading, or incomplete information provided with the purpose
4615 of avoiding or reducing the amount of premiums for workers'
4616 compensation coverage is a felony of the second degree,
4617 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4618 The application must contain a statement that the filing of an
4619 application containing false, misleading, or incomplete
4620 information provided with the purpose of avoiding or reducing
4621 the amount of premiums for workers' compensation coverage is a
4622 felony of the third degree, punishable as provided in s.
4623 775.082, s. 775.083, or s. 775.084. The application must contain
4624 a sworn statement by the employer attesting to the accuracy of
4625 the information submitted and acknowledging the provisions of
4626 former s. 440.37(4). The application must contain a sworn
4627 statement by the agent attesting that the agent explained to the
4628 employer or officer the classification codes that are used for
4629 premium calculations.



4630 (6)(a) If an employer understates or conceals payroll, or
4631 misrepresents or conceals employee duties so as to avoid proper
4632 classification for premium calculations, or misrepresents or
4633 conceals information pertinent to the computation and
4634 application of an experience rating modification factor, the
4635 employer, or the employer's agent or attorney, shall pay to the
4636 insurance carrier a penalty of 10 times the amount of the
4637 difference in premium paid and the amount the employer should
4638 have paid and reasonable attorney's fees. The penalty may be
4639 enforced in the circuit courts of this state.

4640 (b) If the department determines that an employer has
4641 materially understated or concealed payroll, has materially
4642 misrepresented or concealed employee duties so as to avoid
4643 proper classification for premium calculations, or has
4644 materially misrepresented or concealed information pertinent to
4645 the computation and application of an experience rating
4646 modification factor, the department shall immediately notify the
4647 employer's carrier of such determination. The carrier shall
4648 commence a physical onsite audit of the employer within 30 days
4649 after receiving notification from the department. If the carrier
4650 fails to commence the audit as required by this section, the
4651 department shall contract with auditing professionals to conduct
4652 the audit at the carrier's expense. A copy of the carrier's
4653 audit of the employer shall be provided to the department upon
4654 completion. The carrier is not required to conduct the physical
4655 onsite audit of the employer as set forth in this paragraph if
4656 the carrier gives written notice of cancellation to the employer
4657 within 30 days after receiving notification from the department



4658 of the material misrepresentation, understatement, or
4659 concealment and an audit is conducted in conjunction with the
4660 cancellation.

4661 Section 29. Subsection (3) of section 440.42, Florida
4662 Statutes, is amended to read:

4663 440.42 Insurance policies; liability.--

4664 (3) No contract or policy of insurance issued by a carrier
4665 under this chapter shall expire or be canceled until at least 30
4666 days have elapsed after a notice of cancellation has been sent
4667 to the department and to the employer in accordance with the
4668 provisions of s. 440.185(7). For cancellation due to nonpayment
4669 of premium, the insurer shall mail notification to the employer
4670 at least 10 days prior to the effective date of the
4671 cancellation. However, when duplicate or dual coverage exists by
4672 reason of two different carriers having issued policies of
4673 insurance to the same employer securing the same liability, it
4674 shall be presumed that only that policy with the later effective
4675 date shall be in force and that the earlier policy terminated
4676 upon the effective date of the latter. In the event that both
4677 policies carry the same effective date, one of the policies may
4678 be canceled instanter upon filing a notice of cancellation with
4679 the department and serving a copy thereof upon the employer in
4680 such manner as the department prescribes by rule. The department
4681 may by rule prescribe the content of the notice of retroactive
4682 cancellation and specify the time, place, and manner in which
4683 the notice of cancellation is to be served.

