



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; providing a definition;
8 amending s. 440.06, F.S.; revising provisions relating to
9 failure to secure compensation; amending s. 440.077, F.S.;
10 providing that a corporate officer electing to be exempt
11 may not receive benefits; amending s. 440.09, F.S.;
12 revising provisions relating to compensation for
13 subsequent injuries; providing definitions; revising
14 provisions relating to drug testing; specifying effect of
15 criminal acts; creating s. 440.093, F.S.; providing for
16 compensability of mental and nervous injuries; amending s.
17 440.10, F.S.; revising provisions relating to contractors
18 and subcontractors with regard to liability for
19 compensation; requiring subcontractors to provide evidence
20 of workers' compensation coverage or proof of exemption to
21 a 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; prohibiting the clerk of the circuit
71 | court from assessing certain fees or costs; amending s.
72 | 440.25, F.S.; revising procedures for mediation and
73 | hearings; amending s. 440.34, F.S.; revising provisions
74 | relating to the award of attorney's fees; amending s.
75 | 440.38, F.S.; providing requirement for employers with
76 | coverage provided by insurers from outside the state;
77 | amending s. 440.381, F.S.; providing criminal penalty for
78 | unlawful applications; requiring on-site audits of
79 | employers under certain circumstances; amending s. 440.42,
80 | F.S.; revising provision relating to notice of
81 | cancellation of coverage; amending s. 440.49, F.S., to
82 | conform cross references; amending s. 440.491, F.S.;
83 | providing training and education requirements and benefits
84 | relating to reemployment of injured workers; providing for



85 | rules; amending s. 440.525, F.S.; providing for the Office
86 | of Insurance Regulation of the Financial Services
87 | Commission to conduct examinations and investigations of
88 | claims-handling entities; providing penalties; providing
89 | for rules; amending s. 627.162, F.S.; revising delinquency
90 | and collection fee for late payment of premium
91 | installments; creating s. 627.285, F.S.; providing for
92 | annual actuarial peer review of rating organization
93 | processes; requiring a report; amending s. 627.311, F.S.;
94 | revising membership of the board of governors of the
95 | workers' compensation joint underwriting plan; requiring
96 | participation in safety programs; providing for an
97 | additional subplan within the joint underwriting plan for
98 | workers' compensation insurance; providing for rates,
99 | surcharges, and assessments; limiting assessment powers;
100 | amending s. 921.0022, F.S.; revising the offense severity
101 | ranking chart to reflect changes in penalties under the
102 | act; requiring a report to the Legislature from the
103 | Department of Financial Services regarding provisions of
104 | law relating to enforcement; amending ss. 946.523 and
105 | 985.315, F.S., to conform cross references; establishing a
106 | Joint Select Committee on Workers' Compensation Rating
107 | Reform and specifying duties thereof; providing for
108 | termination of the committee; requiring the board of
109 | governors of the workers' compensation joint underwriting
110 | plan to submit a report to the Legislature; amending s.
111 | 443.1715, F.S.; revising provisions relating to records
112 | and reports; providing for disclosure of specified



113 information; amending s. 625.989, F.S.; providing that the
114 Department of Financial Services shall prepare an annual
115 report relating to workers' compensation fraud and
116 compliance; amending s. 626.9891, F.S.; amending reporting
117 requirements for insurers; providing penalties for
118 noncompliance; providing for rules; repealing s. 440.1925,
119 F.S., relating to procedure for resolving maximum medical
120 improvement or permanent impairment disputes; providing
121 that amendments to ss. 440.02 and 440.15, F.S., do not
122 affect certain disability, determination, and benefits;
123 providing for construction of the act in pari materia with
124 laws enacted during the Regular Session of the
125 Legislature; providing effective dates.

126

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

128

129 Section 1. Effective upon this act becoming a law,
130 subsections (1), (15), (29), (38), (40), (41), and (42) of
131 section 440.02, Florida Statutes, are amended to read:

132 440.02 Definitions.--When used in this chapter, unless the
133 context clearly requires otherwise, the following terms shall
134 have the following meanings:

135 (1) "Accident" means only an unexpected or unusual event
136 or result that happens suddenly. ~~A mental or nervous injury due~~
137 ~~to stress, fright, or excitement only, or~~ Disability or death
138 due to the accidental acceleration or aggravation of a venereal
139 disease or of a disease due to the habitual use of alcohol or
140 controlled substances or narcotic drugs, or a disease that



141 manifests itself in the fear of or dislike for an individual
142 because of the individual's race, color, religion, sex, national
143 origin, age, or handicap is not an injury by accident arising
144 out of the employment. Subject to s. 440.15(5), if a preexisting
145 disease or anomaly is accelerated or aggravated by an accident
146 arising out of and in the course of employment, only
147 acceleration of death or acceleration or aggravation of the
148 preexisting condition reasonably attributable to the accident is
149 compensable, with respect to any compensation otherwise payable
150 under this chapter ~~death or permanent impairment~~. An injury or
151 disease caused by exposure to a toxic substance, including, but
152 not limited to, fungus or mold, is not an injury by accident
153 arising out of the employment unless there is clear and
154 convincing evidence establishing that exposure to the specific
155 substance involved, at the levels to which the employee was
156 exposed, can cause the injury or disease sustained by the
157 employee.

158 (15)(a) "Employee" means any person engaged in any
159 employment under any appointment or contract of hire or
160 apprenticeship, express or implied, oral or written, whether
161 lawfully or unlawfully employed, and includes, but is not
162 limited to, aliens and minors.

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



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

170 2. As to officers of a corporation who are actively
171 engaged in the construction industry, no more than three
172 officers may elect to be exempt from this chapter by filing
173 written notice of the election with the department as provided
174 in s. 440.05. ~~However, any exemption obtained by a corporate~~
175 ~~officer of a corporation actively engaged in the construction~~
176 ~~industry is not applicable with respect to any commercial~~
177 ~~building project estimated to be valued at \$250,000 or greater.~~

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

181
182 Services are presumed to have been rendered to the corporation
183 if the officer is compensated by other than dividends upon
184 shares of stock of the corporation which the officer owns.

185 (c)~~1~~. "Employee" includes a sole proprietor or a partner
186 who devotes full time to the proprietorship or partnership and,
187 except as provided in this paragraph, elects to be included in
188 the definition of employee by filing notice thereof as provided
189 in s. 440.05. Partners or sole proprietors actively engaged in
190 the construction industry are considered employees unless they
191 elect to be excluded from the definition of employee by filing
192 written notice of the election with the department as provided
193 in s. 440.05. However, no more than three partners in a
194 partnership that is actively engaged in the construction



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

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

208 (d) "Employee" does not include:

209 1. An independent contractor, if:

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

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

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



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

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

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

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

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

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

238

239 However, the determination as to whether an individual included
240 in the Standard Industrial Classification Manual of 1987,
241 Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782,
242 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449,
243 or a newspaper delivery person, is an independent contractor is
244 governed not by the criteria in this paragraph but by common-law
245 principles, giving due consideration to the business activity of
246 the individual. ~~Notwithstanding the provisions of this paragraph~~
247 ~~or any other provision of this chapter, with respect to any~~
248 ~~commercial building project estimated to be valued at \$250,000~~



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

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

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

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

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

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



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

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

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

292 7. Any officer of a corporation who elects to be exempt
293 from this chapter.

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

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



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

306 10. A taxicab, limousine, or other passenger vehicle-for-
307 hire driver who operates said vehicles pursuant to a written
308 agreement with a company which provides any dispatch, marketing,
309 insurance, communications, or other services under which the
310 driver and any fees or charges paid by the driver to the company
311 for such services are not conditioned upon, or expressed as a
312 proportion of, fare revenues.

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

326 (29) "Weekly compensation rate" means and refers to the
327 amount of compensation payable for a period of 7 consecutive
328 calendar days, including any Saturdays, Sundays, holidays, and
329 other nonworking days which fall within such period of 7
330 consecutive calendar days. When Saturdays, Sundays, holidays, or
331 other nonworking days immediately follow the first 7 calendar



332 days of disability or occur at the end of a period of disability
 333 as the last day or days of such period, such nonworking days
 334 constitute a part of the period of disability with respect to
 335 which compensation is payable.

336 (38) "Catastrophic injury" means a permanent impairment
 337 constituted by the loss of both hands, both arms, both feet,
 338 both legs, or both eyes, or any two thereof, or paraplegia or
 339 quadriplegia.÷

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

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

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

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

346 ~~2. Severe communication disturbances;~~

347 ~~3. Severe complex integrated disturbances of cerebral~~
 348 ~~function;~~

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

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

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

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

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



360 ~~supplemental security income benefits under Title XVI of the~~
361 ~~federal Social Security Act as the Social Security Act existed~~
362 ~~on July 1, 1992, without regard to any time limitations provided~~
363 ~~under that act.~~

364 (40) "Statement," for the purposes of ss. 440.105 and
365 440.106, shall include the exact fraud statement language in s.
366 440.105(7). This requirement includes, but is not limited to,
367 any notice, representation, statement, proof of injury, bill for
368 services, diagnosis, prescription, hospital or doctor record, X
369 ray, test result, or other evidence of loss, injury, or expense.

370 (41) "Specificity" means information on the petition for
371 benefits sufficient to put the employer or carrier on notice of
372 the exact statutory classification and outstanding time period
373 of benefits being requested and includes a detailed explanation
374 of any benefits received that should be increased, decreased,
375 changed, or otherwise modified. If the petition is for medical
376 benefits, the information shall include specific details as to
377 why such benefits are being requested, why such benefits are
378 medically necessary, and why current treatment, if any, is not
379 sufficient. Any petition requesting alternate or other medical
380 care, including, but not limited to, petitions requesting
381 psychiatric or psychological treatment, must specifically
382 identify the physician, as defined in s. 440.13(1), that is
383 recommending such treatment. A copy of a report from such
384 physician making the recommendation for alternate or other
385 medical care shall also be attached to the petition. A judge of
386 compensation claims shall not order such treatment if a
387 physician is not recommending such treatment. ~~"Commercial~~



388 ~~building" means any building or structure intended for~~
389 ~~commercial or industrial use, or any building or structure~~
390 ~~intended for multifamily use of more than four dwelling units,~~
391 ~~as well as any accessory use structures constructed in~~
392 ~~conjunction with the principal structure. The term, "commercial~~
393 ~~building," does not include the conversion of any existing~~
394 ~~residential building to a commercial building.~~

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

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

402 440.02 Definitions.--When used in this chapter, unless the
403 context clearly requires otherwise, the following terms shall
404 have the following meanings:

405 (8) "Construction industry" means for-profit activities
406 involving ~~the carrying out of~~ any building, clearing, filling,
407 excavation, or substantial improvement in the size or use of any
408 structure or the appearance of any land. ~~When appropriate to the~~
409 ~~context, "construction" refers to the act of construction or the~~
410 ~~result of construction.~~ However, "construction" does ~~shall~~ not
411 mean a homeowner's ~~landowner's~~ act of construction or the result
412 of a construction upon his or her own premises, provided such
413 premises are not intended to be sold, ~~or~~ resold, or leased by
414 the owner within 1 year after the commencement of construction.
415 The division may, by rule, establish standard industrial



416 classification codes and definitions thereof which meet the
417 criteria of the term "construction industry" as set forth in
418 this section.

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

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

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

432 2. As to officers of a corporation who are ~~actively~~
433 engaged in the construction industry, no more than three
434 officers of a corporation or of any group of affiliated
435 corporations may elect to be exempt from this chapter by filing
436 written notice of the election with the department as provided
437 in s. 440.05. Officers must be shareholders, each owning at
438 least 10 percent of the stock of such corporation and listed as
439 an officer of such corporation with the Division of Corporations
440 of the Department of State, in order to elect exemptions under
441 this chapter. For purposes of this subparagraph, the term
442 "affiliated" means and includes one or more corporations or
443 entities, any one of which is a corporation engaged in the



444 construction industry, under the same or substantially the same
445 control of a group of business entities which are connected or
446 associated so that one entity controls or has the power to
447 control each of the other business entities. The term
448 "affiliated" includes, but is not limited to, the officers,
449 directors, executives, shareholders active in management,
450 employees, and agents of the affiliated corporation. The
451 ownership by one business entity of a controlling interest in
452 another business entity or a pooling of equipment or income
453 among business entities shall be prima facie evidence that one
454 business is affiliated with the other.

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

458
459 Services are presumed to have been rendered to the corporation
460 if the officer is compensated by other than dividends upon
461 shares of stock of the corporation which the officer owns.

462 (c) "Employee" includes:

463 1. A sole proprietor or a partner who is not engaged in
464 the construction industry, devotes full time to the
465 proprietorship or partnership, and, ~~except as provided in this~~
466 ~~paragraph,~~ elects to be included in the definition of employee
467 by filing notice thereof as provided in s. 440.05. ~~Partners or~~
468 ~~sole proprietors actively engaged in the construction industry~~
469 ~~are considered employees unless they elect to be excluded from~~
470 ~~the definition of employee by filing written notice of the~~
471 ~~election with the department as provided in s. 440.05. However,~~



472 ~~no more than three partners in a partnership that is actively~~
473 ~~engaged in the construction industry may elect to be excluded. A~~
474 ~~sole proprietor or partner who is actively engaged in the~~
475 ~~construction industry and who elects to be exempt from this~~
476 ~~chapter by filing a written notice of the election with the~~
477 ~~department as provided in s. 440.05 is not an employee. For~~
478 ~~purposes of this chapter, an independent contractor is an~~
479 ~~employee unless he or she meets all of the conditions set forth~~
480 ~~in subparagraph (d)1.~~

481 2. All persons who are being paid by a construction
482 contractor as a subcontractor, unless the subcontractor has
483 validly elected an exemption as permitted by this chapter, or
484 has otherwise secured the payment of compensation coverage as a
485 subcontractor, consistent with s. 440.10, for work performed by
486 or as a subcontractor.

487 3. An independent contractor working or performing
488 services in the construction industry.

489 4. A sole proprietor who engages in the construction
490 industry and a partner or partnership that is engaged in the
491 construction industry.

492 (d) "Employee" does not include:

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

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

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



500 (II) The independent contractor holds or has applied for a
501 federal employer identification number, unless the independent
502 contractor is a sole proprietor who is not required to obtain a
503 federal employer identification number under state or federal
504 regulations;

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

508 (IV) The independent contractor holds one or more bank
509 accounts in the name of the business entity for purposes of
510 paying business expenses or other expenses related to services
511 rendered or work performed for compensation;

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

516 (VI) The independent contractor receives compensation for
517 work or services rendered on a competitive-bid basis or
518 completion of a task or a set of tasks as defined by a
519 contractual agreement, unless such contractual agreement
520 expressly states that an employment relationship exists. The
521 ~~independent contractor maintains a separate business with his or~~
522 ~~her own work facility, truck, equipment, materials, or similar~~
523 ~~accommodations;~~

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



527 consideration of the nature of the individual situation with
528 regard to satisfying any of the following conditions:

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

532 (II) The independent contractor incurs the principal
533 expenses related to the service or work that he or she performs
534 or agrees to perform.

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

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

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

543 (VI) The independent contractor has continuing or
544 recurring business liabilities or obligations.

545 (VII) The success or failure of the independent
546 contractor's business depends on the relationship of business
547 receipts to expenditures. ~~The independent contractor holds or~~
548 ~~has applied for a federal employer identification number, unless~~
549 ~~the independent contractor is a sole proprietor who is not~~
550 ~~required to obtain a federal employer identification number~~
551 ~~under state or federal requirements;~~

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



555 independent contractor for purposes of this chapter. The
556 ~~independent contractor performs or agrees to perform specific~~
557 ~~services or work for specific amounts of money and controls the~~
558 ~~means of performing the services or work;~~
559 ~~d. The independent contractor incurs the principal~~
560 ~~expenses related to the service or work that he or she performs~~
561 ~~or agrees to perform;~~
562 ~~e. The independent contractor is responsible for the~~
563 ~~satisfactory completion of work or services that he or she~~
564 ~~performs or agrees to perform and is or could be held liable for~~
565 ~~a failure to complete the work or services;~~
566 ~~f. The independent contractor receives compensation for~~
567 ~~work or services performed for a commission or on a per-job or~~
568 ~~competitive-bid basis and not on any other basis;~~
569 ~~g. The independent contractor may realize a profit or~~
570 ~~suffer a loss in connection with performing work or services;~~
571 ~~h. The independent contractor has continuing or recurring~~
572 ~~business liabilities or obligations; and~~
573 ~~i. The success or failure of the independent contractor's~~
574 ~~business depends on the relationship of business receipts to~~
575 ~~expenditures.~~
576
577 ~~However, the determination as to whether an individual included~~
578 ~~in the Standard Industrial Classification Manual of 1987,~~
579 ~~Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782,~~
580 ~~0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449,~~
581 ~~or a newspaper delivery person, is an independent contractor is~~
582 ~~governed not by the criteria in this paragraph but by common-law~~



583 ~~principles, giving due consideration to the business activity of~~
584 ~~the individual.~~

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

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

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

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

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



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

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

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

624 7. Unless otherwise prohibited by this chapter, any
625 officer of a corporation who elects to be exempt from this
626 chapter. Such officer is not an employee for any reason under
627 this chapter until the notice of revocation of election filed
628 pursuant to s. 440.05 is effective.

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

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



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

642 10. A taxicab, limousine, or other passenger vehicle-for-
643 hire driver who operates said vehicles pursuant to a written
644 agreement with a company which provides any dispatch, marketing,
645 insurance, communications, or other services under which the
646 driver and any fees or charges paid by the driver to the company
647 for such services are not conditioned upon, or expressed as a
648 proportion of, fare revenues.

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

662 12. Medicaid-enrolled clients under chapter 393 who are
663 excluded from the definition of employment under s.
664 443.036(21)(d)5. and served by Adult Day Training Services under
665 the Home and Community-Based Medicaid Waiver program in a
666 sheltered workshop setting licensed by the United States



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

669 (16)(a) "Employer" means the state and all political
670 subdivisions thereof, all public and quasi-public corporations
671 therein, every person carrying on any employment, and the legal
672 representative of a deceased person or the receiver or trustees
673 of any person. "Employer" also includes employment agencies,
674 employee leasing companies, and similar agents who provide
675 employees to other persons. If the employer is a corporation,
676 parties in actual control of the corporation, including, but not
677 limited to, the president, officers who exercise broad corporate
678 powers, directors, and all shareholders who directly or
679 indirectly own a controlling interest in the corporation, are
680 considered the employer for the purposes of ss. 440.105, ~~and~~
681 440.106, and 440.107.

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

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

692 Section 3. Effective January 1, 2004, subsections (3),
693 (4), (6), (10), (11), and (12) of section 440.05, Florida
694 Statutes, are amended, present subsection (13) is renumbered as



695 subsection (11) and amended, and new subsections (12), (13),
696 (14), and (15) are added to said section, to read:

697 440.05 Election of exemption; revocation of election;
698 notice; certification.--

699 (3) Each ~~sole proprietor, partner, or~~ officer of a
700 corporation who is ~~actively~~ engaged in the construction industry
701 and who elects an exemption from this chapter or who, after
702 electing such exemption, revokes that exemption, must mail a
703 written notice to such effect to the department on a form
704 prescribed by the department. The notice of election to be
705 exempt from the provisions of this chapter must be notarized and
706 under oath. The notice of election to be exempt which is
707 submitted to the department by the ~~sole proprietor, partner, or~~
708 officer of a corporation who is allowed to claim an exemption as
709 provided by this chapter must list the name, federal tax
710 identification number, social security number, all certified or
711 registered licenses issued pursuant to chapter 489 held by the
712 person seeking the exemption, a copy of relevant documentation
713 as to employment status filed with the Internal Revenue Service
714 as specified by the department, a copy of the relevant
715 occupational license in the primary jurisdiction of the
716 business, and, ~~for corporate officers and partners,~~ the
717 registration number of the corporation ~~or partnership~~ filed with
718 the Division of Corporations of the Department of State along
719 with a copy of the stock certificate evidencing the required
720 ownership under this chapter. The notice of election to be
721 exempt must identify each ~~sole proprietorship, partnership, or~~
722 corporation that employs the person electing the exemption and



723 must list the social security number or federal tax
724 identification number of each such employer and the additional
725 documentation required by this section. In addition, the notice
726 of election to be exempt must provide that the ~~sole proprietor,~~
727 ~~partner,~~ or officer electing an exemption is not entitled to
728 benefits under this chapter, must provide that the election does
729 not exceed exemption limits for officers and ~~partnerships~~
730 provided in s. 440.02, and must certify that any employees of
731 the corporation whose ~~sole proprietor, partner, or officer~~
732 elects ~~electing~~ an exemption are covered by workers'
733 compensation insurance. Upon receipt of the notice of the
734 election to be exempt, receipt of all application fees, and a
735 determination by the department that the notice meets the
736 requirements of this subsection, the department shall issue a
737 certification of the election to the ~~sole proprietor, partner,~~
738 ~~or officer,~~ unless the department determines that the
739 information contained in the notice is invalid. The department
740 shall revoke a certificate of election to be exempt from
741 coverage upon a determination by the department that the person
742 does not meet the requirements for exemption or that the
743 information contained in the notice of election to be exempt is
744 invalid. The certificate of election must list the name ~~names~~ of
745 the ~~sole proprietorship, partnership, or~~ corporation listed in
746 the request for exemption. A new certificate of election must be
747 obtained each time the person is employed by a new ~~sole~~
748 ~~proprietorship, partnership,~~ or different corporation that is
749 not listed on the certificate of election. A copy of the
750 certificate of election must be sent to each workers'



751 compensation carrier identified in the request for exemption.
752 Upon filing a notice of revocation of election, an ~~a sole~~
753 ~~proprietor, partner, or~~ officer who is a subcontractor or an
754 officer of a corporate subcontractor must notify her or his
755 contractor. Upon revocation of a certificate of election of
756 exemption by the department, the department shall notify the
757 workers' compensation carriers identified in the request for
758 exemption.