4684 Section 30. Paragraph (a) of subsection (4) of section
4685 440.49, Florida Statutes, is amended to read:



4686 440.49 Limitation of liability for subsequent injury
4687 through Special Disability Trust Fund.--

4688 (4) PERMANENT IMPAIRMENT OR PERMANENT TOTAL DISABILITY,
4689 TEMPORARY BENEFITS, MEDICAL BENEFITS, OR ATTENDANT CARE AFTER
4690 OTHER PHYSICAL IMPAIRMENT.--

4691 (a) *Permanent impairment.*--If an employee who has a
4692 preexisting permanent physical impairment incurs a subsequent
4693 permanent impairment from injury or occupational disease arising
4694 out of, and in the course of, her or his employment which merges
4695 with the preexisting permanent physical impairment to cause a
4696 permanent impairment, the employer shall, in the first instance,
4697 pay all benefits provided by this chapter; but, subject to the
4698 limitations specified in subsection (6), such employer shall be
4699 reimbursed from the Special Disability Trust Fund created by
4700 subsection (9) for 50 percent of all impairment benefits which
4701 the employer has been required to provide pursuant to s.
4702 ~~440.15(3)(a)~~ as a result of the subsequent accident or
4703 occupational disease.

4704 Section 31. Subsection (6) of section 440.491, Florida
4705 Statutes, is amended to read:

4706 440.491 Reemployment of injured workers; rehabilitation.--

4707 (6) TRAINING AND EDUCATION.--

4708 (a) Upon referral of an injured employee by the carrier,
4709 or upon the request of an injured employee, the department shall
4710 conduct a training and education screening to determine whether
4711 it should refer the employee for a vocational evaluation and, if
4712 appropriate, approve training and education or other vocational
4713 services for the employee. The department may not approve formal



4714 training and education programs unless it determines, after
4715 consideration of the reemployment assessment, pertinent
4716 reemployment status reviews or reports, and such other relevant
4717 factors as it prescribes by rule, that the reemployment plan is
4718 likely to result in return to suitable gainful employment. The
4719 department is authorized to expend moneys from the Workers'
4720 Compensation Administration Trust Fund, established by s.
4721 440.50, to secure appropriate training and education at a
4722 community college established under part III of chapter 240 or
4723 at a vocational-technical school established under s. 230.63, or
4724 to secure other vocational services when necessary to satisfy
4725 the recommendation of a vocational evaluator. As used in this
4726 paragraph, "appropriate training and education" includes
4727 securing a general education diploma (GED), if necessary. The
4728 department shall establish training and education standards
4729 pertaining to employee eligibility, course curricula and
4730 duration, and associated costs.

4731 (b) When ~~it appears that~~ an employee who has attained
4732 maximum medical improvement is unable to earn at least 80
4733 percent of the compensation rate and requires training and
4734 education to obtain suitable gainful employment, the employer or
4735 carrier shall pay the employee additional training and education
4736 temporary total compensation benefits while the employee
4737 receives such training and education for a period not to exceed
4738 104 weeks. The benefits provided under this paragraph shall not
4739 be in addition to the 104 weeks as specified in s. 440.15(2) 26
4740 weeks, which period may be extended for an additional 26 weeks
4741 or less, if such extended period is determined to be necessary



4742 ~~and proper by a judge of compensation claims.~~ However, a
4743 carrier or employer is not precluded from voluntarily paying
4744 additional temporary total disability compensation beyond that
4745 period. If an employee requires temporary residence at or near a
4746 facility or an institution providing training and education
4747 which is located more than 50 miles away from the employee's
4748 customary residence, the reasonable cost of board, lodging, or
4749 travel must be borne by the department from the Workers'
4750 Compensation Administration Trust Fund established by s. 440.50.
4751 An employee who refuses to accept training and education that is
4752 recommended by the vocational evaluator and considered necessary
4753 by the department will forfeit any additional training and
4754 education benefits and any additional payment for lost wages
4755 under this chapter. The department shall adopt rules to
4756 implement this section, which shall include requirements placed
4757 upon the carrier to notify the injured employee of the
4758 availability of training and education benefits as specified in
4759 this chapter. The department shall also include information
4760 regarding the eligibility for training and education benefits in
4761 informational materials specified in ss. 440.207 and 440.40 ~~is~~
4762 ~~subject to a 50 percent reduction in weekly compensation~~
4763 ~~benefits, including wage loss benefits, as determined under s.~~
4764 ~~440.15(3)(b).~~

4765 Section 32. Section 440.525, Florida Statutes, is amended
4766 to read:

4767 440.525 Audit, examination, and examination of carriers
4768 and claims-handling entities.--