759 (4) The notice of election to be exempt from the
760 provisions of this chapter must contain a notice that clearly
761 states in substance the following: "Any person who, knowingly
762 and with intent to injure, defraud, or deceive the department or
763 any employer or employee, insurance company, or any other person
764 ~~purposes program~~, files a notice of election to be exempt
765 containing any false or misleading information is guilty of a
766 felony of the third degree." Each person filing a notice of
767 election to be exempt shall personally sign the notice and
768 attest that he or she has reviewed, understands, and
769 acknowledges the foregoing notice.

770 (6) A construction industry certificate of election to be
771 exempt which is issued in accordance with this section shall be
772 valid for 2 years after the effective date stated thereon. Both
773 the effective date and the expiration date must be listed on the
774 face of the certificate by the department. The construction
775 industry certificate must expire at midnight, 2 years from its
776 issue date, as noted on the face of the exemption certificate.
777 Any person who has received from the division a construction
778 industry certificate of election to be exempt which is in effect



779 on December 31, 1998, shall file a new notice of election to be
780 exempt by the last day in his or her birth month following
781 December 1, 1998. A construction industry certificate of
782 election to be exempt may be revoked before its expiration by
783 the ~~sole proprietor, partner, or~~ officer for whom it was issued
784 or by the department for the reasons stated in this section. At
785 least 60 days prior to the expiration date of a construction
786 industry certificate of exemption issued after December 1, 1998,
787 the department shall send notice of the expiration date and an
788 application for renewal to the certificateholder at the address
789 on the certificate.

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

799 ~~(11) Any sole proprietor or partner actively engaged in~~
800 ~~the construction industry claiming an exemption under this~~
801 ~~section shall maintain a copy of his or her federal income tax~~
802 ~~records for each of the immediately previous 3 years in which he~~
803 ~~or she claims an exemption. Such federal income tax records must~~
804 ~~include a complete copy of the following for each year in which~~
805 ~~an exemption is claimed:~~



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

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

811

812 ~~A sole proprietor or partner shall produce, upon request by the~~
813 ~~division, a copy of those documents together with a statement by~~
814 ~~the sole proprietor or partner that the tax records provided are~~
815 ~~true and accurate copies of what the sole proprietor or partner~~
816 ~~has filed with the federal Internal Revenue Service. The~~
817 ~~statement must be signed under oath by the sole proprietor or~~
818 ~~partner and must be notarized. The division shall issue a stop-~~
819 ~~work order under s. 440.107(5) to any sole proprietor or partner~~
820 ~~who fails or refuses to produce a copy of the tax records and~~
821 ~~affidavit required under this paragraph to the division within 3~~
822 ~~business days after the request is made.~~

823 ~~(12) For those sole proprietors or partners that have not~~
824 ~~been in business long enough to provide the information required~~
825 ~~of an established business, the division shall require such sole~~
826 ~~proprietor or partner to provide copies of the most recently~~
827 ~~filed Federal Income Tax Form 1040. The division shall establish~~
828 ~~by rule such other criteria to show that the sole proprietor or~~
829 ~~partner intends to engage in a legitimate enterprise within the~~
830 ~~construction industry and is not otherwise attempting to evade~~
831 ~~the requirements of this section. The division shall establish~~
832 ~~by rule the form and format of financial information required to~~
833 ~~be submitted by such employers.~~



834 ~~(11)(13)~~ Any corporate officer permitted by this chapter
835 to claim ~~claiming~~ an exemption under ~~this section~~ must be listed
836 on the records of this state's Secretary of State, Division of
837 Corporations, as a corporate officer. ~~If the person who claims~~
838 ~~an exemption as a corporate officer is not so listed on the~~
839 ~~records of the Secretary of State, the individual must provide~~
840 ~~to the division, upon request by the division, a notarized~~
841 ~~affidavit stating that the individual is a bona fide officer of~~
842 ~~the corporation and stating the date his or her appointment or~~
843 ~~election as a corporate officer became or will become effective.~~
844 ~~The statement must be signed under oath by both the officer and~~
845 ~~the president or chief operating officer of the corporation and~~
846 ~~must be notarized.~~ The division shall issue a stop-work order
847 under s. 440.107(1) to any corporation who employs a person who
848 claims to be exempt as a corporate officer but who fails or
849 refuses to produce the documents required under this subsection
850 to the division within 3 business days after the request is
851 made.

852 (12) Certificates of election to be exempt issued under
853 subsection (3) shall apply only to the corporate officer named
854 on the notice of election to be exempt and apply only within the
855 scope of the business or trade listed on the notice of election
856 to be exempt.

857 (13) Notices of election to be exempt and certificates of
858 election to be exempt shall be subject to revocation if, at any
859 time after the filing of the notice or the issuance of the
860 certificate, the person named on the notice or certificate no
861 longer meets the requirements of this section for issuance of a



862 certificate. The department shall revoke a certificate at any
863 time for failure of the person named on the certificate to meet
864 the requirements of this section.

865 (14) An officer of a corporation who elects exemption from
866 this chapter by filing a certificate of election under this
867 section may not recover benefits or compensation under this
868 chapter. For purposes of determining the appropriate premium for
869 workers' compensation coverage, carriers may not consider any
870 officer of a corporation who validly meets the requirements of
871 this section to be an employee.

872 (15) Any corporate officer who is an affiliated person
873 of a person who is delinquent in paying a stop-work order and
874 penalty assessment order issued pursuant to s. 440.107, or owed
875 pursuant to a court order, is ineligible for an election of
876 exemption. The stop-work order and penalty assessment shall be
877 in effect against any such affiliated person. As used in this
878 subsection, the term "affiliated person" means:

879 (a) The spouse of such other person;

880 (b) Any person who directly or indirectly owns or
881 controls, or holds with the power to vote, 10 percent or more of
882 the outstanding voting securities of such other person;

883 (c) Any person who directly or indirectly owns 10 percent
884 or more of the outstanding voting securities that are directly
885 or indirectly owned, controlled, or held with the power to vote
886 by such other person;

887 (d) Any person or group of persons who directly or
888 indirectly control, are controlled by, or are under common
889 control with such other person;



890 (e) Any person who directly or indirectly acquires all or
 891 substantially all of the other assets of such other person;

892 (f) Any officer, director, trustee, partner, owner,
 893 manager, joint venturer, or employee of such other person or a
 894 person performing duties similar to persons in such positions;

895 or

896 (g) Any person who has an officer, director, trustee,
 897 partner, or joint venturer in common with such person.

898 Section 4. Section 440.06, Florida Statutes, is amended to
 899 read:

900 440.06 Failure to secure compensation; effect.--Every
 901 employer who fails to secure the payment of compensation, as
 902 provided in s. 440.10, by failing to meet the requirements of
 903 ~~under this chapter as provided in s. 440.38~~ may not, in any suit
 904 brought against him or her by an employee subject to this
 905 chapter to recover damages for injury or death, defend such a
 906 suit on the grounds that the injury was caused by the negligence
 907 of a fellow servant, that the employee assumed the risk of his
 908 or her employment, or that the injury was due to the comparative
 909 negligence of the employee.

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

912 440.077 When a corporate sole proprietor, partner, or
 913 officer rejects chapter, effect.--An A sole proprietor, partner,
 914 ~~or~~ officer of a corporation who is permitted to elect an
 915 exemption under this chapter actively engaged in the
 916 ~~construction industry~~ and who elects to be exempt from the



917 provisions of this chapter may not recover benefits under this
918 chapter.

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

922 440.09 Coverage.--

923 (1) The employer must ~~shall~~ pay compensation or furnish
924 benefits required by this chapter if the employee suffers an
925 accidental compensable injury or death arising out of work
926 performed in the course and the scope of employment. The injury,
927 its occupational cause, and any resulting manifestations or
928 disability must ~~shall~~ be established to a reasonable degree of
929 medical certainty, based on and by objective relevant medical
930 findings, and the accidental compensable injury must be the
931 major contributing cause of any resulting injuries. For purposes
932 of this section, "major contributing cause" means the cause
933 which is more than 50 percent responsible for the injury as
934 compared to all other causes combined for which treatment or
935 benefits are sought. In cases involving occupational disease or
936 repetitive exposure, both causation and sufficient exposure to
937 support causation must be proven by clear and convincing
938 evidence. Pain or other subjective complaints alone, in the
939 absence of objective relevant medical findings, are not
940 compensable. For purposes of this section, "objective relevant
941 medical findings" are those objective findings that correlate to
942 the subjective complaints of the injured employee and are
943 confirmed by physical examination findings or diagnostic
944 testing. Establishment of the causal relationship between a



945 compensable accident and injuries for conditions that are not
946 readily observable must be by medical evidence only, as
947 demonstrated by physical examination findings or diagnostic
948 testing. Major contributing cause must be demonstrated by
949 medical evidence only. Mental or nervous injuries occurring as a
950 manifestation of an injury compensable under this section shall
951 be demonstrated by clear and convincing evidence.

952 (a) This chapter does not require any compensation or
953 benefits for any subsequent injury the employee suffers as a
954 result of an original injury arising out of and in the course of
955 employment unless the original injury is the major contributing
956 cause of the subsequent injury. Major contributing cause must be
957 demonstrated by medical evidence only.

958 (b) If an injury arising out of and in the course of
959 employment combines with a preexisting disease or condition to
960 cause or prolong disability or need for treatment, the employer
961 must pay compensation or benefits required by this chapter only
962 to the extent that the injury arising out of and in the course
963 of employment is and remains more than 50 percent responsible
964 for the injury as compared to all other causes combined and
965 thereafter remains the major contributing cause of the
966 disability or need for treatment. Major contributing cause must
967 be demonstrated by medical evidence only.

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



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

982 (4)(a) An employee shall not be entitled to compensation
983 or benefits under this chapter if any judge of compensation
984 claims, administrative law judge, court, or jury convened in
985 this state determines that the employee has knowingly or
986 intentionally engaged in any of the acts described in s. 440.105
987 or any criminal act for the purpose of securing workers'
988 compensation benefits. For purposes of this section, the term
989 "intentional" shall include, but is not limited to, pleas of
990 guilty or nolo contendere in criminal matters. This section
991 shall apply to accidents, regardless of the date of the
992 accident. For injuries occurring prior to January 1, 1994, this
993 section shall pertain to the acts of the employee described in
994 s. 440.105 or criminal activities occurring subsequent to
995 January 1, 1994.

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



1000 (c) Upon the denial of benefits in accordance with this
 1001 section, a judge of compensation claims shall have the
 1002 jurisdiction to order any benefits payable to the employee to be
 1003 paid into the court registry or an escrow account during the
 1004 pendency of an appeal or until such time as the time in which to
 1005 file an appeal has expired.

1006 (7)

1007 (e) As a part of rebutting any presumptions under
 1008 paragraph (b), the injured worker must prove the actual
 1009 quantitative amounts of the drug or its metabolites as measured
 1010 on the initial and confirmation post-accident drug tests of the
 1011 injured worker's urine sample and provide additional evidence
 1012 regarding the absence of drug influence other than the worker's
 1013 denial of being under the influence of a drug. No drug test
 1014 conducted on a urine sample shall be rejected as to its results
 1015 or the presumption imposed under paragraph (b) on the basis of
 1016 the urine being bodily fluid tested.

1017 Section 7. Section 440.093, Florida Statutes, is created
 1018 to read:

1019 440.093 Mental and nervous injuries.--

1020 (1) A mental or nervous injury due to stress, fright, or
 1021 excitement only is not an injury by accident arising out of the
 1022 employment. Nothing in this section shall be construed to allow
 1023 for the payment of benefits under this chapter for mental or
 1024 nervous injuries without an accompanying physical injury
 1025 requiring medical treatment. A physical injury resulting from
 1026 mental or nervous injuries unaccompanied by physical trauma



1027 requiring medical treatment shall not be compensable under this
1028 chapter.

1029 (2) Mental or nervous injuries occurring as a
1030 manifestation of an injury compensable under this chapter shall
1031 be demonstrated by clear and convincing medical evidence by a
1032 licensed psychiatrist meeting criteria established in the most
1033 recent edition of the diagnostic and statistical manual of
1034 mental disorders published by the American Psychiatric
1035 Association. The compensable physical injury must be and remain
1036 the major contributing cause of the mental or nervous condition
1037 and the compensable physical injury as determined by reasonable
1038 medical certainty must be at least 50 percent responsible for
1039 the mental or nervous condition as compared to all other
1040 contributing causes combined. Compensation is not payable for
1041 the mental, psychological, or emotional injury arising out of
1042 depression from being out of work or losing employment
1043 opportunities, resulting from a preexisting mental,
1044 psychological, or emotional condition or due to pain or other
1045 subjective complaints that cannot be substantiated by objective,
1046 relevant medical findings.

1047 (3) Subject to the payment of permanent benefits under s.
1048 440.15, in no event shall benefits for a compensable mental or
1049 nervous injury be paid for more than 3 months after the date of
1050 maximum medical improvement for the injured employee's physical
1051 injury or injuries, which shall be included in the period of 104
1052 weeks as provided in s. 440.15(2) and (4). Mental or nervous
1053 injuries are compensable only in accordance with the terms of
1054 this section.



1055 Section 8. Effective January 1, 2004, subsection (1) of
1056 section 440.10, Florida Statutes, is amended to read:

1057 440.10 Liability for compensation.--

1058 (1)(a) Every employer coming within the provisions of this
1059 chapter, ~~including any brought within the chapter by waiver of~~
1060 ~~exclusion or of exemption~~, shall be liable for, and shall
1061 secure, the payment to his or her employees, or any physician,
1062 surgeon, or pharmacist providing services under the provisions
1063 of s. 440.13, of the compensation payable under ss. 440.13,
1064 440.15, and 440.16. Any contractor or subcontractor who engages
1065 in any public or private construction in the state shall secure
1066 and maintain compensation for his or her employees under this
1067 chapter as provided in s. 440.38.

1068 (b) In case a contractor sublets any part or parts of his
1069 or her contract work to a subcontractor or subcontractors, all
1070 of the employees of such contractor and subcontractor or
1071 subcontractors engaged on such contract work shall be deemed to
1072 be employed in one and the same business or establishment, ~~+~~ and
1073 the contractor shall be liable for, and shall secure, the
1074 payment of compensation to all such employees, except to
1075 employees of a subcontractor who has secured such payment.

1076 (c) A contractor shall ~~may~~ require a subcontractor to
1077 provide evidence of workers' compensation insurance ~~or a copy of~~
1078 ~~his or her certificate of election~~. A subcontractor who is a
1079 corporation and has an officer who elects ~~electing~~ to be exempt
1080 as permitted under this chapter ~~a sole proprietor, partner, or~~
1081 ~~officer of a corporation~~ shall provide a copy of his or her
1082 certificate of exemption ~~election~~ to the contractor.



1083 (d)1. If a contractor becomes liable for the payment of
1084 compensation to the employees of a subcontractor who has failed
1085 to secure such payment in violation of s. 440.38, the contractor
1086 or other third-party payor shall be entitled to recover from the
1087 subcontractor all benefits paid or payable plus interest unless
1088 the contractor and subcontractor have agreed in writing that the
1089 contractor will provide coverage.

1090 2. If a contractor or third-party payor becomes liable for
1091 the payment of compensation to the corporate officer ~~employee~~ of
1092 a subcontractor who is ~~actively~~ engaged in the construction
1093 industry and has elected to be exempt from the provisions of
1094 this chapter, but whose election is invalid, the contractor or
1095 third-party payor may recover from the claimant, ~~partnership,~~ or
1096 corporation all benefits paid or payable plus interest, unless
1097 the contractor and the subcontractor have agreed in writing that
1098 the contractor will provide coverage.

1099 (e) A subcontractor providing services in conjunction with
1100 a contractor on the same project or contract work is not liable
1101 for the payment of compensation to the employees of another
1102 subcontractor or the contractor on such contract work and is ~~not~~
1103 protected by the exclusiveness-of-liability provisions of s.
1104 440.11 from any action at law or in admiralty on account of
1105 injury to an ~~of such~~ employee of another subcontractor, or of
1106 the contractor, provided that:

1107 1. The subcontractor has secured workers' compensation
1108 insurance for its employees or the contractor has secured such
1109 insurance on behalf of the subcontractor and its employees in
1110 accordance with paragraph (b); and



1111 2. The subcontractor's own gross negligence was not the
1112 major contributing cause of the injury.

1113 (f) If an employer fails to secure compensation as
1114 required by this chapter, the department shall ~~may~~ assess
1115 against the employer a penalty not to exceed \$5,000 for each
1116 employee of that employer who is classified by the employer as
1117 an independent contractor but who is found by the department to
1118 not meet the criteria for an independent contractor that are set
1119 forth in s. 440.02. The division shall adopt rules to administer
1120 the provisions of this paragraph.

1121 (g) Subject to s. 440.38, any employer who has employees
1122 engaged in work in this state shall obtain a Florida policy or
1123 endorsement for such employees which utilizes Florida class
1124 codes, rates, rules, and manuals that are in compliance with and
1125 approved under the provisions of this chapter and the Florida
1126 Insurance Code. Failure to comply with this paragraph is a
1127 felony of the second degree, punishable as provided in s.
1128 775.082, s. 775.083, or s. 775.084. The department shall adopt
1129 rules for construction industry and nonconstruction-industry
1130 employers with regard to the activities that define what
1131 constitutes being "engaged in work" in this state, using the
1132 following standards:

1133 1. For employees of nonconstruction-industry employers who
1134 have their headquarters outside of Florida and also operate in
1135 Florida and who are routinely crossing state lines, but usually
1136 return to their homes each night, the employee shall be assigned
1137 to the headquarters' state. However, the construction industry
1138 employees performing new construction or alterations in Florida



1139 shall be assigned to Florida even if the employees return to
1140 their home state each night.

1141 2. The payroll of executive supervisors who may visit a
1142 Florida location but who are not in direct charge of a Florida
1143 location shall be assigned to the state in which the
1144 headquarters is located.

1145 3. For construction contractors who maintain a permanent
1146 staff of employees and superintendents, if any of these
1147 employees or superintendents are assigned to a job that is
1148 located in Florida, either for the duration of the job or any
1149 portion thereof, their payroll shall be assigned to Florida
1150 rather than headquarters' state.

1151 4. Employees who are hired for a specific project in
1152 Florida shall be assigned to Florida. For purposes of this
1153 section, a person is conclusively presumed to be an independent
1154 contractor if:

1155 1. The independent contractor provides the general
1156 contractor with an affidavit stating that he or she meets all
1157 the requirements of s. 440.02; and

1158 2. The independent contractor provides the general
1159 contractor with a valid certificate of workers' compensation
1160 insurance or a valid certificate of exemption issued by the
1161 department.

1162
1163 A sole proprietor, partner, or officer of a corporation who
1164 elects exemption from this chapter by filing a certificate of
1165 election under s. 440.05 may not recover benefits or
1166 compensation under this chapter. An independent contractor who



1167 ~~provides the general contractor with both an affidavit stating~~
 1168 ~~that he or she meets the requirements of s. 440.02 and a~~
 1169 ~~certificate of exemption is not an employee under s. 440.02 and~~
 1170 ~~may not recover benefits under this chapter. For purposes of~~
 1171 ~~determining the appropriate premium for workers' compensation~~
 1172 ~~coverage, carriers may not consider any person who meets the~~
 1173 ~~requirements of this paragraph to be an employee.~~

1174 Section 9. Section 440.1025, Florida Statutes, is amended
 1175 to read:

1176 440.1025 ~~Consideration of public~~ Employer workplace safety
 1177 program in rate-setting; program requirements; rulemaking.—

1178 (1) For a public or private employer to be eligible for
 1179 receipt of specific identifiable consideration under s. 627.0915
 1180 for a workplace safety program in the setting of rates, the
 1181 ~~public~~ employer must have a workplace safety program. At a
 1182 minimum, the program must include a written safety policy and
 1183 safety rules, and make provision for safety inspections,
 1184 preventative maintenance, safety training, first-aid, accident
 1185 investigation, and necessary recordkeeping. ~~For purposes of this~~
 1186 ~~section, "public employer" means any agency within state,~~
 1187 ~~county, or municipal government employing individuals for~~
 1188 ~~salary, wages, or other remuneration.~~ The division may adopt
 1189 ~~promulgate~~ rules for insurers to utilize in determining ~~public~~
 1190 employer compliance with the requirements of this section.