4769 (1) The department may audit, examine, or investigate any
4770 each carrier, third-party administrator, servicing agent, or
4771 other claims-handling entity as often as is warranted to ensure
4772 that it is carriers are fulfilling its ~~their~~ obligations under
4773 this chapter ~~the law. The examination may cover any period of~~
4774 ~~the carrier's operations since the last previous examination.~~

4775 (2) An audit or examination may cover any period of the
4776 carrier's, third-party administrator's, servicing agent's, or
4777 other claims-handling entity's operations since the last
4778 previous audit or examination. An investigation based upon a
4779 reasonable belief by the department that a material violation of
4780 this chapter has occurred may cover any time period, but may not
4781 predate the last audit by more than 5 years. The department may
4782 by rule establish procedures, standards, and protocols for
4783 audits, examinations, and investigations. If the department
4784 finds any violation of this chapter, it may impose
4785 administrative penalties pursuant to this chapter. If the
4786 department finds any self-insurer in violation of this chapter,
4787 it may take action pursuant s. 440.38(3). Audits, examinations,
4788 or investigations by the department may address, but are not
4789 limited to addressing: unfair or unreasonable claims-handling
4790 techniques; patterns or practices of unreasonable denial of
4791 claims or unreasonable delay in claims handling; timeliness and
4792 accuracy of payments and reports under ss. 440.13, 440.16, and
4793 440.185; proper application of practice parameters and protocols
4794 in paying medical benefits; or patterns or practices of
4795 harassment, coercion, or intimidation of claimants. The



4796 department may also specify by rule the documentation to be
4797 maintained for each claim file.

4798 (3) As to any audit, examination, or investigation
4799 conducted under this chapter, the department shall have the
4800 power to conduct onsite inspections of claims records and
4801 documentation of a carrier, third-party administrator, servicing
4802 agent, or other claims-handling entity, and conduct interviews,
4803 both sworn and unsworn, of claims-handling personnel. Carriers,
4804 third-party administrators, servicing agents, and other claims-
4805 handling entities shall make all claims records, documentation,
4806 communication, and correspondence available to department
4807 personnel during regular business hours. If any person fails to
4808 comply with a department request for production of records or
4809 documents or fails to produce an employee for interview, the
4810 department may compel production or attendance by subpoena. The
4811 results of an audit, examination, or investigation shall be
4812 provided to the carrier, third-party administrator, servicing
4813 agent, or other claims-handling entity in a written report
4814 setting forth the basis for any violations that are asserted.
4815 Such report is agency action for purposes of chapter 120, and
4816 the aggrieved party may request a proceeding under s. 120.57
4817 with regard to the findings and conclusion of the report.

4818 (4) If the department finds that violations of this
4819 chapter have occurred, the department may impose an
4820 administrative penalty upon the offending entity or entities.
4821 For each offending entity, such penalties shall not exceed
4822 \$2,500 for each pattern or practice constituting nonwillful
4823 violation and shall not exceed an aggregate amount of \$10,000



4824 for all nonwillful violations arising out of the same action. If
4825 the department finds a pattern of practice that constitutes a
4826 willful violation, the department may impose an administrative
4827 penalty upon each offending entity not to exceed \$20,000 for
4828 each willful pattern or practice. Such fines shall not exceed
4829 \$100,000 for all willful violations arising out of the same
4830 action. No penalty assessed under this section may be recouped
4831 by any carrier in the rate base, the premium, or any rate
4832 filing. Any administrative penalty imposed under this section
4833 for a nonwillful violation shall not duplicate an administrative
4834 penalty imposed under another provision of this chapter. The
4835 department may adopt rules to implement this section. The
4836 department shall adopt penalty guidelines by rule to set
4837 penalties under this chapter.

4838 Section 33. Subsection (2) of section 627.162, Florida
4839 Statutes, is amended to read:

4840 627.162 Requirements for premium installments;
4841 delinquency, collection, and check return charges; attorney's
4842 fees.--

4843 (2) Insurers providing workers' compensation coverage
4844 under chapter 440 may charge the insured a delinquency and
4845 collection fee on each installment in default for a period of
4846 not less than 5 days in an amount not to exceed \$25 ~~\$10~~ or 5
4847 percent of the delinquent installment, whichever is greater.
4848 Only one such delinquency and collection fee may be collected on
4849 any such installment regardless of the period during which it
4850 remains in default.