1191 (2) The division shall publicize on the Internet, and
 1192 shall encourage insurers to publicize, the availability of free
 1193 safety consultation services and safety program resources.



1194 Section 10. Section 440.103, Florida Statutes, is amended
 1195 to read:

1196 440.103 Building permits; identification of minimum
 1197 premium policy.--~~Except as otherwise provided in this chapter,~~
 1198 Every employer shall, as a condition to applying for and
 1199 receiving a building permit, show proof and certify to the
 1200 permit issuer that it has secured compensation for its employees
 1201 under this chapter as provided in ss. 440.10 and 440.38. Such
 1202 proof of compensation must be evidenced by a certificate of
 1203 coverage issued by the carrier, a valid exemption certificate
 1204 approved by the department ~~or the former Division of Workers'~~
 1205 ~~Compensation of the Department of Labor and Employment Security,~~
 1206 or a copy of the employer's authority to self-insure and shall
 1207 be presented each time the employer applies for a building
 1208 permit. As provided in s. 627.413(5), each certificate of
 1209 coverage must show, on its face, whether or not coverage is
 1210 secured under the minimum premium provisions of rules adopted by
 1211 rating organizations licensed by the department. The words
 1212 "minimum premium policy" or equivalent language shall be typed,
 1213 printed, stamped, or legibly handwritten.

1214 Section 11. Section 440.105, Florida Statutes, is amended
 1215 to read:

1216 440.105 Prohibited activities; reports; penalties;
 1217 limitations.--

1218 (1)(a) Any insurance carrier, any individual self-insured,
 1219 any commercial or group self-insurance fund, any professional
 1220 practitioner licensed or regulated by the Department of Health
 1221 ~~Business and Professional Regulation~~, except as otherwise



1222 provided by law, any medical review committee as defined in s.
1223 766.101, any private medical review committee, and any insurer,
1224 agent, or other person licensed under the insurance code, or any
1225 employee thereof, having knowledge or who believes that a
1226 fraudulent act or any other act or practice which, upon
1227 conviction, constitutes a felony or misdemeanor under this
1228 chapter is being or has been committed shall send to the
1229 Division of Insurance Fraud, Bureau of Workers' Compensation
1230 Fraud, a report or information pertinent to such knowledge or
1231 belief and such additional information relative thereto as the
1232 bureau may require. The bureau shall review such information or
1233 reports and select such information or reports as, in its
1234 judgment, may require further investigation. It shall then cause
1235 an independent examination of the facts surrounding such
1236 information or report to be made to determine the extent, if
1237 any, to which a fraudulent act or any other act or practice
1238 which, upon conviction, constitutes a felony or a misdemeanor
1239 under this chapter is being committed. The bureau shall report
1240 any alleged violations of law which its investigations disclose
1241 to the appropriate licensing agency and state attorney or other
1242 prosecuting agency having jurisdiction with respect to any such
1243 violations of this chapter. If prosecution by the state attorney
1244 or other prosecuting agency having jurisdiction with respect to
1245 such violation is not begun within 60 days of the bureau's
1246 report, the state attorney or other prosecuting agency having
1247 jurisdiction with respect to such violation shall inform the
1248 bureau of the reasons for the lack of prosecution.



1249 (b) In the absence of fraud or bad faith, a person is not
1250 subject to civil liability for libel, slander, or any other
1251 relevant tort by virtue of filing reports, without malice, or
1252 furnishing other information, without malice, required by this
1253 section or required by the bureau, and no civil cause of action
1254 of any nature shall arise against such person:

1255 1. For any information relating to suspected fraudulent
1256 acts furnished to or received from law enforcement officials,
1257 their agents, or employees;

1258 2. For any information relating to suspected fraudulent
1259 acts furnished to or received from other persons subject to the
1260 provisions of this chapter; or

1261 3. For any such information relating to suspected
1262 fraudulent acts furnished in reports to the bureau, or the
1263 National Association of Insurance Commissioners.

1264 (2) Whoever violates any provision of this subsection
1265 commits a misdemeanor of the first ~~second~~ degree, punishable as
1266 provided in s. 775.082 or s. 775.083.

1267 (a) It shall be unlawful for any employer to knowingly:

1268 1. Coerce or attempt to coerce, as a precondition to
1269 employment or otherwise, an employee to obtain a certificate of
1270 election of exemption pursuant to s. 440.05.

1271 2. Discharge or refuse to hire an employee or job
1272 applicant because the employee or applicant has filed a claim
1273 for benefits under this chapter.

1274 3. Discharge, discipline, or take any other adverse
1275 personnel action against any employee for disclosing information
1276 to the department or any law enforcement agency relating to any



1277 violation or suspected violation of any of the provisions of
1278 this chapter or rules promulgated hereunder.

1279 4. Violate a stop-work order issued by the department
1280 pursuant to s. 440.107.

1281 (b) It shall be unlawful for any insurance entity to
1282 revoke or cancel a workers' compensation insurance policy or
1283 membership because an employer has returned an employee to work
1284 or hired an employee who has filed a workers' compensation
1285 claim.

1286 (3) Whoever violates any provision of this subsection
1287 commits a misdemeanor of the first degree, punishable as
1288 provided in s. 775.082 or s. 775.083.

1289 (a) It shall be unlawful for any employer to knowingly
1290 fail to update applications for coverage as required by s.
1291 440.381(1) and department ~~of Insurance~~ rules within 7 days after
1292 the reporting date for any change in the required information,
1293 or to post notice of coverage pursuant to s. 440.40.

1294 (b) It is unlawful for any attorney or other person, in
1295 his or her individual capacity or in his or her capacity as a
1296 public or private employee, or for any firm, corporation,
1297 partnership, or association to receive any fee or other
1298 consideration or any gratuity from a person on account of
1299 services rendered for a person in connection with any
1300 proceedings arising under this chapter, unless such fee,
1301 consideration, or gratuity is approved by a judge of
1302 compensation claims or by the Deputy Chief Judge of Compensation
1303 Claims.



1304 (4) Whoever violates any provision of this subsection
1305 commits insurance fraud, punishable as provided in paragraph
1306 (f).

1307 (a) It shall be unlawful for any employer to knowingly:

1308 1. Present or cause to be presented any false, fraudulent,
1309 or misleading oral or written statement to any person as
1310 evidence of compliance with s. 440.38.

1311 2. Make a deduction from the pay of any employee entitled
1312 to the benefits of this chapter for the purpose of requiring the
1313 employee to pay any portion of premium paid by the employer to a
1314 carrier or to contribute to a benefit fund or department
1315 maintained by such employer for the purpose of providing
1316 compensation or medical services and supplies as required by
1317 this chapter.

1318 3. Fail to secure payment of compensation if required to
1319 do so by this chapter.

1320 (b) It shall be unlawful for any person:

1321 1. To knowingly make, or cause to be made, any false,
1322 fraudulent, or misleading oral or written statement for the
1323 purpose of obtaining or denying any benefit or payment under
1324 this chapter.

1325 2. To present or cause to be presented any written or oral
1326 statement as part of, or in support of, a claim for payment or
1327 other benefit pursuant to any provision of this chapter, knowing
1328 that such statement contains any false, incomplete, or
1329 misleading information concerning any fact or thing material to
1330 such claim.



1331 3. To prepare or cause to be prepared any written or oral
1332 statement that is intended to be presented to any employer,
1333 insurance company, or self-insured program in connection with,
1334 or in support of, any claim for payment or other benefit
1335 pursuant to any provision of this chapter, knowing that such
1336 statement contains any false, incomplete, or misleading
1337 information concerning any fact or thing material to such claim.

1338 4. To knowingly assist, conspire with, or urge any person
1339 to engage in activity prohibited by this section.

1340 5. To knowingly make any false, fraudulent, or misleading
1341 oral or written statement, or to knowingly omit or conceal
1342 material information, required by s. 440.185 or s. 440.381, for
1343 the purpose of obtaining workers' compensation coverage or for
1344 the purpose of avoiding, delaying, or diminishing the amount of
1345 payment of any workers' compensation premiums.

1346 6. To knowingly misrepresent or conceal payroll,
1347 classification of workers, or information regarding an
1348 employer's loss history which would be material to the
1349 computation and application of an experience rating modification
1350 factor for the purpose of avoiding or diminishing the amount of
1351 payment of any workers' compensation premiums.

1352 7. To knowingly present or cause to be presented any
1353 false, fraudulent, or misleading oral or written statement to
1354 any person as evidence of compliance with s. 440.38, as evidence
1355 of eligibility for a certificate of exemption under s. 440.05.

1356 8. To knowingly violate a stop-work order issued by the
1357 department pursuant to s. 440.107.



1358 9. To knowingly present or cause to be presented any
1359 false, fraudulent, or misleading oral or written statement to
1360 any person as evidence of identity for the purpose of obtaining
1361 employment or filing or supporting a claim for workers'
1362 compensation benefits.

1363 (c) It shall be unlawful for any physician licensed under
1364 chapter 458, osteopathic physician licensed under chapter 459,
1365 chiropractic physician licensed under chapter 460, podiatric
1366 physician licensed under chapter 461, optometric physician
1367 licensed under chapter 463, or any other practitioner licensed
1368 under the laws of this state to knowingly and willfully assist,
1369 conspire with, or urge any person to fraudulently violate any of
1370 the provisions of this chapter.

1371 (d) It shall be unlawful for any person or governmental
1372 entity licensed under chapter 395 to maintain or operate a
1373 hospital in such a manner so that such person or governmental
1374 entity knowingly and willfully allows the use of the facilities
1375 of such hospital by any person, in a scheme or conspiracy to
1376 fraudulently violate any of the provisions of this chapter.

1377 (e) It shall be unlawful for any attorney or other person,
1378 in his or her individual capacity or in his or her capacity as a
1379 public or private employee, or any firm, corporation,
1380 partnership, or association, to knowingly assist, conspire with,
1381 or urge any person to fraudulently violate any of the provisions
1382 of this chapter.

1383 (f) If the monetary value ~~amount~~ of any ~~claim or workers'~~
1384 ~~compensation insurance premium involved in any~~ violation of this
1385 subsection:



1386 1. Is less than \$20,000, the offender commits a felony of
 1387 the third degree, punishable as provided in s. 775.082, s.
 1388 775.083, or s. 775.084.

1389 2. Is \$20,000 or more, but less than \$100,000, the
 1390 offender commits a felony of the second degree, punishable as
 1391 provided in s. 775.082, . 775.083, or s. 775.084.

1392 3. Is \$100,000 or more, the offender commits a felony of
 1393 the first degree, punishable as provided in s. 775.082, s.
 1394 775.083, or s. 775.084.

1395 (5) It shall be unlawful for any attorney or other person,
 1396 in his or her individual capacity or in his or her capacity as a
 1397 public or private employee or for any firm, corporation,
 1398 partnership, or association, to unlawfully solicit any business
 1399 in and about city or county hospitals, courts, or any public
 1400 institution or public place; in and about private hospitals or
 1401 sanitariums; in and about any private institution; or upon
 1402 private property of any character whatsoever for the purpose of
 1403 making workers' compensation claims. Whoever violates any
 1404 provision of this subsection commits a felony of the second
 1405 ~~third~~ degree, punishable as provided in s. 775.082, s. 775.083,
 1406 or s. 775.085.

1407 (6) This section shall not be construed to preclude the
 1408 applicability of any other provision of criminal law that
 1409 applies or may apply to any transaction.

1410 ~~(7) For the purpose of the section, the term "statement"~~
 1411 ~~includes, but is not limited to, any notice, representation,~~
 1412 ~~statement, proof of injury, bill for services, diagnosis,~~



1413 ~~prescription, hospital or doctor records, X ray, test result, or~~
1414 ~~other evidence of loss, injury, or expense.~~

1415 (7)(8) An injured employee or any other party making a
1416 claim under this chapter shall provide his or her personal
1417 signature attesting that he or she has reviewed, understands,
1418 and acknowledges ~~All claim forms as provided for in this chapter~~
1419 ~~shall contain a notice that clearly states in substance the~~
1420 ~~following~~ statement: "Any person who, knowingly and with intent
1421 to injure, defraud, or deceive any employer or employee,
1422 insurance company, or self-insured program, files a statement of
1423 claim containing any false or misleading information commits
1424 insurance fraud, punishable as provided in s. 817.234." If the
1425 injured employee or other party refuses to sign the document
1426 attesting ~~Each claimant shall personally sign the claim form and~~
1427 ~~attest~~ that he or she has reviewed, understands, and
1428 acknowledges the statement, benefits or payments under this
1429 chapter shall be suspended until such signature is obtained
1430 ~~foregoing notice.~~

1431 Section 12. Subsection (3) of section 440.1051, Florida
1432 Statutes, is amended to read:

1433 440.1051 Fraud reports; civil immunity; criminal
1434 penalties.--

1435 (2) Any person who reports workers' compensation fraud to
1436 the division under subsection (1) is immune from civil liability
1437 for doing so, and the person or entity alleged to have committed
1438 the fraud may not retaliate against him or her for providing
1439 such report, unless the person making the report knows it to be
1440 false.



1441 (3) A person who calls and, knowingly and falsely, reports
1442 workers' compensation fraud or who, in violation of subsection
1443 (2) retaliates against a person for making such report, commits
1444 ~~is guilty of a felony misdemeanor~~ of the third ~~first~~ degree,
1445 punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s.
1446 775.084 both.

1447 Section 13. Section 440.107, Florida Statutes, is amended
1448 to read:

1449 440.107 Department powers to enforce employer compliance
1450 with coverage requirements.--

1451 (1) The Legislature finds that the failure of an employer
1452 to comply with the workers' compensation coverage requirements
1453 under this chapter poses an immediate danger to public health,
1454 safety, and welfare. ~~The Legislature authorizes the department~~
1455 ~~to secure employer compliance with the workers' compensation~~
1456 ~~coverage requirements and authorizes the department to conduct~~
1457 ~~investigations for the purpose of ensuring employer compliance.~~

1458 (2) For the purposes of this section, "securing the
1459 payment of workers' compensation" means obtaining coverage that
1460 meets the requirements of this chapter and the Florida Insurance
1461 Code. However, if at any time an employer materially understates
1462 or conceals payroll, materially misrepresents or conceals
1463 employee duties so as to avoid proper classification for premium
1464 calculations, or materially misrepresents or conceals
1465 information pertinent to the computation and application of an
1466 experience rating modification factor, such employer shall be
1467 deemed to have failed to secure payment of workers' compensation
1468 and shall be subject to the sanctions set forth in this section.



1469 A stop-work order issued because an employer is deemed to have
1470 failed to secure the payment of workers' compensation required
1471 under this chapter because the employer has materially
1472 understated or concealed payroll, materially misrepresented or
1473 concealed employee duties so as to avoid proper classification
1474 for premium calculations, or materially misrepresented or
1475 concealed information pertinent to the computation and
1476 application of an experience rating modification factor shall
1477 have no effect upon an employer's or carrier's duty to provide
1478 benefits under this chapter or upon any of the employer's or
1479 carrier's rights and defenses under this chapter, including
1480 exclusive remedy. ~~The department and its authorized~~
1481 ~~representatives may enter and inspect any place of business at~~
1482 ~~any reasonable time for the limited purpose of investigating~~
1483 ~~compliance with workers' compensation coverage requirements~~
1484 ~~under this chapter. Each employer shall keep true and accurate~~
1485 ~~business records that contain such information as the department~~
1486 ~~prescribes by rule. The business records must contain~~
1487 ~~information necessary for the department to determine compliance~~
1488 ~~with workers' compensation coverage requirements and must be~~
1489 ~~maintained within this state by the business, in such a manner~~
1490 ~~as to be accessible within a reasonable time upon request by the~~
1491 ~~department. The business records must be open to inspection and~~
1492 ~~be available for copying by the department at any reasonable~~
1493 ~~time and place and as often as necessary. The department may~~
1494 ~~require from any employer any sworn or unsworn reports,~~
1495 ~~pertaining to persons employed by that employer, deemed~~



1496 ~~necessary for the effective administration of the workers'~~
1497 ~~compensation coverage requirements.~~

1498 (3) The department shall enforce workers' compensation
1499 coverage requirements, including the requirement that the
1500 employer secure the payment of workers' compensation, and the
1501 requirement that the employer provide the carrier with
1502 information to accurately determine payroll and correctly assign
1503 classification codes. In addition to any other powers under this
1504 chapter, the department shall have the power to:

1505 (a) Conduct investigations for the purpose of ensuring
1506 employer compliance.

1507 (b) Enter and inspect any place of business at any
1508 reasonable time for the purpose of investigating employer
1509 compliance.

1510 (c) Examine and copy business records.

1511 (d) Administer oaths and affirmations.

1512 (e) Certify to official acts.

1513 (f) Issue and serve subpoenas for attendance of witnesses
1514 or production of business records, books, papers,
1515 correspondence, memoranda, and other records.

1516 (g) Issue stop-work orders, penalty assessment orders, and
1517 any other orders necessary for the administration of this
1518 section.

1519 (h) Enforce the terms of a stop-work order.

1520 (i) Levy and pursue actions to recover penalties.

1521 (j) Seek injunctions and other appropriate relief. ~~In~~
1522 ~~discharging its duties, the department may administer oaths and~~
1523 ~~affirmations, certify to official acts, issue subpoenas to~~



1524 ~~compel the attendance of witnesses and the production of books,~~
1525 ~~papers, correspondence, memoranda, and other records deemed~~
1526 ~~necessary by the department as evidence in order to ensure~~
1527 ~~proper compliance with the coverage provisions of this chapter.~~

1528 (4) The department shall designate representatives who may
1529 serve subpoenas and other process of the department issued under
1530 this section.

1531 (5) The department shall specify by rule the business
1532 records that employers must maintain and produce to comply with
1533 this section.

1534 ~~(6)(4)~~ If a person has refused to obey a subpoena to
1535 appear before the department or its authorized representative or
1536 ~~and~~ produce evidence requested by the department or to give
1537 testimony about the matter that is under investigation, a court
1538 has jurisdiction to issue an order requiring compliance with the
1539 subpoena if the court has jurisdiction in the geographical area
1540 where the inquiry is being carried on or in the area where the
1541 person who has refused the subpoena is found, resides, or
1542 transacts business. Failure to obey such a court order may be
1543 punished by the court as contempt, either civilly or criminally.
1544 Costs, including reasonable attorney's fees, incurred by the
1545 department to obtain an order granting, in whole or in part, a
1546 petition to enforce a subpoena or a subpoena duces tecum shall
1547 be taxed against the subpoenaed party.

1548 ~~(7)(a)(5)~~ Whenever the department determines that an
1549 employer who is required to secure the payment to his or her
1550 employees of the compensation provided for by this chapter has
1551 failed to secure the payment of workers' compensation required



1552 by this chapter or to produce the required business records
1553 under subsection (5) within 5 business days after receipt of the
1554 written request of the department ~~do so~~, such failure shall be
1555 deemed an immediate serious danger to public health, safety, or
1556 welfare sufficient to justify service by the department of a
1557 stop-work order on the employer, requiring the cessation of all
1558 business operations ~~at the place of employment or job site~~. If
1559 the department ~~division~~ makes such a determination, the
1560 department ~~division~~ shall issue a stop-work order within 72
1561 hours. The order shall take effect when served upon the ~~date of~~
1562 ~~service upon the~~ employer or, for a particular employer work
1563 site, when served at that work site, unless the employer
1564 ~~provides evidence satisfactory to the department of having~~
1565 ~~secured any necessary insurance or self insurance and pays a~~
1566 ~~civil penalty to the department, to be deposited by the~~
1567 ~~department into the Workers' Compensation Administration Trust~~
1568 ~~Fund, in the amount of \$100 per day for each day the employer~~
1569 ~~was not in compliance with this chapter~~. In addition to serving
1570 a stop-work order at a particular work site which shall be
1571 effective immediately, the department shall immediately proceed
1572 with service upon the employer which shall be effective upon all
1573 employer work sites in the state for which the employer is not
1574 in compliance. A stop-work order may be served with regard to an
1575 employer's work site by posting a copy of the stop-work order in
1576 a conspicuous location at the work site. The order shall remain
1577 in effect until the department issues an order releasing the
1578 stop-work order upon a finding that the employer has come into
1579 compliance with the coverage requirements of this chapter and



1580 has paid any penalty assessed under this section. The department
1581 may require an employer who is found to have failed to comply
1582 with the coverage requirements of s. 440.38 to file with the
1583 department, as a condition of release from a stop-work order,
1584 periodic reports for a probationary period that shall not exceed
1585 2 years that demonstrate the employer's continued compliance
1586 with this chapter. The department shall by rule specify the
1587 reports required and the time for filing under this subsection.