4851 Section 34. Paragraphs (c) and (d) of subsection (4) of
 4852 section 627.311, Florida Statutes, are amended to read

4853 627.311 Joint underwriters and joint reinsurers.--

4854 (4)

4855 (c) The operation of the plan shall be governed by a plan
 4856 of operation that is prepared at the direction of the board of
 4857 governors. The plan of operation may be changed at any time by
 4858 the board of governors or upon request of the department. The
 4859 plan of operation and all changes thereto are subject to the
 4860 approval of the department. The plan of operation shall:

4861 1. Authorize the board to engage in the activities
 4862 necessary to implement this subsection, including, but not
 4863 limited to, borrowing money.

4864 2. Develop criteria for eligibility for coverage by the
 4865 plan, including, but not limited to, documented rejection by at
 4866 least two insurers which reasonably assures that insureds
 4867 covered under the plan are unable to acquire coverage in the
 4868 voluntary market. Any insured may voluntarily elect to accept
 4869 coverage from an insurer for a premium equal to or greater than
 4870 the plan premium if the insurer writing the coverage adheres to
 4871 the provisions of s. 627.171.

4872 3. Require notice from the agent to the insured at the
 4873 time of the application for coverage that the application is for
 4874 coverage with the plan and that coverage may be available
 4875 through an insurer, group self-insurers' fund, commercial self-
 4876 insurance fund, or assessable mutual insurer through another
 4877 agent at a lower cost.



4878 4. Establish programs to encourage insurers to provide
 4879 coverage to applicants of the plan in the voluntary market and
 4880 to insureds of the plan, including, but not limited to:

4881 a. Establishing procedures for an insurer to use in
 4882 notifying the plan of the insurer's desire to provide coverage
 4883 to applicants to the plan or existing insureds of the plan and
 4884 in describing the types of risks in which the insurer is
 4885 interested. The description of the desired risks must be on a
 4886 form developed by the plan.

4887 b. Developing forms and procedures that provide an insurer
 4888 with the information necessary to determine whether the insurer
 4889 wants to write particular applicants to the plan or insureds of
 4890 the plan.

4891 c. Developing procedures for notice to the plan and the
 4892 applicant to the plan or insured of the plan that an insurer
 4893 will insure the applicant or the insured of the plan, and notice
 4894 of the cost of the coverage offered; and developing procedures
 4895 for the selection of an insuring entity by the applicant or
 4896 insured of the plan.

4897 d. Provide for a market-assistance plan to assist in the
 4898 placement of employers. All applications for coverage in the
 4899 plan received 45 days before the effective date for coverage
 4900 shall be processed through the market-assistance plan. A market-
 4901 assistance plan specifically designed to serve the needs of
 4902 small good policyholders as defined by the board must be
 4903 finalized by January 1, 1994.



4904 5. Provide for policy and claims services to the insureds
 4905 of the plan of the nature and quality provided for insureds in
 4906 the voluntary market.

4907 6. Provide for the review of applications for coverage
 4908 with the plan for reasonableness and accuracy, using any
 4909 available historic information regarding the insured.

4910 7. Provide for procedures for auditing insureds of the
 4911 plan which are based on reasonable business judgment and are
 4912 designed to maximize the likelihood that the plan will collect
 4913 the appropriate premiums.

4914 8. Authorize the plan to terminate the coverage of and
 4915 refuse future coverage for any insured that submits a fraudulent
 4916 application to the plan or provides fraudulent or grossly
 4917 erroneous records to the plan or to any service provider of the
 4918 plan in conjunction with the activities of the plan.

4919 9. Establish service standards for agents who submit
 4920 business to the plan.

4921 10. Establish criteria and procedures to prohibit any
 4922 agent who does not adhere to the established service standards
 4923 from placing business with the plan or receiving, directly or
 4924 indirectly, any commissions for business placed with the plan.

4925 11. Provide for the establishment of reasonable safety
 4926 programs for all insureds in the plan. All insureds of the plan
 4927 must participate in the safety program.

4928 12. Authorize the plan to terminate the coverage of and
 4929 refuse future coverage to any insured who fails to pay premiums
 4930 or surcharges when due; who, at the time of application, is
 4931 delinquent in payments of workers' compensation or employer's



4932 liability insurance premiums or surcharges owed to an insurer,
4933 group self-insurers' fund, commercial self-insurance fund, or
4934 assessable mutual insurer licensed to write such coverage in
4935 this state; or who refuses to substantially comply with any
4936 safety programs recommended by the plan.

4937 13. Authorize the board of governors to provide the
4938 services required by the plan through staff employed by the
4939 plan, through reasonably compensated service providers who
4940 contract with the plan to provide services as specified by the
4941 board of governors, or through a combination of employees and
4942 service providers.

4943 14. Provide for service standards for service providers,
4944 methods of determining adherence to those service standards,
4945 incentives and disincentives for service, and procedures for
4946 terminating contracts for service providers that fail to adhere
4947 to service standards.

4948 15. Provide procedures for selecting service providers and
4949 standards for qualification as a service provider that
4950 reasonably assure that any service provider selected will
4951 continue to operate as an ongoing concern and is capable of
4952 providing the specified services in the manner required.

4953 16. Provide for reasonable accounting and data-reporting
4954 practices.

4955 17. Provide for annual review of costs associated with the
4956 administration and servicing of the policies issued by the plan
4957 to determine alternatives by which costs can be reduced.

4958 18. Authorize the acquisition of such excess insurance or
4959 reinsurance as is consistent with the purposes of the plan.



4960 19. Provide for an annual report to the department on a
 4961 date specified by the department and containing such information
 4962 as the department reasonably requires.

4963 20. Establish multiple rating plans for various
 4964 classifications of risk which reflect risk of loss, hazard
 4965 grade, actual losses, size of premium, and compliance with loss
 4966 control. At least one of such plans must be a preferred-rating
 4967 plan to accommodate small-premium policyholders with good
 4968 experience as defined in sub-subparagraph 22.a.

4969 21. Establish agent commission schedules.

4970 22. Establish four ~~three~~ subplans as follows:

4971 a. Subplan "A" must include those insureds whose annual
 4972 premium does not exceed \$2,500 and who have neither incurred any
 4973 lost-time claims nor incurred medical-only claims exceeding 50
 4974 percent of their premium for the immediate 2 years.

4975 b. Subplan "B" must include insureds that are employers
 4976 identified by the board of governors as high-risk employers due
 4977 solely to the nature of the operations being performed by those
 4978 insureds and for whom no market exists in the voluntary market,
 4979 and whose experience modifications are less than 1.00.

4980 c. Subplan "C" must include all ~~other~~ insureds within the
 4981 plan that are not eligible for subplan "A," subplan "B," or
 4982 subplan "D."

4983 d. Subplan "D" must include any employer with 50 or fewer
 4984 employees, except that an employer who is eligible for subplan
 4985 "D" and another subplan may elect the subplan in which it will
 4986 participate. The rate plan for subplan "D" shall be the same
 4987 rate plan as the plan approved under ss. 627.091-627.151 and



4988 each participant in subplan "D" shall pay the premium determined
 4989 under such rate plan, plus a surcharge determined by the board
 4990 to be sufficient to ensure that the plan does not compete with
 4991 the voluntary market rate for any participant, but not to exceed
 4992 25 percent.

4993 23. Provide for a depopulation program to reduce the
 4994 number of insureds in subplan "D." If an employer insured
 4995 through subplan "D" is offered coverage from a voluntary market
 4996 carrier:

4997 a. During the first 30 days of coverage under the subplan;

4998 b. Before a policy is issued under the subplan;

4999 c. By issuance of a policy upon expiration or cancellation
 5000 of the policy under the subplan; or

5001 d. By assumption of the subplan's obligation with respect
 5002 to an in-force policy,

5003
 5004 that employer is no longer eligible for coverage through the
 5005 plan. The premium for risks assumed by the voluntary market
 5006 carrier must be the same premium plus, for the first 2 years,
 5007 the surcharge as determined in sub-subparagraph 22.d. A premium
 5008 under this subparagraph, including surcharge, is deemed approved
 5009 and is not an excess premium for purposes of s. 627.171.