1588 (b) Stop-work orders and penalty assessment orders issued
1589 under this section against a corporation, partnership, or sole
1590 proprietorship shall be in effect against any successor
1591 corporation or business entity that has one or more of the same
1592 principals or officers as the corporation or partnership against
1593 which the stop-work order was issued and are engaged in the same
1594 or equivalent trade or activity.

1595 (c) The department shall assess a penalty of \$1,000 per
1596 day against an employer for each day that the employer conducts
1597 business operations that are in violation of a stop-work order.

1598 (d)1. In addition to any penalty, stop-work order, or
1599 injunction, the department shall assess against any employer who
1600 has failed to secure the payment of compensation as required by
1601 this chapter a penalty equal to 1.5 times the amount the
1602 employer would have paid in premium when applying approved
1603 manual rates to the employer's payroll during periods for which
1604 it failed to secure the payment of workers' compensation
1605 required by this chapter within the preceding 3-year period or
1606 \$1,000, whichever is greater.



1607 2. Any subsequent violation within 5 years after the most
 1608 recent violation shall, in addition to the penalties set forth
 1609 in this subsection, be deemed a knowing act within the meaning
 1610 of s. 440.105.

1611 (e) When an employer fails to provide business records
 1612 sufficient to enable the department to determine the employer's
 1613 payroll for the period requested for the calculation of the
 1614 penalty provided in paragraph (d), for penalty calculation
 1615 purposes, the imputed weekly payroll for each employee,
 1616 corporate officer, sole proprietor, or partner shall be the
 1617 statewide average weekly wage as defined in s. 440.12(2)
 1618 multiplied by 1.5.

1619 (f) In addition to any other penalties provided for in
 1620 this chapter, the department may assess against the employer a
 1621 penalty of \$5,000 for each employee of that employer who the
 1622 employer represents to the department or carrier as an
 1623 independent contractor but who is determined by the department
 1624 not to be an independent contractor as defined in s. 440.02.

1625 (8)(6) In addition to the issuance of a stop-work order
 1626 under subsection (7), the department may file a complaint in the
 1627 circuit court in and for Leon County to enjoin any employer, who
 1628 has failed to secure the payment of workers' compensation as
 1629 required by this chapter, from employing individuals and from
 1630 conducting business until the employer presents evidence
 1631 satisfactory to the department of having secured the payment of
 1632 workers' for compensation required by this chapter and pays a
 1633 civil penalty assessed by to the department under this section,
 1634 to be deposited by the department into the Workers' Compensation



1635 ~~Administration Trust Fund, in the amount of \$100 per day for~~
1636 ~~each day the employer was not in compliance with this chapter.~~

1637 ~~(9)(7) In addition to any penalty, stop work order, or~~
1638 ~~injunction, the department shall assess against any employer,~~
1639 ~~who has failed to secure the payment of compensation as required~~
1640 ~~by this chapter, a penalty in the following amount:~~

1641 ~~(a) An amount equal to at least the amount that the~~
1642 ~~employer would have paid or up to twice the amount the employer~~
1643 ~~would have paid during periods it illegally failed to secure~~
1644 ~~payment of compensation in the preceding 3-year period based on~~
1645 ~~the employer's payroll during the preceding 3-year period; or~~

1646 ~~(b) One thousand dollars, whichever is greater. Any~~
1647 ~~penalty assessed under this subsection is due within 30 days~~
1648 ~~after the date on which the employer is notified, except that,~~
1649 ~~if the department has posted a stop work order or obtained~~
1650 ~~injunctive relief against the employer, payment is due, in~~
1651 ~~addition to those conditions set forth in this section, as a~~
1652 ~~condition to relief from a stop work order or an injunction.~~
1653 ~~Interest shall accrue on amounts not paid when due at the rate~~
1654 ~~of 1 percent per month. The department division shall adopt~~
1655 ~~rules to administer this section.~~

1656 ~~(10)(8) The department may bring an action in circuit~~
1657 ~~court to recover penalties assessed under this section,~~
1658 ~~including any interest owed to the department pursuant to this~~
1659 ~~section. In any action brought by the department pursuant to~~
1660 ~~this section in which it prevails, the circuit court shall award~~
1661 ~~costs, including the reasonable costs of investigation and a~~
1662 ~~reasonable attorney's fee.~~



1663 (11)~~(9)~~ Any judgment obtained by the department and any
1664 penalty due pursuant to the service of a stop-work order or
1665 otherwise due under this section shall, until collected,
1666 constitute a lien upon the entire interest of the employer,
1667 legal or equitable, in any property, real or personal, tangible
1668 or intangible; however, such lien is subordinate to claims for
1669 unpaid wages and any prior recorded liens, and a lien created by
1670 this section is not valid against any person who, subsequent to
1671 such lien and in good faith and for value, purchases real or
1672 personal property from such employer or becomes the mortgagee on
1673 real or personal property of such employer, or against a
1674 subsequent attaching creditor, unless, with respect to real
1675 estate of the employer, a notice of the lien is recorded in the
1676 public records of the county where the real estate is located,
1677 and with respect to personal property of the employer, the
1678 notice is recorded with the Secretary of State.

1679 (12)~~(10)~~ Any law enforcement agency in the state may, at
1680 the request of the department, render any assistance necessary
1681 to carry out the provisions of this section, including, but not
1682 limited to, preventing any employee or other person from
1683 remaining at a place of employment or job site after a stop-work
1684 order or injunction has taken effect.

1685 (13)~~(11)~~ Agency action ~~Actions~~ by the department under
1686 this section, if contested, must be contested as provided in
1687 chapter 120. All ~~civil~~ penalties assessed by the department must
1688 be paid into the Workers' Compensation Administration Trust
1689 Fund. ~~The department shall return any sums previously paid, upon~~
1690 ~~conclusion of an action, if the department fails to prevail and~~



1691 ~~if so directed by an order of court or an administrative hearing~~
1692 ~~officer. The requirements of this subsection may be met by~~
1693 ~~posting a bond in an amount equal to twice the penalty and in a~~
1694 ~~form approved by the department.~~

1695 (14)~~(12)~~ If the department ~~division~~ finds that an employer
1696 who is certified or registered under part I or part II of
1697 chapter 489 and who is required to secure the payment of
1698 workers' the compensation under ~~provided for by~~ this chapter to
1699 his or her employees has failed to do so, the department
1700 ~~division~~ shall immediately notify the Department of Business and
1701 Professional Regulation.

1702 Section 14. Subsections (1) and (3) of section 440.11,
1703 Florida Statutes, are amended to read:

1704 440.11 Exclusiveness of liability.--

1705 (1) The liability of an employer prescribed in s. 440.10
1706 shall be exclusive and in place of all other liability,
1707 including vicarious liability, of such employer to any third-
1708 party tortfeasor and to the employee, the legal representative
1709 thereof, husband or wife, parents, dependents, next of kin, and
1710 anyone otherwise entitled to recover damages from such employer
1711 at law or in admiralty on account of such injury or death,
1712 except as follows: ~~that~~

1713 (a) If an employer fails to secure payment of compensation
1714 as required by this chapter, an injured employee, or the legal
1715 representative thereof in case death results from the injury,
1716 may elect to claim compensation under this chapter or to
1717 maintain an action at law or in admiralty for damages on account
1718 of such injury or death. In such action the defendant may not



1719 plead as a defense that the injury was caused by negligence of a
1720 fellow employee, that the employee assumed the risk of the
1721 employment, or that the injury was due to the comparative
1722 negligence of the employee.

1723 (b) When an employer commits an intentional tort that
1724 causes the injury or death of the employee. For purposes of this
1725 paragraph, an employer's actions shall be deemed to constitute
1726 an intentional tort and not an accident only when the employee
1727 proves, by clear and convincing evidence, that:

1728 1. The employer deliberately intended to injure the
1729 employee; or

1730 2. The employer engaged in conduct that the employer knew,
1731 based on prior similar accidents or on explicit warnings
1732 specifically identifying a known danger, was certain to result
1733 in injury or death to the employee, and the employee was not
1734 aware of the risk because the danger was not apparent and the
1735 employer deliberately concealed or misrepresented the danger so
1736 as to prevent the employee from exercising informed judgment
1737 about whether to perform the work.

1738
1739 The same immunities from liability enjoyed by an employer shall
1740 extend as well to each employee of the employer when such
1741 employee is acting in furtherance of the employer's business and
1742 the injured employee is entitled to receive benefits under this
1743 chapter. Such fellow-employee immunities shall not be applicable
1744 to an employee who acts, with respect to a fellow employee, with
1745 willful and wanton disregard or unprovoked physical aggression
1746 or with gross negligence when such acts result in injury or



1747 death or such acts proximately cause such injury or death, nor
1748 shall such immunities be applicable to employees of the same
1749 employer when each is operating in the furtherance of the
1750 employer's business but they are assigned primarily to unrelated
1751 works within private or public employment. The same immunity
1752 provisions enjoyed by an employer shall also apply to any sole
1753 proprietor, partner, corporate officer or director, supervisor,
1754 or other person who in the course and scope of his or her duties
1755 acts in a managerial or policymaking capacity and the conduct
1756 which caused the alleged injury arose within the course and
1757 scope of said managerial or policymaking duties and was not a
1758 violation of a law, whether or not a violation was charged, for
1759 which the maximum penalty which may be imposed does not exceed
1760 60 days' imprisonment as set forth in s. 775.082. The immunity
1761 from liability provided in this subsection extends to county
1762 governments with respect to employees of county constitutional
1763 officers whose offices are funded by the board of county
1764 commissioners.

1765 (3) An employer's workers' compensation carrier, service
1766 agent, or safety consultant shall not be liable as a third-party
1767 tortfeasor to employees of the employer or employees of its
1768 subcontractors for assisting the employer and its
1769 subcontractors, if any, in carrying out the employer's rights
1770 and responsibilities under this chapter by furnishing any safety
1771 inspection, safety consultative service, or other safety service
1772 incidental to the workers' compensation or employers' liability
1773 coverage or to the workers' compensation or employer's liability
1774 servicing contract. Without limitation, a safety consultant may



1775 include an owner, as defined in chapter 713, or an owner's
 1776 related, affiliated, or subsidiary companies and the employees
 1777 of each. The exclusion from liability under this subsection
 1778 shall not apply in any case in which injury or death is
 1779 proximately caused by the willful and unprovoked physical
 1780 aggression, or by the negligent operation of a motor vehicle, by
 1781 employees, officers, or directors of the employer's workers'
 1782 compensation carrier, service agent, or safety consultant.

1783 Section 15. Section 440.13, Florida Statutes, is amended
 1784 to read:

1785 440.13 Medical services and supplies; penalty for
 1786 violations; limitations.--

1787 (1) DEFINITIONS.--As used in this section, the term:

1788 (a) "Alternate medical care" means a change in treatment
 1789 or health care provider.

1790 (b) "Attendant care" means care rendered by trained
 1791 professional attendants which is beyond the scope of household
 1792 duties. Family members may provide nonprofessional attendant
 1793 care, but may not be compensated under this chapter for care
 1794 that falls within the scope of household duties and other
 1795 services normally and gratuitously provided by family members.
 1796 "Family member" means a spouse, father, mother, brother, sister,
 1797 child, grandchild, father-in-law, mother-in-law, aunt, or uncle.

1798 (c) "Carrier" means, for purposes of this section,
 1799 insurance carrier, self-insurance fund or individually self-
 1800 insured employer, or assessable mutual insurer.

1801 (d) "Catastrophic injury" means an injury as defined in s.
 1802 440.02.



1803 (e) "Certified health care provider" means a health care
1804 provider who has been certified by the agency or who has entered
1805 an agreement with a licensed managed care organization to
1806 provide treatment to injured workers under this section.
1807 Certification of such health care provider must include
1808 documentation that the health care provider has read and is
1809 familiar with the portions of the statute, impairment guides,
1810 practice parameters, protocols of treatment, and rules which
1811 govern the provision of remedial treatment, care, and
1812 attendance.

1813 (f) "Compensable" means a determination by a carrier or
1814 judge of compensation claims that a condition suffered by an
1815 employee results from an injury arising out of and in the course
1816 of employment.

1817 (g) "Emergency services and care" means emergency services
1818 and care as defined in s. 395.002.

1819 (h) "Health care facility" means any hospital licensed
1820 under chapter 395 and any health care institution licensed under
1821 chapter 400.

1822 (i) "Health care provider" means a physician or any
1823 recognized practitioner who provides skilled services pursuant
1824 to a prescription or under the supervision or direction of a
1825 physician and who has been certified by the agency as a health
1826 care provider. The term "health care provider" includes a health
1827 care facility.

1828 (j) "Independent medical examiner" means a physician
1829 selected by either an employee or a carrier to render one or



1830 more independent medical examinations in connection with a
1831 dispute arising under this chapter.

1832 (k) "Independent medical examination" means an objective
1833 evaluation of the injured employee's medical condition,
1834 including, but not limited to, impairment or work status,
1835 performed by a physician or an expert medical advisor at the
1836 request of a party, a judge of compensation claims, or the
1837 agency to assist in the resolution of a dispute arising under
1838 this chapter.

1839 (l) "Instance of overutilization" means a specific
1840 inappropriate service or level of service provided to an injured
1841 employee that includes the provision of treatment in excess of
1842 established practice parameters and protocols of treatment
1843 established in accordance with this chapter.

1844 (m) "Medically necessary" or "medical necessity" means any
1845 medical service or medical supply which is used to identify or
1846 treat an illness or injury, is appropriate to the patient's
1847 diagnosis and status of recovery, and is consistent with the
1848 location of service, the level of care provided, and applicable
1849 practice parameters. The service should be widely accepted among
1850 practicing health care providers, based on scientific criteria,
1851 and determined to be reasonably safe. The service must not be of
1852 an experimental, investigative, or research nature, ~~except in~~
1853 ~~those instances in which prior approval of the Agency for Health~~
1854 ~~Care Administration has been obtained. The Agency for Health~~
1855 ~~Care Administration shall adopt rules providing for such~~
1856 ~~approval on a case-by-case basis when the service or supply is~~



1857 ~~shown to have significant benefits to the recovery and well-~~
1858 ~~being of the patient.~~

1859 (n) "Medicine" means a drug prescribed by an authorized
1860 health care provider and includes only generic drugs or single-
1861 source patented drugs for which there is no generic equivalent,
1862 unless the authorized health care provider writes or states that
1863 the brand-name drug as defined in s. 465.025 is medically
1864 necessary, or is a drug appearing on the schedule of drugs
1865 created pursuant to s. 465.025(6), or is available at a cost
1866 lower than its generic equivalent.

1867 (o) "Palliative care" means noncurative medical services
1868 that mitigate the conditions, effects, or pain of an injury.

1869 (p) "Pattern or practice of overutilization" means
1870 repetition of instances of overutilization within a specific
1871 medical case or multiple cases by a single health care provider.

1872 (q) "Peer review" means an evaluation by two or more
1873 physicians licensed under the same authority and with the same
1874 or similar specialty as the physician under review, of the
1875 appropriateness, quality, and cost of health care and health
1876 services provided to a patient, based on medically accepted
1877 standards.

1878 (r) "Physician" or "doctor" means a physician licensed
1879 under chapter 458, an osteopathic physician licensed under
1880 chapter 459, a chiropractic physician licensed under chapter
1881 460, a podiatric physician licensed under chapter 461, an
1882 optometrist licensed under chapter 463, or a dentist licensed
1883 under chapter 466, each of whom must be certified by the agency
1884 as a health care provider.



1885 (s) "Reimbursement dispute" means any disagreement between
1886 a health care provider or health care facility and carrier
1887 concerning payment for medical treatment.

1888 (t) "Utilization control" means a systematic process of
1889 implementing measures that assure overall management and cost
1890 containment of services delivered, including compliance with
1891 practice parameters and protocols of treatment as provided for
1892 in this chapter.

1893 (u) "Utilization review" means the evaluation of the
1894 appropriateness of both the level and the quality of health care
1895 and health services provided to a patient, including, but not
1896 limited to, evaluation of the appropriateness of treatment,
1897 hospitalization, or office visits based on medically accepted
1898 standards. Such evaluation must be accomplished by means of a
1899 system that identifies the utilization of medical services based
1900 on practice parameters and protocols of treatment as provided
1901 for in this chapter ~~medically accepted standards as established~~
1902 ~~by medical consultants with qualifications similar to those~~
1903 ~~providing the care under review, and that refers patterns and~~
1904 ~~practices of overutilization to the agency.~~

1905 (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.--

1906 (a) Subject to the limitations specified elsewhere in this
1907 chapter, the employer shall furnish to the employee such
1908 medically necessary remedial treatment, care, and attendance for
1909 such period as the nature of the injury or the process of
1910 recovery may require, which is in accordance with established
1911 practice parameters and protocols of treatment as provided for
1912 in this chapter, including medicines, medical supplies, durable



1913 medical equipment, orthoses, prostheses, and other medically
1914 necessary apparatus. Remedial treatment, care, and attendance,
1915 including work-hardening programs or pain-management programs
1916 accredited by the Commission on Accreditation of Rehabilitation
1917 Facilities or Joint Commission on the Accreditation of Health
1918 Organizations or pain-management programs affiliated with
1919 medical schools, shall be considered as covered treatment only
1920 when such care is given based on a referral by a physician as
1921 defined in this chapter. ~~Each facility shall maintain outcome~~
1922 ~~data, including work status at discharges, total program~~
1923 ~~charges, total number of visits, and length of stay. The~~
1924 ~~department shall utilize such data and report to the President~~
1925 ~~of the Senate and the Speaker of the House of Representatives~~
1926 ~~regarding the efficacy and cost-effectiveness of such program,~~
1927 ~~no later than October 1, 1994.~~ Medically necessary treatment,
1928 care, and attendance does not include chiropractic services in
1929 excess of 24 ~~18~~ treatments or rendered 12 ~~8~~ weeks beyond the
1930 date of the initial chiropractic treatment, whichever comes
1931 first, unless the carrier authorizes additional treatment or the
1932 employee is catastrophically injured.

1933 (b) The employer shall provide appropriate professional or
1934 nonprofessional attendant care performed only at the direction
1935 and control of a physician when such care is medically
1936 necessary. The physician shall prescribe such care in writing.
1937 The employer or carrier shall not be responsible for such care
1938 until the prescription for attendant care is received by the
1939 employer and carrier, which shall specify the time periods for
1940 such care, the level of care required, and the type of



1941 assistance required. A prescription for attendant care shall not
1942 prescribe such care retroactively. The value of nonprofessional
1943 attendant care provided by a family member must be determined as
1944 follows:

1945 1. If the family member is not employed or if the family
1946 member is employed and is providing attendant care services
1947 during hours that he or she is not engaged in employment, the
1948 per-hour value equals the federal minimum hourly wage.

1949 2. If the family member is employed and elects to leave
1950 that employment to provide attendant or custodial care, the per-
1951 hour value of that care equals the per-hour value of the family
1952 member's former employment, not to exceed the per-hour value of
1953 such care available in the community at large. A family member
1954 or a combination of family members providing nonprofessional
1955 attendant care under this paragraph may not be compensated for
1956 more than a total of 12 hours per day.

1957 3. If the family member remains employed while providing
1958 attendant or custodial care, the per-hour value of that care
1959 equals the per-hour value of the family member's employment, not
1960 to exceed the per-hour value of such care available in the
1961 community at large.

1962 (c) If the employer fails to provide initial treatment or
1963 care required by this section after request by the injured
1964 employee, the employee may obtain such initial treatment at the
1965 expense of the employer, if the initial treatment or care is
1966 compensable and medically necessary and is in accordance with
1967 established practice parameters and protocols of treatment as
1968 provided for in this chapter. There must be a specific request



1969 for the initial treatment or care, and the employer or carrier
1970 must be given a reasonable time period within which to provide
1971 the initial treatment or care. However, the employee is not
1972 entitled to recover any amount personally expended for the
1973 initial treatment or care ~~service~~ unless he or she has requested
1974 the employer to furnish that initial treatment or service and
1975 the employer has failed, refused, or neglected to do so within a
1976 reasonable time or unless the nature of the injury requires such
1977 initial treatment, nursing, and services and the employer or his
1978 or her superintendent or foreman, having knowledge of the
1979 injury, has neglected to provide the initial treatment or care
1980 ~~service~~.

1981 (d) The carrier has the right to transfer the care of an
1982 injured employee from the attending health care provider if an
1983 independent medical examination determines that the employee is
1984 not making appropriate progress in recuperation.

1985 (e) Except in emergency situations and for treatment
1986 rendered by a managed care arrangement, after any initial
1987 examination and diagnosis by a physician providing remedial
1988 treatment, care, and attendance, and before a proposed course of
1989 medical treatment begins, each insurer shall review, in
1990 accordance with the requirements of this chapter, the proposed
1991 course of treatment, to determine whether such treatment would
1992 be recognized as reasonably prudent. The review must be in
1993 accordance with all applicable workers' compensation practice
1994 parameters and protocols of treatment established in accordance
1995 with this chapter. The insurer must accept any such proposed
1996 course of treatment unless the insurer notifies the physician of



1997 its specific objections to the proposed course of treatment by
1998 the close of the tenth business day after notification by the
1999 physician, or a supervised designee of the physician, of the
2000 proposed course of treatment.