5010 24. Require that policies issued under subplan "D" and
 5011 applications for such policies must include a notice that the
 5012 policy issued under subplan "D" could be replaced by a policy
 5013 issued from a voluntary market carrier and that if an offer of
 5014 coverage is obtained from a voluntary market carrier, the
 5015 policyholder is no longer eligible for coverage through subplan



5016 "D." The notice must also specify that acceptance of coverage
5017 under subplan "D" creates a conclusive presumption that the
5018 applicant or policyholder is aware of this potential. With
5019 respect to any employer organized as a not-for-profit
5020 corporation and tax-exempt under s. 501(c)(3) of the Internal
5021 Revenue Code, the surcharge shall be sufficient to ensure that
5022 the subplan does not compete with the voluntary market but does
5023 not exceed 10 percent.

5024 (d)1. The plan must be funded through actuarially sound
5025 premiums charged to insureds of the plan.

5026 2. The plan may issue assessable policies only to those
5027 insureds in subplan "C-" and subplan "D." Assessments levied
5028 against subplan "C" participants shall cover only the excess
5029 losses attributable to subplan "C," and assessments levied
5030 against subplan "D" participants shall cover only the excess
5031 losses attributable to subplan "D." In no event may the plan
5032 levy assessments against any person or entity except as
5033 authorized by this paragraph. Those assessable policies must be
5034 clearly identified as assessable by containing, in contrasting
5035 color and in not less than 10-point type, the following
5036 statements: "This is an assessable policy. If the plan is unable
5037 to pay its obligations, policyholders will be required to
5038 contribute on a pro rata earned premium basis the money
5039 necessary to meet any assessment levied."

5040 3. The plan may issue assessable policies with differing
5041 terms and conditions to different groups within subplan "C" and
5042 subplan "D" ~~the plan~~ when a reasonable basis exists for the
5043 differentiation.



5044 4. The plan may offer rating, dividend plans, and other
 5045 plans to encourage loss prevention programs.

5046 Section 35. Paragraphs (c) and (e) of subsection (3) of
 5047 section 921.0022, Florida Statutes, are amended to read:

5048 921.0022 Criminal Punishment Code; offense severity
 5049 ranking chart.--

5050 (3) OFFENSE SEVERITY RANKING CHART

Florida Statute	Felony Degree	Description
		(c) LEVEL 3
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in marked patrol vehicle with siren and lights activated.
319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell,



			etc., a blank, forged, or unlawfully obtained title or registration.
5058	327.35(2)(b)	3rd	Felony BUI.
5059	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
5060	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
5061	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
5062	<u>440.105(3)(b)</u>	<u>3rd</u>	<u>Receipt of fee or consideration without approval by judge of compensation claims.</u>
5063	<u>440.1051(3)</u>	<u>3rd</u>	<u>False report of workers' compensation fraud or retaliation for making such a report.</u>
5064	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
5065	697.08	3rd	Equity skimming.
5066			



5067	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
5068	796.05(1)	3rd	Live on earnings of a prostitute.
5069	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
5070	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
5071	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
5072	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
5073	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
5074	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
5075	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
	817.233	3rd	Burning to defraud insurer.



5076	817.234(8)&(9)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
5077	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
5078	817.505(4)	3rd	Patient brokering.
5079	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
5080	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
5081	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
5082	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
5083	843.19	3rd	Injure, disable, or kill police dog or horse.
5084	870.01(2)	3rd	Riot; inciting or encouraging.
5085	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).

5086

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.

5087

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.

5088

893.13(6)(a) 3rd

Possession of any controlled substance
 other than felony possession of
 cannabis.

5089

893.13(7)(a)8. 3rd

Withhold information from practitioner
 regarding previous receipt of or
 prescription for a controlled
 substance.

5090

893.13(7)(a)9. 3rd

Obtain or attempt to obtain controlled
 substance by fraud, forgery,



misrepresentation, etc.

5091

893.13(7)(a)10. 3rd Affix false or forged label to package of controlled substance.

5092

893.13(7)(a)11. 3rd Furnish false or fraudulent material information on any document or record required by chapter 893.

5093

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.

5094

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.