2001 (f) Upon the written request of the employee, the carrier
2002 shall give the employee the opportunity for one change of
2003 physician during the course of treatment for any one accident.
2004 Upon the granting of a change of physician, the originally
2005 authorized physician in the same specialty as the changed
2006 physician shall become deauthorized upon written notification by
2007 the employer or carrier. The carrier shall authorize an
2008 alternative physician who shall not be professionally affiliated
2009 with the previous physician within 5 days after receipt of the
2010 request. If the carrier fails to provide a change of physician
2011 as requested by the employee, the employee may select the
2012 physician and such physician shall be considered authorized if
2013 the treatment being provided is compensable and medically
2014 necessary.

2015
2016 Failure of the carrier to timely comply with this subsection
2017 shall be a violation of this chapter and the carrier shall be
2018 subject to penalties as provided for in s. 440.525. ~~The employee~~
2019 ~~shall be entitled to select another physician from among not~~
2020 ~~fewer than three carrier-authorized physicians who are not~~
2021 ~~professionally affiliated.~~

2022 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

2023 (a) As a condition to eligibility for payment under this
2024 chapter, a health care provider who renders services must be a



2025 certified health care provider and must receive authorization
2026 from the carrier before providing treatment. This paragraph does
2027 not apply to emergency care. The agency shall adopt rules to
2028 implement the certification of health care providers.

2029 (b) A health care provider who renders emergency care must
2030 notify the carrier by the close of the third business day after
2031 it has rendered such care. If the emergency care results in
2032 admission of the employee to a health care facility, the health
2033 care provider must notify the carrier by telephone within 24
2034 hours after initial treatment. Emergency care is not compensable
2035 under this chapter unless the injury requiring emergency care
2036 arose as a result of a work-related accident. Pursuant to
2037 chapter 395, all licensed physicians and health care providers
2038 in this state shall be required to make their services available
2039 for emergency treatment of any employee eligible for workers'
2040 compensation benefits. To refuse to make such treatment
2041 available is cause for revocation of a license.

2042 (c) A health care provider may not refer the employee to
2043 another health care provider, diagnostic facility, therapy
2044 center, or other facility without prior authorization from the
2045 carrier, except when emergency care is rendered. Any referral
2046 must be to a health care provider that has been certified by the
2047 agency, unless the referral is for emergency treatment, and the
2048 referral must be made in accordance with practice parameters and
2049 protocols of treatment as provided for in this chapter.

2050 (d) A carrier must respond, by telephone or in writing, to
2051 a request for authorization from an authorized health care
2052 provider by the close of the third business day after receipt of



2053 the request. A carrier who fails to respond to a written request
2054 for authorization for referral for medical treatment by the
2055 close of the third business day after receipt of the request
2056 consents to the medical necessity for such treatment. All such
2057 requests must be made to the carrier. Notice to the carrier does
2058 not include notice to the employer.

2059 (e) Carriers shall adopt procedures for receiving,
2060 reviewing, documenting, and responding to requests for
2061 authorization. Such procedures shall be for a health care
2062 provider certified under this section.

2063 (f) By accepting payment under this chapter for treatment
2064 rendered to an injured employee, a health care provider consents
2065 to the jurisdiction of the agency as set forth in subsection
2066 (11) and to the submission of all records and other information
2067 concerning such treatment to the agency in connection with a
2068 reimbursement dispute, audit, or review as provided by this
2069 section. The health care provider must further agree to comply
2070 with any decision of the agency rendered under this section.

2071 (g) The employee is not liable for payment for medical
2072 treatment or services provided pursuant to this section except
2073 as otherwise provided in this section.

2074 (h) The provisions of s. 456.053 are applicable to
2075 referrals among health care providers, as defined in subsection
2076 (1), treating injured workers.

2077 (i) Notwithstanding paragraph (d), a claim for specialist
2078 consultations, surgical operations, physiotherapeutic or
2079 occupational therapy procedures, X-ray examinations, or special
2080 diagnostic laboratory tests that cost more than \$1,000 and other



2081 specialty services that the agency identifies by rule is not
 2082 valid and reimbursable unless the services have been expressly
 2083 authorized by the carrier, or unless the carrier has failed to
 2084 respond within 10 days to a written request for authorization,
 2085 or unless emergency care is required. The insurer shall ~~not~~
 2086 ~~refuse to~~ authorize such consultation or procedure unless the
 2087 health care provider or facility is not authorized or certified,
 2088 unless such treatment is not in accordance with practice
 2089 parameters and protocols of treatment established in this
 2090 chapter, or unless a judge of compensation claims an expert
 2091 ~~medical adviser~~ has determined that the consultation or
 2092 procedure is not medically necessary, not in accordance with the
 2093 practice parameters and protocols of treatment established in
 2094 this chapter, or otherwise not compensable under this chapter.
 2095 Authorization of a treatment plan does not constitute express
 2096 authorization for purposes of this section, except to the extent
 2097 the carrier provides otherwise in its authorization procedures.
 2098 This paragraph does not limit the carrier's obligation to
 2099 identify and disallow overutilization or billing errors.

2100 (j) Notwithstanding anything in this chapter to the
 2101 contrary, a sick or injured employee shall be entitled, at all
 2102 times, to free, full, and absolute choice in the selection of
 2103 the pharmacy or pharmacist dispensing and filling prescriptions
 2104 for medicines required under this chapter. It is expressly
 2105 forbidden for the agency, an employer, or a carrier, or any
 2106 agent or representative of the agency, an employer, or a carrier
 2107 to select the pharmacy or pharmacist which the sick or injured
 2108 employee must use; condition coverage or payment on the basis of



2109 | the pharmacy or pharmacist utilized; or to otherwise interfere
2110 | in the selection by the sick or injured employee of a pharmacy
2111 | or pharmacist.

2112 | (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
2113 | DEPARTMENT.--

2114 | (a) Any health care provider providing necessary remedial
2115 | treatment, care, or attendance to any injured worker shall
2116 | submit treatment reports to the carrier in a format prescribed
2117 | by the department ~~in consultation with the agency~~. A claim for
2118 | medical or surgical treatment is not valid or enforceable
2119 | against such employer or employee, unless, by the close of the
2120 | third business day following the first treatment, the physician
2121 | providing the treatment furnishes to the employer or carrier a
2122 | preliminary notice of the injury and treatment in a format ~~on~~
2123 | ~~forms~~ prescribed by the department ~~in consultation with the~~
2124 | ~~agency~~ and, within 15 days thereafter, furnishes to the employer
2125 | or carrier a complete report, and subsequent thereto furnishes
2126 | progress reports, if requested by the employer or insurance
2127 | carrier, at intervals of not less than 3 weeks apart or at less
2128 | frequent intervals if requested in a format ~~on forms~~ prescribed
2129 | by the department ~~in consultation with the agency~~.

2130 | (b) Upon the request of the department ~~or agency~~, each
2131 | medical report or bill obtained or received by the employer, the
2132 | carrier, or the injured employee, or the attorney for the
2133 | employer, carrier, or injured employee, with respect to the
2134 | remedial treatment, care, and attendance of the injured
2135 | employee, including any report of an examination, diagnosis, or
2136 | disability evaluation, must be produced by the health care



2137 provider to ~~filed with~~ the department ~~or agency~~ pursuant to
2138 rules adopted by the department ~~in consultation with the agency~~.
2139 The health care provider shall also furnish to the injured
2140 employee or ~~to~~ his or her attorney and the employer or carrier
2141 or its attorney, on demand, a copy of his or her office chart,
2142 records, and reports, and may charge the injured employee no
2143 more than 50 cents per page for copying the records and the
2144 actual direct cost to the health care provider or health care
2145 facility for X rays, microfilm, or other nonpaper records an
2146 ~~amount authorized by the department for the copies~~. Each such
2147 health care provider shall provide to the ~~agency or~~ department
2148 information about the remedial treatment, care, and attendance
2149 which the ~~agency or~~ department reasonably requests.

2150 (c) It is the policy for the administration of the
2151 workers' compensation system that there shall be reasonable
2152 access to medical information by all parties to facilitate the
2153 self-executing features of the law. An employee who reports an
2154 injury or illness alleged to be work-related waives any
2155 physician-patient privilege with respect to any condition or
2156 complaint reasonably related to the condition for which the
2157 employee claims compensation. Notwithstanding the limitations in
2158 s. 456.057 and subject to the limitations in s. 381.004, upon
2159 the request of the employer, the carrier, an authorized
2160 qualified rehabilitation provider, or the attorney for the
2161 employer or carrier, the medical records, reports, and
2162 information of an injured employee relevant to the particular
2163 injury or illness for which compensation is sought must be
2164 furnished to those persons and the medical condition of the



2165 injured employee must be discussed with those persons, if the
2166 records and the discussions are restricted to conditions
2167 relating to the workplace injury. Release of medical information
2168 by the health care provider or other physician does not require
2169 the authorization of the injured employee. If medical records,
2170 reports, and information of an injured employee are sought from
2171 health care providers who are not subject to the jurisdiction of
2172 the state, the injured employee shall sign an authorization
2173 allowing for the employer or carrier to obtain the medical
2174 records, reports, or information. Any such discussions or
2175 release of information may be held before or after the filing of
2176 a claim or petition for benefits without the knowledge, consent,
2177 or presence of any other party or his or her agent or
2178 representative. A health care provider who willfully refuses to
2179 provide medical records or to discuss the medical condition of
2180 the injured employee, after a reasonable request is made for
2181 such information pursuant to this subsection, shall be subject
2182 by the department ~~agency~~ to one or more of the penalties set
2183 forth in paragraph (8)(b). The department may adopt rules to
2184 carry out this subsection.

2185 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

2186 (a) In any dispute concerning overutilization, medical
2187 benefits, compensability, or disability under this chapter, the
2188 carrier or the employee may select an independent medical
2189 examiner. If the parties agree, the examiner may be a health
2190 care provider treating or providing other care to the employee.
2191 An independent medical examiner may not render an opinion
2192 outside his or her area of expertise, as demonstrated by



2193 licensure and applicable practice parameters. The employer and
2194 employee shall be entitled to only one independent medical
2195 examination per accident and not one independent medical
2196 examination per medical specialty. The party requesting and
2197 selecting the independent medical examination shall be
2198 responsible for all expenses associated with said examination,
2199 including, but not limited to, medically necessary diagnostic
2200 testing performed and physician or medical care provider fees
2201 for the evaluation. The party selecting the independent medical
2202 examination shall identify the choice of the independent medical
2203 examiner to all other parties within 15 days after the date the
2204 independent medical examination is to take place. Failure to
2205 timely provide such notification shall preclude the requesting
2206 party from submitting the findings of such independent medical
2207 examiner in a proceeding before a judge of compensation claims.
2208 The independent medical examiner may not provide followup care
2209 if such recommendation for care is found to be medically
2210 necessary. If the employee prevails in a medical dispute as
2211 determined in an order by a judge of compensation claims or if
2212 benefits are paid or treatment provided after the employee has
2213 obtained an independent medical examination based upon the
2214 examiner's findings, the costs of such examination shall be paid
2215 by the employer or carrier.

2216 (b) Each party is bound by his or her selection of an
2217 independent medical examiner, including the selection of the
2218 independent medical examiner in accordance with s. 440.134 and
2219 the opinions of such independent medical examiner. Each party
2220 and is entitled to an alternate examiner only if:



2221 1. The examiner is not qualified to render an opinion upon
2222 an aspect of the employee's illness or injury which is material
2223 to the claim or petition for benefits;

2224 2. The examiner ceases to practice in the specialty
2225 relevant to the employee's condition;

2226 3. The examiner is unavailable due to injury, death, or
2227 relocation outside a reasonably accessible geographic area; or

2228 4. The parties agree to an alternate examiner.
2229

2230 ~~Any party may request, or a judge of compensation claims may~~
2231 ~~require, designation of an agency medical advisor as an~~
2232 ~~independent medical examiner. The opinion of the advisors acting~~
2233 ~~as examiners shall not be afforded the presumption set forth in~~
2234 ~~paragraph (9)(c).~~

2235 (c) The carrier may, at its election, contact the claimant
2236 directly to schedule a reasonable time for an independent
2237 medical examination. The carrier must confirm the scheduling
2238 agreement in writing with the claimant and the ~~within 5 days and~~
2239 ~~notify~~ claimant's counsel, if any, at least 7 days before the
2240 date upon which the independent medical examination is scheduled
2241 to occur. An attorney representing a claimant is not authorized
2242 to schedule the self-insured employer's or carrier's independent
2243 medical evaluations under this subsection. Neither the self-
2244 insured employer nor the carrier shall be responsible for
2245 scheduling any independent medical examination other than an
2246 employer or carrier independent medical examination.

2247 (d) If the employee fails to appear for the independent
2248 medical examination scheduled by the employer or carrier without



2249 good cause and fails to advise the physician at least 24 hours
2250 before the scheduled date for the examination that he or she
2251 cannot appear, the employee is barred from recovering
2252 compensation for any period during which he or she has refused
2253 to submit to such examination. Further, the employee shall
2254 reimburse the employer or carrier 50 percent of the physician's
2255 cancellation or no-show fee unless the employer or carrier that
2256 schedules the examination fails to timely provide to the
2257 employee a written confirmation of the date of the examination
2258 pursuant to paragraph (c) which includes an explanation of why
2259 he or she failed to appear. The employee may appeal to a judge
2260 of compensation claims for reimbursement when the employer or
2261 carrier withholds payment in excess of the authority granted by
2262 this section.

2263 (e) No medical opinion other than the opinion of a medical
2264 advisor appointed by the judge of compensation claims or the
2265 department ~~agency~~, an independent medical examiner, or an
2266 authorized treating provider is admissible in proceedings before
2267 the judges of compensation claims.

2268 (f) Attorney's fees incurred by an injured employee in
2269 connection with delay of or opposition to an independent medical
2270 examination, including, but not limited to, motions for
2271 protective orders, are not recoverable under this chapter.

2272 (g) When a medical dispute arises, the parties may
2273 mutually agree to refer the employee to a licensed physician
2274 specializing in the diagnosis and treatment of the medical
2275 condition at issue for an independent medical examination and
2276 report. Such medical examination shall be referred to as a



2277 "consensus independent medical examination." The findings and
2278 conclusions of such mutually agreed upon consensus independent
2279 medical examination shall be binding on the parties and shall
2280 constitute resolution of the medical dispute addressed in the
2281 independent consensus medical examination and in any proceeding.
2282 Agreement by the parties to a consensus independent medical
2283 examination shall not affect the employer's, carrier's, or
2284 employee's entitlement to one independent medical examination
2285 per accident as provided for in this subsection.

2286 (6) UTILIZATION REVIEW.--Carriers shall review all bills,
2287 invoices, and other claims for payment submitted by health care
2288 providers in order to identify overutilization and billing
2289 errors, including compliance with practice parameters and
2290 protocols of treatment established in accordance with this
2291 chapter, and may hire peer review consultants or conduct
2292 independent medical evaluations. Such consultants, including
2293 peer review organizations, are immune from liability in the
2294 execution of their functions under this subsection to the extent
2295 provided in s. 766.101. If a carrier finds that overutilization
2296 of medical services or a billing error has occurred, or there is
2297 a violation of the practice parameters and protocols of
2298 treatment established in accordance with this chapter, it must
2299 disallow or adjust payment for such services or error without
2300 order of a judge of compensation claims or the agency, if the
2301 carrier, in making its determination, has complied with this
2302 section and rules adopted by the agency.

2303 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--



2304 (a) Any health care provider, carrier, or employer who
2305 elects to contest the disallowance or adjustment of payment by a
2306 carrier under subsection (6) must, within 30 days after receipt
2307 of notice of disallowance or adjustment of payment, petition the
2308 agency to resolve the dispute. The petitioner must serve a copy
2309 of the petition on the carrier and on all affected parties by
2310 certified mail. The petition must be accompanied by all
2311 documents and records that support the allegations contained in
2312 the petition. Failure of a petitioner to submit such
2313 documentation to the agency results in dismissal of the
2314 petition.

2315 (b) The carrier must submit to the agency within 10 days
2316 after receipt of the petition all documentation substantiating
2317 the carrier's disallowance or adjustment. Failure of the carrier
2318 to timely submit the requested documentation to the agency
2319 within 10 days constitutes a waiver of all objections to the
2320 petition.

2321 (c) Within 60 days after receipt of all documentation, the
2322 agency must provide to the petitioner, the carrier, and the
2323 affected parties a written determination of whether the carrier
2324 properly adjusted or disallowed payment. The agency must be
2325 guided by standards and policies set forth in this chapter,
2326 including all applicable reimbursement schedules, practice
2327 parameters, and protocols of treatment, in rendering its
2328 determination.

2329 (d) If the agency finds an improper disallowance or
2330 improper adjustment of payment by an insurer, the insurer shall
2331 reimburse the health care provider, facility, insurer, or



2332 employer within 30 days, subject to the penalties provided in
2333 this subsection.

2334 (e) The agency shall adopt rules to carry out this
2335 subsection. The rules may include provisions for consolidating
2336 petitions filed by a petitioner and expanding the timetable for
2337 rendering a determination upon a consolidated petition.

2338 (f) Any carrier that engages in a pattern or practice of
2339 arbitrarily or unreasonably disallowing or reducing payments to
2340 health care providers may be subject to one or more of the
2341 following penalties imposed by the agency:

2342 1. Repayment of the appropriate amount to the health care
2343 provider.

2344 2. An administrative fine assessed by the agency in an
2345 amount not to exceed \$5,000 per instance of improperly
2346 disallowing or reducing payments.

2347 3. Award of the health care provider's costs, including a
2348 reasonable attorney's fee, for prosecuting the petition.

2349 (8) PATTERN OR PRACTICE OF OVERUTILIZATION.--

2350 (a) Carriers must report to the agency all instances of
2351 overutilization including, but not limited to, all instances in
2352 which the carrier disallows or adjusts payment or a
2353 determination has been made that the provided or recommended
2354 treatment is in excess of the practice parameters and protocols
2355 of treatment established in this chapter. The agency shall
2356 determine whether a pattern or practice of overutilization
2357 exists.

2358 (b) If the agency determines that a health care provider
2359 has engaged in a pattern or practice of overutilization or a



2360 violation of this chapter or rules adopted by the agency,
 2361 including a pattern or practice of providing treatment in excess
 2362 of the practice parameters or protocols of treatment, it may
 2363 impose one or more of the following penalties:

- 2364 1. An order of the agency barring the provider from
 2365 payment under this chapter;
- 2366 2. Deauthorization of care under review;
- 2367 3. Denial of payment for care rendered in the future;
- 2368 4. Decertification of a health care provider certified as
 2369 an expert medical advisor under subsection (9) or of a
 2370 rehabilitation provider certified under s. 440.49;
- 2371 5. An administrative fine assessed by the agency in an
 2372 amount not to exceed \$5,000 per instance of overutilization or
 2373 violation; and
- 2374 6. Notification of and review by the appropriate licensing
 2375 authority pursuant to s. 440.106(3).

2376 (9) EXPERT MEDICAL ADVISORS.--

2377 (a) The agency shall certify expert medical advisors in
 2378 each specialty to assist the agency and the judges of
 2379 compensation claims within the advisor's area of expertise as
 2380 provided in this section. The agency shall, in a manner
 2381 prescribed by rule, in certifying, recertifying, or decertifying
 2382 an expert medical advisor, consider the qualifications,
 2383 training, impartiality, and commitment of the health care
 2384 provider to the provision of quality medical care at a
 2385 reasonable cost. As a prerequisite for certification or
 2386 recertification, the agency shall require, at a minimum, that
 2387 an expert medical advisor have specialized workers' compensation



2388 training or experience under the workers' compensation system of
2389 this state and board certification or board eligibility.

2390 (b) The agency shall contract with one or more entities
2391 that employ, contract with, or otherwise secure ~~or employ~~ expert
2392 medical advisors to provide peer review or expert medical
2393 consultation, opinions, and testimony to the agency or to a
2394 judge of compensation claims in connection with resolving
2395 disputes relating to reimbursement, differing opinions of health
2396 care providers, and health care and physician services rendered
2397 under this chapter, including utilization issues. The agency
2398 shall by rule establish the qualifications of expert medical
2399 advisors, including training and experience in the workers'
2400 compensation system in the state and the expert medical
2401 advisor's knowledge of and commitment to the standards of care,
2402 practice parameters, and protocols established pursuant to this
2403 chapter. Expert medical advisors contracting with the agency
2404 shall, as a term of such contract, agree to provide consultation
2405 or services in accordance with the timetables set forth in this
2406 chapter and to abide by rules adopted by the agency, including,
2407 but not limited to, rules pertaining to procedures for review of
2408 the services rendered by health care providers and preparation
2409 of reports and testimony or recommendations for submission to
2410 the agency or the judge of compensation claims.