5095

893.13(8)(a)3. 3rd Knowingly write a prescription for a controlled substance for a fictitious person.

5096

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.
5097	918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
5098	944.47(1)(a)1.- 2.	3rd	Introduce contraband to correctional facility.
5099	944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
5100	985.3141	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).
5101			(e) LEVEL 5
5102	316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
5103	316.1935(4)	2nd	Aggravated fleeing or eluding.
5104	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
5105	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
5106	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.



5107			
5108	<u>440.10(1)(g)</u>	<u>2nd</u>	<u>Failure to obtain workers' compensation coverage.</u>
5109	<u>440.105(5)</u>	<u>2nd</u>	<u>Unlawful solicitation for the purpose of making workers' compensation claims.</u>
5110	<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>
5111	790.01(2)	3rd	Carrying a concealed firearm.
5112	790.162	2nd	Threat to throw or discharge destructive device.
5113	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
5114	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
5115	790.23	2nd	Felons in possession of firearms or electronic weapons or devices.
5116	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
5117			



5118	800.04(7)(c)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
5119	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
5120	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
5121	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
5122	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
5123	812.131(2)(b)	3rd	Robbery by sudden snatching.
5124	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
5125	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
5126	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
	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.
5127	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
5128	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
5129	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
5130	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.
5131	843.01	3rd	Resist officer with violence to person; resist arrest with violence.
5132	874.05(2)	2nd	Encouraging or recruiting another to join a criminal street gang; second or subsequent offense.
5133	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).

5134

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.

5135

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.

5136

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.

5137

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.



5138 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).

5139
 5140 Section 36. Report to the Legislature regarding
 5141 outstanding enforcement issues.--The Department of Financial
 5142 Services shall, no later than January 1, 2004, provide a report
 5143 to the President of the Senate, the Speaker of the House of
 5144 Representatives, the minority leaders of the Senate and the
 5145 House of Representatives, and the chairs of the standing
 5146 committees of the Senate and the House of Representatives having
 5147 jurisdiction over insurance issues, containing the following
 5148 information:

5149 (1) Any provision of chapter 440, Florida Statutes,
 5150 relating to workers' compensation carrier compliance and
 5151 enforcement, that the department finds it is unable to enforce.

5152 (2) Any administrative rule relating to workers'
 5153 compensation carrier compliance and enforcement that the
 5154 department finds it is unable to enforce.

5155 (3) Any other impediment to enforcement of chapter 440,
 5156 Florida Statutes, resulting from the transfer of activities from
 5157 the former Department of Labor and Employment Security to the
 5158 department or the reorganization of the former Department of
 5159 Insurance into the department.

5160 Section 37. Subsection (2) of section 946.523, Florida
 5161 Statutes, is amended to read:



5162 946.523 Prison industry enhancement (PIE) programs.--

5163 (2) Notwithstanding any other law to the contrary,
 5164 including s. 440.15~~(8)(9)~~, private sector employers shall
 5165 provide workers' compensation coverage to inmates who
 5166 participate in prison industry enhancement (PIE) programs under
 5167 subsection (1). However, inmates are not entitled to
 5168 unemployment compensation.

5169 Section 38. Paragraph (c) of subsection (5) of section
 5170 985.315, Florida Statutes, is amended to read:

5171 985.315 Educational/technical and vocational work-related
 5172 programs.--

5173 (5)

5174 (c) Notwithstanding any other law to the contrary,
 5175 including s. 440.15~~(8)(9)~~, private sector employers shall
 5176 provide juveniles participating in juvenile work programs under
 5177 paragraph (b) with workers' compensation coverage, and juveniles
 5178 shall be entitled to the benefits of such coverage. Nothing in
 5179 this subsection shall be construed to allow juveniles to
 5180 participate in unemployment compensation benefits.

5181 Section 39. Section 440.1925, Florida Statutes, is
 5182 repealed.

5183 Section 40. The amendments to ss. 440.02 and 440.15,
 5184 Florida Statutes, which are made by this act shall not be
 5185 construed to affect any determination of disability under s.
 5186 112.18, s. 112.181, or s. 112.19, Florida Statutes.

5187 Section 41. Except as otherwise provided herein, this act
 5188 shall take effect October 1, 2003.