2411 (c) If there is disagreement in the opinions of the health
2412 care providers, if two health care providers disagree on medical
2413 evidence supporting the employee's complaints or the need for
2414 additional medical treatment, or if two health care providers
2415 disagree that the employee is able to return to work, the agency



2416 may, and the judge of compensation claims shall, upon his or her
2417 own motion or within 15 days after receipt of a written request
2418 by either the injured employee, the employer, or the carrier,
2419 order the injured employee to be evaluated by an expert medical
2420 advisor. The opinion of the expert medical advisor is presumed
2421 to be correct unless there is clear and convincing evidence to
2422 the contrary as determined by the judge of compensation claims.
2423 The expert medical advisor appointed to conduct the evaluation
2424 shall have free and complete access to the medical records of
2425 the employee. An employee who fails to report to and cooperate
2426 with such evaluation forfeits entitlement to compensation during
2427 the period of failure to report or cooperate.

2428 (d) The expert medical advisor must complete his or her
2429 evaluation and issue his or her report to the agency or to the
2430 judge of compensation claims within 15 ~~45~~ days after receipt of
2431 all medical records. The expert medical advisor must furnish a
2432 copy of the report to the carrier and to the employee.

2433 (e) An expert medical advisor is not liable under any
2434 theory of recovery for evaluations performed under this section
2435 without a showing of fraud or malice. The protections of s.
2436 766.101 apply to any officer, employee, or agent of the agency
2437 and to any officer, employee, or agent of any entity with which
2438 the agency has contracted under this subsection.

2439 (f) If the agency or a judge of compensation claims orders
2440 ~~determines that~~ the services of a certified expert medical
2441 advisor ~~are required~~ to resolve a dispute under this section,
2442 the party requesting such examination ~~carrier~~ must compensate
2443 the advisor for his or her time in accordance with a schedule



2444 adopted by the agency. If the employee prevails in a dispute as
2445 determined in an order by a judge of compensation claims based
2446 upon the expert medical advisor's findings, the employer or
2447 carrier shall pay for the costs of such expert medical advisor.
2448 If a judge of compensation claims, upon his or her motion, finds
2449 that an expert medical advisor is needed to resolve the dispute,
2450 the carrier must compensate the advisor for his or her time in
2451 accordance with a schedule adopted by the agency. The agency may
2452 assess a penalty not to exceed \$500 against any carrier that
2453 fails to timely compensate an advisor in accordance with this
2454 section.

2455 (10) WITNESS FEES.--Any health care provider who gives a
2456 deposition shall be allowed a witness fee. The amount charged by
2457 the witness may not exceed \$200 per hour. An expert witness who
2458 has never provided direct professional services to a party but
2459 has merely reviewed medical records and provided an expert
2460 opinion or has provided only direct professional services that
2461 were unrelated to the workers' compensation case may not be
2462 allowed a witness fee in excess of \$200 per day.

2463 (11) AUDITS BY AGENCY FOR HEALTH CARE ADMINISTRATION AND
2464 THE DEPARTMENT OF INSURANCE; JURISDICTION.--

2465 (a) The Agency for Health Care Administration may
2466 investigate health care providers to determine whether providers
2467 are complying with this chapter and with rules adopted by the
2468 agency, whether the providers are engaging in overutilization,
2469 ~~and~~ whether providers are engaging in improper billing
2470 practices, and whether providers are adhering to practice
2471 parameters and protocols established in accordance with this



2472 chapter. If the agency finds that a health care provider has
2473 improperly billed, overutilized, or failed to comply with agency
2474 rules or the requirements of this chapter, including, but not
2475 limited to, practice parameters and protocols established in
2476 accordance with this chapter, it must notify the provider of its
2477 findings and may determine that the health care provider may not
2478 receive payment from the carrier or may impose penalties as set
2479 forth in subsection (8) or other sections of this chapter. If
2480 the health care provider has received payment from a carrier for
2481 services that were improperly billed, that constitute
2482 overutilization, or that were outside practice parameters or
2483 protocols established in accordance with this chapter ~~or for~~
2484 ~~overutilization~~, it must return those payments to the carrier.
2485 The agency may assess a penalty not to exceed \$500 for each
2486 overpayment that is not refunded within 30 days after
2487 notification of overpayment by the agency or carrier.

2488 (b) The department shall monitor and audit carriers as
2489 provided in s. 624.3161, to determine if medical bills are paid
2490 in accordance with this section and department rules. Any
2491 employer, if self-insured, or carrier found by the division not
2492 to be within 90 percent compliance as to the payment of medical
2493 bills after July 1, 1994, must be assessed a fine not to exceed
2494 1 percent of the prior year's assessment levied against such
2495 entity under s. 440.51 for every quarter in which the entity
2496 fails to attain 90-percent compliance. The department shall fine
2497 or otherwise discipline an employer or carrier, pursuant to this
2498 chapter, the insurance code, or rules adopted by the department,
2499 for each late payment of compensation that is below the minimum



2500 95-percent ~~90-percent~~ performance standard. Any carrier that is
2501 found to be not in compliance in subsequent consecutive quarters
2502 must implement a medical-bill review program approved by the
2503 division, and the carrier is subject to disciplinary action by
2504 the Department of Insurance.

2505 (c) The agency has exclusive jurisdiction to decide any
2506 matters concerning reimbursement, to resolve any overutilization
2507 dispute under subsection (7), and to decide any question
2508 concerning overutilization under subsection (8), which question
2509 or dispute arises after January 1, 1994.

2510 (d) The following agency actions do not constitute agency
2511 action subject to review under ss. 120.569 and 120.57 and do not
2512 constitute actions subject to s. 120.56: referral by the entity
2513 responsible for utilization review; a decision by the agency to
2514 refer a matter to a peer review committee; establishment by a
2515 health care provider or entity of procedures by which a peer
2516 review committee reviews the rendering of health care services;
2517 and the review proceedings, report, and recommendation of the
2518 peer review committee.

2519 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
2520 REIMBURSEMENT ALLOWANCES.--

2521 (a) A three-member panel is created, consisting of the
2522 Insurance Commissioner, or the Insurance Commissioner's
2523 designee, and two members to be appointed by the Governor,
2524 subject to confirmation by the Senate, one member who, on
2525 account of present or previous vocation, employment, or
2526 affiliation, shall be classified as a representative of
2527 employers, the other member who, on account of previous



2528 vocation, employment, or affiliation, shall be classified as a
2529 representative of employees. The panel shall determine statewide
2530 schedules of maximum reimbursement allowances for medically
2531 necessary treatment, care, and attendance provided by
2532 physicians, hospitals, ambulatory surgical centers, work-
2533 hardening programs, pain programs, and durable medical
2534 equipment. The maximum reimbursement allowances for inpatient
2535 hospital care shall be based on a schedule of per diem rates, to
2536 be approved by the three-member panel no later than March 1,
2537 1994, to be used in conjunction with a precertification manual
2538 as determined by the department, including maximum hours in
2539 which an outpatient may remain in observation status, which
2540 shall not exceed 23 hours ~~agency~~. All compensable charges for
2541 hospital outpatient care shall be reimbursed at 75 percent of
2542 usual and customary charges, except as otherwise provided by
2543 this subsection. ~~Until the three-member panel approves a~~
2544 ~~schedule of per diem rates for inpatient hospital care and it~~
2545 ~~becomes effective, all compensable charges for hospital~~
2546 ~~inpatient care must be reimbursed at 75 percent of their usual~~
2547 ~~and customary charges~~. Annually, the three-member panel shall
2548 adopt schedules of maximum reimbursement allowances for
2549 physicians, hospital inpatient care, hospital outpatient care,
2550 ambulatory surgical centers, work-hardening programs, and pain
2551 programs. ~~However, the maximum percentage of increase in the~~
2552 ~~individual reimbursement allowance may not exceed the percentage~~
2553 ~~of increase in the Consumer Price Index for the previous year~~.
2554 An individual physician, hospital, ambulatory surgical center,
2555 pain program, or work-hardening program shall be reimbursed



2556 either ~~the usual and customary charge for treatment, care, and~~
2557 ~~attendance,~~ the agreed-upon contract price, or the maximum
2558 reimbursement allowance in the appropriate schedule, ~~whichever~~
2559 ~~is less.~~

2560 (b) It is the intent of the Legislature to increase the
2561 schedule of maximum reimbursement allowances for selected
2562 physicians effective January 1, 2004, and to pay for the
2563 increases through reductions in payments to hospitals. Revisions
2564 developed pursuant to this subsection are limited to the
2565 following:

2566 1. Payments for outpatient physical, occupational, and
2567 speech therapy provided by hospitals shall be reduced to the
2568 schedule of maximum reimbursement allowances for these services
2569 which applies to nonhospital providers.

2570 2. Payments for scheduled outpatient nonemergency
2571 radiological and clinical laboratory services that are not
2572 provided in conjunction with a surgical procedure shall be
2573 reduced to the schedule of maximum reimbursement allowances for
2574 these services which applies to nonhospital providers.

2575 3. Outpatient reimbursement for scheduled surgeries shall
2576 be reduced from 75 percent of charges to 60 percent of charges.

2577 4. Maximum reimbursement for a physician licensed under
2578 chapter 458 or chapter 459 shall be increased to 110 percent of
2579 the reimbursement allowed by Medicare, using appropriate codes
2580 and modifiers or the medical reimbursement level adopted by the
2581 three-member panel as of January 1, 2003, whichever is greater.

2582 5. Maximum reimbursement for surgical procedures shall be
2583 increased to 140 percent of the reimbursement allowed by



2584 Medicare or the medical reimbursement level adopted by the
2585 three-member panel as of January 1, 2003, whichever is greater.

2586 (c)(b) As to reimbursement for a prescription medication,
2587 the reimbursement amount for a prescription shall be the average
2588 wholesale price ~~times 1.2~~ plus \$4.18 for the dispensing fee,
2589 except where the carrier has contracted for a lower amount. Fees
2590 for pharmaceuticals and pharmaceutical services shall be
2591 reimbursable at the applicable fee schedule amount. Where the
2592 employer or carrier has contracted for such services and the
2593 employee elects to obtain them through a provider not a party to
2594 the contract, the carrier shall reimburse at the schedule,
2595 negotiated, or contract price, whichever is lower. No such
2596 contract shall rely on a provider that is not reasonably
2597 accessible to the employee.

2598 (d)(e) Reimbursement for all fees and other charges for
2599 such treatment, care, and attendance, including treatment, care,
2600 and attendance provided by any hospital or other health care
2601 provider, ambulatory surgical center, work-hardening program, or
2602 pain program, must not exceed the amounts provided by the
2603 uniform schedule of maximum reimbursement allowances as
2604 determined by the panel or as otherwise provided in this
2605 section. This subsection also applies to independent medical
2606 examinations performed by health care providers under this
2607 chapter. ~~Until the three-member panel approves a uniform~~
2608 ~~schedule of maximum reimbursement allowances and it becomes~~
2609 ~~effective, all compensable charges for treatment, care, and~~
2610 ~~attendance provided by physicians, ambulatory surgical centers,~~
2611 ~~work-hardening programs, or pain programs shall be reimbursed at~~



2612 ~~the lowest maximum reimbursement allowance across all 1992~~
2613 ~~schedules of maximum reimbursement allowances for the services~~
2614 ~~provided regardless of the place of service.~~ In determining the
2615 uniform schedule, the panel shall first approve the data which
2616 it finds representative of prevailing charges in the state for
2617 similar treatment, care, and attendance of injured persons. Each
2618 health care provider, health care facility, ambulatory surgical
2619 center, work-hardening program, or pain program receiving
2620 workers' compensation payments shall maintain records verifying
2621 their usual charges. In establishing the uniform schedule of
2622 maximum reimbursement allowances, the panel must consider:

- 2623 1. The levels of reimbursement for similar treatment,
2624 care, and attendance made by other health care programs or
2625 third-party providers;
- 2626 2. The impact upon cost to employers for providing a level
2627 of reimbursement for treatment, care, and attendance which will
2628 ensure the availability of treatment, care, and attendance
2629 required by injured workers;
- 2630 3. The financial impact of the reimbursement allowances
2631 upon health care providers and health care facilities, including
2632 trauma centers as defined in s. 395.4001, and its effect upon
2633 their ability to make available to injured workers such
2634 medically necessary remedial treatment, care, and attendance.
2635 The uniform schedule of maximum reimbursement allowances must be
2636 reasonable, must promote health care cost containment and
2637 efficiency with respect to the workers' compensation health care
2638 delivery system, and must be sufficient to ensure availability



2639 of such medically necessary remedial treatment, care, and
2640 attendance to injured workers; and

2641 4. The most recent average maximum allowable rate of
2642 increase for hospitals determined by the Health Care Board under
2643 chapter 408.

2644 (e)~~(d)~~ In addition to establishing the uniform schedule of
2645 maximum reimbursement allowances, the panel shall:

2646 1. Take testimony, receive records, and collect data to
2647 evaluate the adequacy of the workers' compensation fee schedule,
2648 nationally recognized fee schedules and alternative methods of
2649 reimbursement to certified health care providers and health care
2650 facilities for inpatient and outpatient treatment and care.

2651 2. Survey certified health care providers and health care
2652 facilities to determine the availability and accessibility of
2653 workers' compensation health care delivery systems for injured
2654 workers.

2655 3. Survey carriers to determine the estimated impact on
2656 carrier costs and workers' compensation premium rates by
2657 implementing changes to the carrier reimbursement schedule or
2658 implementing alternative reimbursement methods.

2659 4. Submit recommendations on or before January 1, 2003,
2660 and biennially thereafter, to the President of the Senate and
2661 the Speaker of the House of Representatives on methods to
2662 improve the workers' compensation health care delivery system.

2663
2664 The division shall provide data to the panel, including but not
2665 limited to, utilization trends in the workers' compensation
2666 health care delivery system. The division shall provide the



2667 panel with an annual report regarding the resolution of medical
2668 reimbursement disputes and any actions pursuant to s. 440.13(8).
2669 The division shall provide administrative support and service to
2670 the panel to the extent requested by the panel.

2671 (13) REMOVAL OF PHYSICIANS FROM LISTS OF THOSE AUTHORIZED
2672 TO RENDER MEDICAL CARE.--The agency shall remove from the list
2673 of physicians or facilities authorized to provide remedial
2674 treatment, care, and attendance under this chapter the name of
2675 any physician or facility found after reasonable investigation
2676 to have:

2677 (a) Engaged in professional or other misconduct or
2678 incompetency in connection with medical services rendered under
2679 this chapter;

2680 (b) Exceeded the limits of his or her or its professional
2681 competence in rendering medical care under this chapter, or to
2682 have made materially false statements regarding his or her or
2683 its qualifications in his or her application;

2684 (c) Failed to transmit copies of medical reports to the
2685 employer or carrier, or failed to submit full and truthful
2686 medical reports of all his or her or its findings to the
2687 employer or carrier as required under this chapter;

2688 (d) Solicited, or employed another to solicit for himself
2689 or herself or itself or for another, professional treatment,
2690 examination, or care of an injured employee in connection with
2691 any claim under this chapter;

2692 (e) Refused to appear before, or to answer upon request
2693 of, the agency or any duly authorized officer of the state, any
2694 legal question, or to produce any relevant book or paper



2695 concerning his or her conduct under any authorization granted to
2696 him or her under this chapter;

2697 (f) Self-referred in violation of this chapter or other
2698 laws of this state; or

2699 (g) Engaged in a pattern of practice of overutilization or
2700 a violation of this chapter or rules adopted by the agency,
2701 including failure to adhere to practice parameters and protocols
2702 established in accordance with this chapter.

2703 (14) PAYMENT OF MEDICAL FEES.--

2704 (a) Except for emergency care treatment, fees for medical
2705 services are payable only to a health care provider certified
2706 and authorized to render remedial treatment, care, or attendance
2707 under this chapter. Carriers shall pay, disallow, or deny
2708 payment to health care providers in the manner and at times set
2709 forth in this chapter. A health care provider may not collect or
2710 receive a fee from an injured employee within this state, except
2711 as otherwise provided by this chapter. Such providers have
2712 recourse against the employer or carrier for payment for
2713 services rendered in accordance with this chapter. Payment to
2714 health care providers or physicians shall be subject to the
2715 medical fee schedule and applicable practice parameters and
2716 protocols, regardless of whether the health care provider or
2717 claimant is asserting that the payment should be made.

2718 (b) Fees charged for remedial treatment, care, and
2719 attendance, except for independent medical examinations and
2720 consensus independent medical examinations, may not exceed the
2721 applicable fee schedules adopted under this chapter and
2722 department rule. Notwithstanding any other provision in this



2723 chapter, if a physician or health care provider specifically
2724 agrees in writing to follow identified procedures aimed at
2725 providing quality medical care to injured workers at reasonable
2726 costs, deviations from established fee schedules shall be
2727 permitted. Written agreements warranting deviations may include,
2728 but are not limited to, the timely scheduling of appointments
2729 for injured workers, participating in return-to-work programs
2730 with injured workers' employers, expediting the reporting of
2731 treatments provided to injured workers, and agreeing to
2732 continuing education, utilization review, quality assurance,
2733 precertification, and case management systems that are designed
2734 to provide needed treatment for injured workers.

2735 (c) Notwithstanding any other provision of this chapter,
2736 following overall maximum medical improvement from an injury
2737 compensable under this chapter, the employee is obligated to pay
2738 a copayment of \$10 per visit for medical services. The copayment
2739 shall not apply to emergency care provided to the employee.

2740 (15) PRACTICE PARAMETERS.--The practice parameters and
2741 protocols mandated under this chapter shall be the practice
2742 parameters and protocols adopted by the United States Agency for
2743 Healthcare Research and Quality in effect on January 1, 2003.

2744 ~~(a) The Agency for Health Care Administration, in~~
2745 ~~conjunction with the department and appropriate health~~
2746 ~~professional associations and health-related organizations shall~~
2747 ~~develop and may adopt by rule scientifically sound practice~~
2748 ~~parameters for medical procedures relevant to workers'~~
2749 ~~compensation claimants. Practice parameters developed under this~~
2750 ~~section must focus on identifying effective remedial treatments~~



2751 ~~and promoting the appropriate utilization of health care~~
2752 ~~resources. Priority must be given to those procedures that~~
2753 ~~involve the greatest utilization of resources either because~~
2754 ~~they are the most costly or because they are the most frequently~~
2755 ~~performed. Practice parameters for treatment of the 10 top~~
2756 ~~procedures associated with workers' compensation injuries~~
2757 ~~including the remedial treatment of lower back injuries must be~~
2758 ~~developed by December 31, 1994.~~

2759 ~~(b) The guidelines may be initially based on guidelines~~
2760 ~~prepared by nationally recognized health care institutions and~~
2761 ~~professional organizations but should be tailored to meet the~~
2762 ~~workers' compensation goal of returning employees to full~~
2763 ~~employment as quickly as medically possible, taking into~~
2764 ~~consideration outcomes data collected from managed care~~
2765 ~~providers and any other inpatient and outpatient facilities~~
2766 ~~serving workers' compensation claimants.~~

2767 ~~(c) Procedures must be instituted which provide for the~~
2768 ~~periodic review and revision of practice parameters based on the~~
2769 ~~latest outcomes data, research findings, technological~~
2770 ~~advancements, and clinical experiences, at least once every 3~~
2771 ~~years.~~

2772 ~~(d) Practice parameters developed under this section must~~
2773 ~~be used by carriers and the agency in evaluating the~~
2774 ~~appropriateness and overutilization of medical services provided~~
2775 ~~to injured employees.~~

2776 (16) STANDARDS OF CARE.--The following standards of care
2777 shall be followed in providing medical care under this chapter:



2778 (a) Abnormal anatomical findings alone, in the absence of
2779 objective relevant medical findings, shall not be an indicator
2780 of injury or illness, a justification for the provision of
2781 remedial medical care or the assignment of restrictions, or a
2782 foundation for limitations.

2783 (b) At all times during evaluation and treatment, the
2784 provider shall act on the premise that returning to work is an
2785 integral part of the treatment plan. The goal of removing all
2786 restrictions and limitations as early as appropriate shall be
2787 part of the treatment plan on a continuous basis. The assignment
2788 of restrictions and limitations shall be reviewed with each
2789 patient exam and upon receipt of new information, such as
2790 progress reports from physical therapists and other providers.
2791 Consideration shall be given to upgrading or removing the
2792 restrictions and limitations with each patient exam, based upon
2793 the presence or absence of objective relevant medical findings.

2794 (c) Reasonable necessary medical care of injured employees
2795 shall in all situations:

2796 1. Utilize a high intensity, short duration treatment
2797 approach that focuses on early activation and restoration of
2798 function whenever possible.

2799 2. Include reassessment of the treatment plans, regimes,
2800 therapies, prescriptions, and functional limitations or
2801 restrictions prescribed by the provider every 30 days.

2802 3. Be focused on treatment of the individual employee's
2803 specific clinical dysfunction or status and shall not be based
2804 upon nondescript diagnostic labels.

2805



2806 All treatment shall be inherently scientifically logical and the
 2807 evaluation or treatment procedure must match the documented
 2808 physiologic and clinical problem. Treatment shall match the
 2809 type, intensity, and duration of service required by the problem
 2810 identified.

2811 (17) Failure to comply with this section shall be
 2812 considered a violation of this chapter and is subject to
 2813 penalties as provided for in s. 440.525.

2814 Section 16. Paragraphs (d) and (i) of subsection (1) and
 2815 subsections (2), (6), (7), (8), (9), (10), (11), (17), and (25)
 2816 of section 440.134, Florida Statutes, are amended to read:

2817 440.134 Workers' compensation managed care arrangement.--

2818 (1) As used in this section, the term:

2819 (d) "Grievance" means a written complaint, other than a
 2820 petition for benefits, filed by the injured worker pursuant to
 2821 the requirements of the managed care arrangement, expressing
 2822 dissatisfaction with the ~~medical care provided by an insurer's~~
 2823 workers' compensation managed care arrangement's refusal to
 2824 provide medical care or the medical care provided arrangement
 2825 health care providers, expressed in writing by an injured
 2826 worker.

2827 (i) "Medical care coordinator" means a primary care
 2828 provider within a provider network who is responsible for
 2829 managing the medical care of an injured worker including
 2830 determining other health care providers and health care
 2831 facilities to which the injured employee will be referred for
 2832 evaluation or treatment. A medical care coordinator shall be a
 2833 physician licensed under chapter 458, ~~or~~ an osteopathic



2834 physician licensed under chapter 459, a chiropractic physician
2835 licensed under chapter 460, or a podiatric physician licensed
2836 under chapter 461.

2837 (2)(a) The self-insured employer or carrier may, subject
2838 to the terms and limitations specified elsewhere in this section
2839 and chapter, furnish to the employee solely through managed care
2840 arrangements such medically necessary remedial treatment, care,
2841 and attendance for such period as the nature of the injury or
2842 the process of recovery requires and which shall be in
2843 accordance with practice parameters and protocols established
2844 pursuant to this chapter. For any self-insured employer or
2845 carrier who elects to deliver the medical benefits required by
2846 this chapter through a method other than a workers' compensation
2847 managed care arrangement, the discontinuance of the use of the
2848 workers' compensation managed care arrangement shall be without
2849 regard to the date of the accident, notwithstanding any other
2850 provision of law or rule.

2851 (b) The agency shall authorize an insurer to offer or
2852 utilize a workers' compensation managed care arrangement after
2853 the insurer files a completed application along with the payment
2854 of a \$1,000 application fee, and upon the agency's being
2855 satisfied that the applicant has the ability to provide quality
2856 of care consistent with the prevailing professional standards of
2857 care and the insurer and its workers' compensation managed care
2858 arrangement otherwise meets the requirements of this section. No
2859 insurer may offer or utilize a managed care arrangement without
2860 such authorization. The authorization, unless sooner suspended
2861 or revoked, shall automatically expire 2 years after the date of



2862 issuance unless renewed by the insurer. The authorization shall
2863 be renewed upon application for renewal and payment of a renewal
2864 fee of \$1,000, provided that the insurer is in compliance with
2865 the requirements of this section and any rules adopted
2866 hereunder. An application for renewal of the authorization shall
2867 be made 90 days prior to expiration of the authorization, on
2868 forms provided by the agency. The renewal application shall not
2869 require the resubmission of any documents previously filed with
2870 the agency if such documents have remained valid and unchanged
2871 since their original filing.

2872 (6) The proposed managed care plan of operation must
2873 include:

2874 (a) A statement or map providing a clear description of
2875 the service area.

2876 (b) A description of the grievance procedure to be used.

2877 (c) A description of the quality assurance program which
2878 assures that the health care services provided to workers shall
2879 be rendered under reasonable standards of quality of care
2880 consistent with the prevailing standards of medical practice in
2881 the medical community. The program shall include, but not be
2882 limited to:

2883 1. A written statement of goals and objectives that
2884 stresses health and return-to-work outcomes as the principal
2885 criteria for the evaluation of the quality of care rendered to
2886 injured workers.

2887 2. A written statement describing how methodology has been
2888 incorporated into an ongoing system for monitoring of care that
2889 is individual case oriented and, when implemented, can provide



2890 interpretation and analysis of patterns of care rendered to
2891 individual patients by individual providers.

2892 3. Written procedures for taking appropriate remedial
2893 action whenever, as determined under the quality assurance
2894 program, inappropriate or substandard services have been
2895 provided or services that should have been furnished have not
2896 been provided.

2897 4. A written plan, which includes ongoing review, for
2898 providing review of physicians and other licensed medical
2899 providers.

2900 5. Appropriate financial incentives to reduce service
2901 costs and utilization without sacrificing the quality of
2902 service.

2903 6. Adequate methods of peer review and utilization review.
2904 The utilization review process shall include a health care
2905 facility's ~~facilities~~ precertification mechanism, including, but
2906 not limited to, all elective admissions and nonemergency
2907 surgeries and adherence to practice parameters and protocols
2908 established in accordance with this chapter.

2909 7. Provisions for resolution of disputes arising between a
2910 health care provider and an insurer regarding reimbursements and
2911 utilization review.

2912 8. Availability of a process for aggressive medical care
2913 coordination, as well as a program involving cooperative efforts
2914 by the workers, the employer, and the workers' compensation
2915 managed care arrangement to promote early return to work for
2916 injured workers.



2917 9. A written plan allowing for the independent medical
2918 examination provided for in s. 440.13(5). Notwithstanding any
2919 provision to the contrary, the costs for the independent medical
2920 examination shall be paid by the carrier if such examination is
2921 performed by a physician in the provider network. Otherwise,
2922 such costs shall be paid in accordance with s. 440.13(5). An
2923 independent medical examination requested by a claimant and paid
2924 for by the carrier shall constitute the claimant's one
2925 independent medical examination per accident under s. 440.13(5).
2926 ~~A process allowing employees to obtain one second medical~~
2927 ~~opinion in the same specialty and within the provider network~~
2928 ~~during the course of treatment for a work-related injury.~~

2929 10. A provision for the selection of a primary care
2930 provider by the employee from among primary providers in the
2931 provider network.

2932 11. The written information proposed to be used by the
2933 insurer to comply with subparagraph 8.

2934 (7) Written procedures to provide the insurer with timely
2935 medical records and information including, but not limited to,
2936 work status, work restrictions, date of maximum medical
2937 improvement, permanent impairment ratings, and other information
2938 as required, including information demonstrating compliance with
2939 the practice parameters and protocols of treatment established
2940 pursuant to this chapter.

2941 (8) Evidence that appropriate health care providers and
2942 administrative staff of the insurer's workers' compensation
2943 managed care arrangement have received training and education on
2944 the provisions of this chapter; ~~and~~ the administrative rules



2945 that govern the provision of remedial treatment, care, and
 2946 attendance of injured workers; and the practice parameters and
 2947 protocols of treatment established pursuant to this chapter.

2948 (9) Written procedures and methods to prevent
 2949 inappropriate or excessive treatment that are in accordance with
 2950 the practice parameters and protocols of treatment established
 2951 pursuant to this chapter.

2952 (10) Written procedures and methods for the management of
 2953 an injured worker's medical care by a medical care coordinator
 2954 including:

2955 (a) The mechanism for assuring that covered employees
 2956 receive all initial covered services from a primary care
 2957 provider participating in the provider network, except for
 2958 emergency care.

2959 (b) The mechanism for assuring that all continuing covered
 2960 services be received from the same primary care provider
 2961 participating in the provider network that provided the initial
 2962 covered services, except when services from another provider are
 2963 authorized by the medical care coordinator pursuant to paragraph
 2964 (d).

2965 (c) The policies and procedures for allowing an employee
 2966 one change to another provider within the ~~same specialty and~~
 2967 provider network as the authorized treating physician during the
 2968 course of treatment for a work-related injury, in accordance
 2969 with the procedures provided in s. 440.13(2)(f), ~~if a request is~~
 2970 ~~made to the medical care coordinator by the employee; and~~
 2971 ~~requiring that special provision be made for more than one such~~
 2972 ~~referral through the arrangement's grievance procedures.~~



2973 (d) The process for assuring that all referrals authorized
 2974 by a medical care coordinator, in accordance with the practice
 2975 parameters and protocols of treatment established pursuant to
 2976 this chapter, are made to the participating network providers,
 2977 unless medically necessary treatment, care, and attendance are
 2978 not available and accessible to the injured worker in the
 2979 provider network.

2980 (e) Assignment of a medical care coordinator licensed
 2981 under chapter 458 or chapter 459 to manage care by physicians
 2982 licensed under chapter 458 or chapter 459, a medical care
 2983 coordinator licensed under chapter 460 to manage care by
 2984 physicians licensed under chapter 460, and a medical care
 2985 coordinator licensed under chapter 461 to manage care by
 2986 physicians licensed under chapter 461 upon request by an injured
 2987 employee for care by a physician licensed under chapter 458,
 2988 chapter 459, chapter 460, or chapter 461.

2989 (11) A description of the use of workers' compensation
 2990 practice parameters and protocols of treatment for health care
 2991 services ~~when adopted by the agency.~~

2992 (17) Notwithstanding any other provisions of this chapter,
 2993 when a carrier provides medical care through a workers'
 2994 compensation managed care arrangement, pursuant to this section,
 2995 those workers who are subject to the arrangement must receive
 2996 medical services for work-related injuries and diseases as
 2997 prescribed in the contract, provided the employer and carrier
 2998 have provided notice to the employees of the arrangement in a
 2999 manner approved by the agency and the medical services are in
 3000 accordance with the practice parameters and protocols



3001 established pursuant to this chapter. Treatment received outside
3002 the workers' compensation managed care arrangement is not
3003 compensable, regardless of the purpose of the treatment,
3004 including, but not limited to, evaluations, examinations, or
3005 diagnostic studies to determine causation between medical
3006 findings and a compensable accident, the existence or extent of
3007 impairments or disabilities, and whether the injured employee
3008 has reached maximum medical improvement, unless authorized by
3009 the carrier prior to the treatment date.

3010 (25) The agency shall adopt rules that specify:

3011 (a) Procedures for authorization and examination of
3012 workers' compensation managed care arrangements by the agency.

3013 (b) Requirements and procedures for authorization of
3014 workers' compensation arrangement provider networks and
3015 procedures for the agency to grant exceptions from accessibility
3016 of services.

3017 (c) Requirements and procedures for case management,
3018 utilization management, and peer review.

3019 (d) Requirements and procedures for quality assurance and
3020 medical records.

3021 (e) Requirements and procedures for dispute resolution in
3022 conformance with this chapter.

3023 (f) Requirements and procedures for employee and provider
3024 education.

3025 (g) Requirements and procedures for reporting data
3026 regarding grievances, return-to-work outcomes, and provider
3027 networks.



3028 Section 17. Subsections (1) and (4) and paragraph (b) of
 3029 subsection (5) of section 440.14, Florida Statutes, are amended
 3030 to read:

3031 440.14 Determination of pay.--

3032 (1) Except as otherwise provided in this chapter, the
 3033 average weekly wages of the injured employee on the date of the
 3034 accident ~~at the time of the injury~~ shall be taken as the basis
 3035 upon which to compute compensation and shall be determined,
 3036 subject to the limitations of s. 440.12(2), as follows:

3037 (a) If the injured employee has worked in the employment
 3038 in which she or he was working on the date of the accident ~~at~~
 3039 ~~the time of the injury~~, whether for the same or another
 3040 employer, during substantially the whole of 13 weeks immediately
 3041 preceding the accident ~~injury~~, her or his average weekly wage
 3042 shall be one-thirteenth of the total amount of wages earned in
 3043 such employment during the 13 weeks. As used in this paragraph,
 3044 the term "substantially the whole of 13 weeks" means the
 3045 calendar ~~shall be deemed to mean and refer to a constructive~~
 3046 period of 13 weeks as a whole, which shall be defined as the 13
 3047 calendar weeks before the date of the accident, excluding the
 3048 week during which the accident occurred. ~~a consecutive period of~~
 3049 ~~91 days, and~~ The term "during substantially the whole of 13
 3050 weeks" shall be deemed to mean during not less than 75 ~~90~~
 3051 percent of the total customary ~~full-time~~ hours of employment
 3052 within such period considered as a whole.

3053 (b) If the injured employee has not worked in such
 3054 employment during substantially the whole of 13 weeks
 3055 immediately preceding the accident ~~injury~~, the wages of a



3056 similar employee in the same employment who has worked
3057 substantially the whole of such 13 weeks shall be used in making
3058 the determination under the preceding paragraph.

3059 (c) If an employee is a seasonal worker and the foregoing
3060 method cannot be fairly applied in determining the average
3061 weekly wage, then the employee may use, instead of the 13 weeks
3062 immediately preceding the accident ~~injury~~, the calendar year or
3063 the 52 weeks immediately preceding the accident ~~injury~~. The
3064 employee will have the burden of proving that this method will
3065 be more reasonable and fairer than the method set forth in
3066 paragraphs (a) and (b) and, further, must document prior
3067 earnings with W-2 forms, written wage statements, or income tax
3068 returns. The employer shall have 30 days following the receipt
3069 of this written proof to adjust the compensation rate, including
3070 the making of any additional payment due for prior weekly
3071 payments, based on the lower rate compensation.

3072 (d) If any of the foregoing methods cannot reasonably and
3073 fairly be applied, the full-time weekly wages of the injured
3074 employee shall be used, except as otherwise provided in
3075 paragraph (e) or paragraph (f).

3076 (e) If it is established that the injured employee was
3077 under 22 years of age when the accident occurred ~~injured~~ and
3078 that under normal conditions her or his wages should be expected
3079 to increase during the period of disability, the fact may be
3080 considered in arriving at her or his average weekly wages.

3081 (f) If it is established that the injured employee was a
3082 part-time worker on the date of the accident ~~at the time of the~~
3083 ~~injury~~, that she or he had adopted part-time employment as a



3084 customary practice, and that under normal working conditions she
3085 or he probably would have remained a part-time worker during the
3086 period of disability, these factors shall be considered in
3087 arriving at her or his average weekly wages. For the purpose of
3088 this paragraph, the term "part-time worker" means an individual
3089 who customarily works less than the full-time hours or full-time
3090 workweek of a similar employee in the same employment.

3091 (g) If compensation is due for a fractional part of the
3092 week, the compensation for such fractional part shall be
3093 determined by dividing the weekly compensation rate by the
3094 number of days employed per week to compute the amount due for
3095 each day.

3096 (4) Upon termination of the employee or upon termination
3097 of the payment of fringe benefits of any employee who is
3098 collecting indemnity benefits pursuant to s. 440.15(2) or
3099 (3)~~(b)~~, the employer shall within 7 days of such termination
3100 file a corrected 13-week wage statement reflecting the wages
3101 paid and the fringe benefits that had been paid to the injured
3102 employee, as provided in s. 440.02(27).

3103 (5)

3104 (b) The employee waives any entitlement to interest,
3105 penalties, and attorney's fees during the period in which the
3106 employee has not provided information concerning the loss of
3107 earnings from concurrent employment. Carriers are not subject to
3108 penalties by the division under s. 440.20(8)(b) ~~and (e)~~ for
3109 unpaid compensation related to concurrent employment during the
3110 period in which the employee has not provided information
3111 concerning the loss of earnings from concurrent employment.



3112 Section 18. Section 440.15, Florida Statutes, is amended
3113 to read:

3114 440.15 Compensation for disability.--Compensation for
3115 disability shall be paid to the employee, subject to the limits
3116 provided in s. 440.12(2), as follows:

3117 (1) PERMANENT TOTAL DISABILITY.--

3118 (a) In case of total disability adjudged to be permanent,
3119 66 2/3 percent of the average weekly wages shall be paid to the
3120 employee during the continuance of such total disability.

3121 (b) ~~Only~~ A catastrophic injury as defined in s. 440.02(38)
3122 shall, in the absence of conclusive proof of a substantial
3123 earning capacity, constitute permanent total disability. In all
3124 other cases, no compensation shall be payable under paragraph
3125 (a) if the employee is engaged in, or is physically capable of
3126 engaging in at least sedentary employment. In order to obtain
3127 permanent total disability benefits, the employee must establish
3128 that he or she is not able uninterruptedly to engage in at least
3129 sedentary employment, within a 50-mile radius of the employee's
3130 residence, due to his or her physical limitation. Such benefits
3131 shall be payable until the employee reaches age 75,
3132 notwithstanding any age limits. If the accident occurred on or
3133 after the employee reaches age 70, benefits shall be payable
3134 during the continuance of permanent total disability, not to
3135 exceed 5 years following the determination of permanent total
3136 disability. Only claimants with catastrophic injuries or
3137 claimants who are incapable of engaging in employment, as
3138 described in this paragraph, are eligible for permanent total



3139 benefits. In no other case may permanent total disability be
3140 awarded.

3141 (c) In cases of permanent total disability resulting from
3142 injuries that occurred prior to July 1, 1955, such payments
3143 shall not be made in excess of 700 weeks.

3144 (d) If an employee who is being paid compensation for
3145 permanent total disability becomes rehabilitated to the extent
3146 that she or he establishes an earning capacity, the employee
3147 shall be paid, instead of the compensation provided in paragraph
3148 (a), benefits pursuant to subsection (3). The department shall
3149 adopt rules to enable a permanently and totally disabled
3150 employee who may have reestablished an earning capacity to
3151 undertake a trial period of reemployment without prejudicing her
3152 or his return to permanent total status in the case that such
3153 employee is unable to sustain an earning capacity.

3154 (e)1. The employer's or carrier's right to conduct
3155 vocational evaluations or testing by the employer's or carrier's
3156 chosen rehabilitation advisor or provider pursuant to s. 440.491
3157 continues even after the employee has been accepted or
3158 adjudicated as entitled to compensation under this chapter and
3159 costs for such evaluations and testing shall be borne by the
3160 employer or carrier, respectively. This right includes, but is
3161 not limited to, instances in which such evaluations or tests are
3162 recommended by a treating physician or independent medical-
3163 examination physician, instances warranted by a change in the
3164 employee's medical condition, or instances in which the employee
3165 appears to be making appropriate progress in recuperation. This
3166 right may not be exercised more than once every calendar year.



3167 2. The carrier must confirm the scheduling of the
3168 vocational evaluation or testing in writing, and must notify the
3169 employee and the employee's counsel, if any, at least 7 days
3170 before the date on which vocational evaluation or testing is
3171 scheduled to occur.

3172 3. ~~Pursuant to an order of the judge of compensation~~
3173 ~~claims,~~ The employer or carrier may withhold payment of benefits
3174 for permanent total disability or supplements for any period
3175 during which the employee willfully fails or refuses to appear
3176 without good cause for the scheduled vocational evaluation or
3177 testing.

3178 (f)1. If permanent total disability results from injuries
3179 that occurred subsequent to June 30, 1955, and for which the
3180 liability of the employer for compensation has not been
3181 discharged under s. 440.20(11), the injured employee shall
3182 receive additional weekly compensation benefits equal to 3 5
3183 percent of her or his weekly compensation rate, as established
3184 pursuant to the law in effect on the date of her or his injury,
3185 multiplied by the number of calendar years since the date of
3186 injury. The weekly compensation payable and the additional
3187 benefits payable under this paragraph, when combined, may not
3188 exceed the maximum weekly compensation rate in effect at the
3189 time of payment as determined pursuant to s. 440.12(2).

3190 ~~Entitlement to~~ These supplemental payments shall not be paid or
3191 payable after the employee attains ~~ease at~~ age 62, regardless
3192 of whether ~~if~~ the employee has applied for or is eligible to
3193 apply ~~is eligible~~ for social security benefits under 42 U.S.C.
3194 ss. 402 and 423, ~~whether or not the employee has applied for~~



3195 ~~such benefits~~. These supplemental benefits shall be paid by the
3196 department out of the Workers' Compensation Administration Trust
3197 Fund when the injury occurred subsequent to June 30, 1955, and
3198 before July 1, 1984. These supplemental benefits shall be paid
3199 by the employer when the injury occurred on or after July 1,
3200 1984. Supplemental benefits are not payable for any period prior
3201 to October 1, 1974.

3202 2.a. The department shall provide by rule for the periodic
3203 reporting to the department of all earnings of any nature and
3204 social security income by the injured employee entitled to or
3205 claiming additional compensation under subparagraph 1. Neither
3206 the department nor the employer or carrier shall make any
3207 payment of those additional benefits provided by subparagraph 1.
3208 for any period during which the employee willfully fails or
3209 refuses to report upon request by the department in the manner
3210 prescribed by such rules.

3211 b. The department shall provide by rule for the periodic
3212 reporting to the employer or carrier of all earnings of any
3213 nature and social security income by the injured employee
3214 entitled to or claiming benefits for permanent total disability.
3215 The employer or carrier is not required to make any payment of
3216 benefits for permanent total disability for any period during
3217 which the employee willfully fails or refuses to report upon
3218 request by the employer or carrier in the manner prescribed by
3219 such rules or if any employee who is receiving permanent total
3220 disability benefits refuses to apply for or cooperate with the
3221 employer or carrier in applying for social security benefits.



3222 3. When an injured employee receives a full or partial
3223 lump-sum advance of the employee's permanent total disability
3224 compensation benefits, the employee's benefits under this
3225 paragraph shall be computed on the employee's weekly
3226 compensation rate as reduced by the lump-sum advance.

3227 (2) TEMPORARY TOTAL DISABILITY.--

3228 (a) Subject to subsection (7), in case of disability total
3229 in character but temporary in quality, 66 2/3 percent of the
3230 average weekly wages shall be paid to the employee during the
3231 continuance thereof, not to exceed 104 weeks except as provided
3232 in this subsection, s. 440.12(1), and s. 440.14(3). Once the
3233 employee reaches the maximum number of weeks allowed, or the
3234 employee reaches the date of maximum medical improvement,
3235 whichever occurs earlier, temporary disability benefits shall
3236 cease and the injured worker's permanent impairment shall be
3237 determined.

3238 (b) Notwithstanding the provisions of paragraph (a), an
3239 employee who has sustained the loss of an arm, leg, hand, or
3240 foot, has been rendered a paraplegic, paraparetic, quadriplegic,
3241 or quadriparetic, or has lost the sight of both eyes shall be
3242 paid temporary total disability of 80 percent of her or his
3243 average weekly wage. The increased temporary total disability
3244 compensation provided for in this paragraph must not extend
3245 beyond 6 months from the date of the accident; however, such
3246 benefits shall not be due or payable if the employee is eligible
3247 for, entitled to, or collecting permanent total disability
3248 benefits. The compensation provided by this paragraph is not
3249 subject to the limits provided in s. 440.12(2), but instead is



3250 subject to a maximum weekly compensation rate of \$700. If, at
3251 the conclusion of this period of increased temporary total
3252 disability compensation, the employee is still temporarily
3253 totally disabled, the employee shall continue to receive
3254 temporary total disability compensation as set forth in
3255 paragraphs (a) and (c). The period of time the employee has
3256 received this increased compensation will be counted as part of,
3257 and not in addition to, the maximum periods of time for which
3258 the employee is entitled to compensation under paragraph (a) but
3259 not paragraph (c).

3260 (c) Temporary total disability benefits paid pursuant to
3261 this subsection shall include such period as may be reasonably
3262 necessary for training in the use of artificial members and
3263 appliances, and shall include such period as the employee may be
3264 receiving training and education under a program pursuant to s.
3265 440.491. ~~Notwithstanding s. 440.02, the date of maximum medical~~
3266 ~~improvement for purposes of paragraph (3)(b) shall be no earlier~~
3267 ~~than the last day for which such temporary disability benefits~~
3268 ~~are paid.~~

3269 (d) The department shall, by rule, provide for the
3270 periodic reporting to the department, employer, or carrier of
3271 all earned income, including income from social security, by the
3272 injured employee who is entitled to or claiming benefits for
3273 temporary total disability. The employer or carrier is not
3274 required to make any payment of benefits for temporary total
3275 disability for any period during which the employee willfully
3276 fails or refuses to report upon request by the employer or
3277 carrier in the manner prescribed by the rules. The rule must



3278 require the claimant to personally sign the claim form and
3279 attest that she or he has reviewed, understands, and
3280 acknowledges the foregoing.

3281 (3) PERMANENT IMPAIRMENT ~~AND WAGE-LOSS~~ BENEFITS.--

3282 (a) ~~Impairment benefits.~~

3283 ~~1.~~ Once the employee has reached the date of maximum
3284 medical improvement, impairment benefits are due and payable
3285 within 14 ~~20~~ days after the carrier has knowledge of the
3286 impairment.

3287 (b)2. The three-member panel, in cooperation with the
3288 department, shall establish and use a uniform permanent
3289 impairment rating schedule. This schedule must be based on
3290 medically or scientifically demonstrable findings as well as the
3291 systems and criteria set forth in the American Medical
3292 Association's Guides to the Evaluation of Permanent Impairment;
3293 the Snellen Charts, published by American Medical Association
3294 Committee for Eye Injuries; and the Minnesota Department of
3295 Labor and Industry Disability Schedules. The schedule must
3296 ~~should~~ be based upon objective findings. The schedule shall be
3297 more comprehensive than the AMA Guides to the Evaluation of
3298 Permanent Impairment and shall expand the areas already
3299 addressed and address additional areas not currently contained
3300 in the guides. On August 1, 1979, and pending the adoption, by
3301 rule, of a permanent schedule, Guides to the Evaluation of
3302 Permanent Impairment, copyright 1977, 1971, 1988, by the
3303 American Medical Association, shall be the temporary schedule
3304 and shall be used for the purposes hereof. For injuries after
3305 July 1, 1990, pending the adoption by rule of a uniform



3306 disability rating agency schedule, the Minnesota Department of
3307 Labor and Industry Disability Schedule shall be used unless that
3308 schedule does not address an injury. In such case, the Guides to
3309 the Evaluation of Permanent Impairment by the American Medical
3310 Association shall be used. Determination of permanent impairment
3311 under this schedule must be made by a physician licensed under
3312 chapter 458, a doctor of osteopathic medicine licensed under
3313 chapters 458 and 459, a chiropractic physician licensed under
3314 chapter 460, a podiatric physician licensed under chapter 461,
3315 an optometrist licensed under chapter 463, or a dentist licensed
3316 under chapter 466, as appropriate considering the nature of the
3317 injury. No other persons are authorized to render opinions
3318 regarding the existence of or the extent of permanent
3319 impairment.

3320 (c)~~3-~~ All impairment income benefits shall be based on an
3321 impairment rating using the impairment schedule referred to in
3322 paragraph (b) subparagraph 2. Impairment income benefits are
3323 paid biweekly ~~weekly~~ at the rate of 75 ~~50~~ percent of the
3324 employee's average weekly temporary total disability benefit not
3325 to exceed the maximum weekly benefit under s. 440.12; provided,
3326 however, that such benefits shall be reduced by 50 percent for
3327 each week in which the employee has earned income equal to or in
3328 excess of the employee's average weekly wage. An employee's
3329 entitlement to impairment income benefits begins the day after
3330 the employee reaches maximum medical improvement or the
3331 expiration of temporary benefits, whichever occurs earlier, and
3332 continues until the earlier of:



3333 ~~1.a.~~ The expiration of a period computed at the rate of 3
 3334 weeks for each percentage point of impairment; or
 3335 ~~2.b.~~ The death of the employee.

3336
 3337 Impairment income benefits as defined by this subsection are
 3338 payable only for impairment ratings for physical impairments. If
 3339 objective medical findings can substantiate a permanent
 3340 psychiatric impairment resulting from the accident, permanent
 3341 impairment benefits are limited for the permanent psychiatric
 3342 impairment to 1-percent permanent impairment.

3343 ~~(d)4.~~ After the employee has been certified by a doctor as
 3344 having reached maximum medical improvement or 6 weeks before the
 3345 expiration of temporary benefits, whichever occurs earlier, the
 3346 certifying doctor shall evaluate the condition of the employee
 3347 and assign an impairment rating, using the impairment schedule
 3348 referred to in paragraph (b) subparagraph 2. ~~Compensation is not~~
 3349 ~~payable for the mental, psychological, or emotional injury~~
 3350 ~~arising out of depression from being out of work.~~ If the
 3351 certification and evaluation are performed by a doctor other
 3352 than the employee's treating doctor, the certification and
 3353 evaluation must be submitted to the treating doctor, the
 3354 employee, and the carrier within 10 days after the evaluation.
 3355 ~~and~~ The treating doctor must indicate to the carrier agreement
 3356 or disagreement with the other doctor's certification and
 3357 evaluation.

3358 1. The certifying doctor shall issue a written report to
 3359 the ~~department, the employee,~~ and the carrier certifying that
 3360 maximum medical improvement has been reached, stating the



3361 impairment rating to the body as a whole, and providing any
 3362 other information required by the department by rule. The
 3363 carrier shall establish an overall maximum medical improvement
 3364 date and permanent impairment rating, based upon all such
 3365 reports.

3366 2. Within 14 days after the carrier's knowledge of each
 3367 maximum medical improvement date and impairment rating to the
 3368 body as a whole upon which the carrier is paying benefits, the
 3369 carrier shall report such maximum medical improvement date and,
 3370 when determined, the overall maximum medical improvement date
 3371 and associated impairment rating to the department in a format
 3372 as set forth in department rule. If the employee has not been
 3373 certified as having reached maximum medical improvement before
 3374 the expiration of 98 ~~102~~ weeks after the date temporary ~~total~~
 3375 disability benefits begin to accrue, the carrier shall notify
 3376 the treating doctor of the requirements of this section.

3377 (e)5. The carrier shall pay the employee impairment income
 3378 benefits for a period based on the impairment rating.

3379 (f)6. The department may by rule specify forms and
 3380 procedures governing the method of payment of ~~wage loss and~~
 3381 ~~impairment benefits under this section for dates of accidents~~
 3382 ~~before January 1, 1994, and for dates of accidents on or after~~
 3383 ~~January 1, 1994.~~

3384 ~~(b) Supplemental benefits.--~~

3385 ~~1. All supplemental benefits must be paid in accordance~~
 3386 ~~with this subsection. An employee is entitled to supplemental~~
 3387 ~~benefits as provided in this paragraph as of the expiration of~~
 3388 ~~the impairment period, if:~~



3389 a. ~~The employee has an impairment rating from the~~
3390 ~~compensable injury of 20 percent or more as determined pursuant~~
3391 ~~to this chapter;~~

3392 b. ~~The employee has not returned to work or has returned~~
3393 ~~to work earning less than 80 percent of the employee's average~~
3394 ~~weekly wage as a direct result of the employee's impairment; and~~

3395 c. ~~The employee has in good faith attempted to obtain~~
3396 ~~employment commensurate with the employee's ability to work.~~

3397 2. ~~If an employee is not entitled to supplemental benefits~~
3398 ~~at the time of payment of the final weekly impairment income~~
3399 ~~benefit because the employee is earning at least 80 percent of~~
3400 ~~the employee's average weekly wage, the employee may become~~
3401 ~~entitled to supplemental benefits at any time within 1 year~~
3402 ~~after the impairment income benefit period ends if:~~

3403 a. ~~The employee earns wages that are less than 80 percent~~
3404 ~~of the employee's average weekly wage for a period of at least~~
3405 ~~90 days;~~

3406 b. ~~The employee meets the other requirements of~~
3407 ~~subparagraph 1.; and~~

3408 c. ~~The employee's decrease in earnings is a direct result~~
3409 ~~of the employee's impairment from the compensable injury.~~

3410 3. ~~If an employee earns wages that are at least 80 percent~~
3411 ~~of the employee's average weekly wage for a period of at least~~
3412 ~~90 days during which the employee is receiving supplemental~~
3413 ~~benefits, the employee ceases to be entitled to supplemental~~
3414 ~~benefits for the filing period. Supplemental benefits that have~~
3415 ~~been terminated shall be reinstated when the employee satisfies~~
3416 ~~the conditions enumerated in subparagraph 2. and files the~~



3417 ~~statement required under subparagraph 4. Notwithstanding any~~
3418 ~~other provision, if an employee is not entitled to supplemental~~
3419 ~~benefits for 12 consecutive months, the employee ceases to be~~
3420 ~~entitled to any additional income benefits for the compensable~~
3421 ~~injury. If the employee is discharged within 12 months after~~
3422 ~~losing entitlement under this subsection, benefits may be~~
3423 ~~reinstated if the employee was discharged at that time with the~~
3424 ~~intent to deprive the employee of supplemental benefits.~~

3425 ~~4. After the initial determination of supplemental~~
3426 ~~benefits, the employee must file a statement with the carrier~~
3427 ~~stating that the employee has earned less than 80 percent of the~~
3428 ~~employee's average weekly wage as a direct result of the~~
3429 ~~employee's impairment, stating the amount of wages the employee~~
3430 ~~earned in the filing period, and stating that the employee has~~
3431 ~~in good faith sought employment commensurate with the employee's~~
3432 ~~ability to work. The statement must be filed quarterly on a form~~
3433 ~~and in the manner prescribed by the department. The department~~
3434 ~~may modify the filing period as appropriate to an individual~~
3435 ~~case. Failure to file a statement relieves the carrier of~~
3436 ~~liability for supplemental benefits for the period during which~~
3437 ~~a statement is not filed.~~

3438 ~~5. The carrier shall begin payment of supplemental~~
3439 ~~benefits not later than the seventh day after the expiration~~
3440 ~~date of the impairment income benefit period and shall continue~~
3441 ~~to timely pay those benefits. The carrier may request a~~
3442 ~~mediation conference for the purpose of contesting the~~
3443 ~~employee's entitlement to or the amount of supplemental income~~
3444 ~~benefits.~~



3445 ~~6. Supplemental benefits are calculated quarterly and paid~~
3446 ~~monthly. For purposes of calculating supplemental benefits, 80~~
3447 ~~percent of the employee's average weekly wage and the average~~
3448 ~~wages the employee has earned per week are compared quarterly.~~
3449 ~~For purposes of this paragraph, if the employee is offered a~~
3450 ~~bona fide position of employment that the employee is capable of~~
3451 ~~performing, given the physical condition of the employee and the~~
3452 ~~geographic accessibility of the position, the employee's weekly~~
3453 ~~wages are considered equivalent to the weekly wages for the~~
3454 ~~position offered to the employee.~~

3455 ~~7. Supplemental benefits are payable at the rate of 80~~
3456 ~~percent of the difference between 80 percent of the employee's~~
3457 ~~average weekly wage determined pursuant to s. 440.14 and the~~
3458 ~~weekly wages the employee has earned during the reporting~~
3459 ~~period, not to exceed the maximum weekly income benefit under s.~~
3460 ~~440.12.~~

3461 ~~8. The department may by rule define terms that are~~
3462 ~~necessary for the administration of this section and forms and~~
3463 ~~procedures governing the method of payment of supplemental~~
3464 ~~benefits for dates of accidents before January 1, 1994, and for~~
3465 ~~dates of accidents on or after January 1, 1994.~~

3466 ~~(c) Duration of temporary impairment and supplemental~~
3467 ~~income benefits. The employee's eligibility for temporary~~
3468 ~~benefits, impairment income benefits, and supplemental benefits~~
3469 ~~terminates on the expiration of 401 weeks after the date of~~
3470 ~~injury.~~

3471 (g) Notwithstanding paragraph (c), for accidents occurring
3472 on or after October 1, 2003, an employee's entitlement to



3473 impairment income benefits begins the day after the employee
3474 reaches maximum medical improvement or the expiration of
3475 temporary benefits, whichever occurs earlier, and continues for
3476 the following periods:

3477 1. Two weeks of benefits are to be paid to the employee
3478 for each percentage point of impairment from 1 percent up to and
3479 including 10 percent.

3480 2. For each percentage point of impairment from 11 percent
3481 up to and including 15 percent, 3 weeks of benefits are to be
3482 paid.

3483 3. For each percentage point of impairment from 16 percent
3484 up to and including 20 percent, 4 weeks of benefits are to be
3485 paid.

3486 4. For each percentage point of impairment from 21 percent
3487 and higher, 6 weeks of benefits are to be paid.

3488 (4) TEMPORARY PARTIAL DISABILITY.--

3489 (a) Subject to subsection (7), in case of temporary
3490 partial disability, compensation shall be equal to 80 percent of
3491 the difference between 80 percent of the employee's average
3492 weekly wage and the salary, wages, and other remuneration the
3493 employee is able to earn post injury, as compared weekly;
3494 however, ~~the~~ weekly temporary partial disability benefits may
3495 not exceed an amount equal to 66 2/3 percent of the employee's
3496 average weekly wage at the time of accident injury. In order to
3497 simplify the comparison of the preinjury average weekly wage
3498 with the salary, wages, and other remuneration the employee is
3499 able to earn post injury, the department may by rule provide for
3500 payment of the initial installment of temporary partial



3501 disability benefits to be paid as a partial week so that payment
3502 for remaining weeks of temporary partial disability can the
3503 ~~modification of the weekly comparison so as to~~ coincide as
3504 closely as possible with the post injury employer's work week
3505 ~~injured worker's pay periods~~. The amount determined to be the
3506 salary, wages, and other remuneration the employee is able to
3507 earn shall in no case be less than the sum actually being earned
3508 by the employee, including earnings from sheltered employment.
3509 Benefits shall be payable under this subsection only if overall
3510 maximum medical improvement has not been reached and the medical
3511 conditions resulting from the accident create restrictions on
3512 the injured employee's ability to return to work.

3513 (b) Within 5 business days after the carrier's knowledge
3514 of the employee's release to restricted work, the carrier shall
3515 mail to the employee and employer an informational letter,
3516 adopted by department rule, explaining the employee's possible
3517 eligibility and responsibilities for temporary partial
3518 disability benefits.

3519 (c) When an employee returns to work with the restrictions
3520 resulting from the accident and is earning wages less than 80
3521 percent of the preinjury average weekly wage, the first
3522 installment of temporary partial disability benefits is due 7
3523 days after the last date of the post injury employer's first
3524 biweekly work week. Thereafter, payment for temporary partial
3525 benefits shall be paid biweekly no later than the 7th day
3526 following the last day of each biweekly work week.

3527 (d) If the employee is unable to return to work with the
3528 restrictions resulting from the accident and is not earning



3529 wages, salary, or other remuneration, temporary partial
3530 disability benefits shall be paid no later than the last day of
3531 each biweekly period. The employee shall notify the carrier
3532 within 5 business days after returning to work. Failure to
3533 notify the carrier of the establishment of an earning capacity
3534 in the required time shall result in a suspension or nonpayment
3535 of temporary partial disability benefits until the proper
3536 notification is provided.

3537 (e)(b) Such benefits shall be paid during the continuance
3538 of such disability, not to exceed a period of 104 weeks, as
3539 provided by this subsection and subsection (2). Once the injured
3540 employee reaches the maximum number of weeks, temporary
3541 disability benefits cease and the injured worker's permanent
3542 impairment must be determined. If the employee is terminated
3543 from post injury employment based on the employee's misconduct,
3544 temporary partial disability benefits are not payable as
3545 provided for in this section. The department shall ~~may~~ by rule
3546 specify forms and procedures governing the method and time for
3547 ~~of~~ payment of temporary disability benefits for dates of
3548 accidents before January 1, 1994, and for dates of accidents on
3549 or after January 1, 1994.

3550 (5) SUBSEQUENT INJURY.--

3551 (a) The fact that an employee has suffered previous
3552 disability, impairment, anomaly, or disease, or received
3553 compensation therefor, shall not preclude her or him from
3554 benefits, as specified in paragraph (b), for a subsequent
3555 aggravation or acceleration of the preexisting condition or ~~nor~~
3556 preclude benefits for death resulting therefrom, except that no



3557 benefits shall be payable if the employee, at the time of
3558 entering into the employment of the employer by whom the
3559 benefits would otherwise be payable, falsely represents herself
3560 or himself in writing as not having previously been disabled or
3561 compensated because of such previous disability, impairment,
3562 anomaly, or disease and the employer detrimentally relies on the
3563 misrepresentation. ~~Compensation for temporary disability,~~
3564 ~~medical benefits, and wage-loss benefits shall not be subject to~~
3565 ~~apportionment.~~

3566 (b) If a compensable injury, disability, or need for
3567 medical care ~~permanent impairment~~, or any portion thereof, is a
3568 result of aggravation or acceleration of a preexisting
3569 condition, or is the result of merger with a preexisting
3570 condition, only the disabilities and medical treatment
3571 associated with such compensable injury shall be payable under
3572 this chapter, excluding the degree of disability or medical
3573 conditions existing at the time of the impairment rating or at
3574 the time of the accident, regardless of whether the preexisting
3575 condition was disabling at the time of the accident or at the
3576 time of the impairment rating and without considering whether
3577 the preexisting condition would be disabling without the
3578 compensable accident ~~impairment, an employee eligible to receive~~
3579 ~~impairment benefits under paragraph (3)(a) shall receive such~~
3580 ~~benefits for the total impairment found to result, excluding the~~
3581 ~~degree of impairment existing at the time of the subject~~
3582 ~~accident or injury or which would have existed by the time of~~
3583 ~~the impairment rating without the intervention of the~~
3584 ~~compensable accident or injury.~~ The degree of permanent



3585 impairment or disability attributable to the accident or injury
3586 shall be compensated in accordance with this section,
3587 apportioning out the preexisting condition based on the
3588 anatomical impairment rating attributable to the preexisting
3589 condition. Medical benefits shall be paid apportioning out the
3590 percentage of the need for such care attributable to the
3591 preexisting condition paragraph ~~(3)(a)~~. As used in this
3592 paragraph, "merger" means the combining of a preexisting
3593 permanent impairment or disability with a subsequent compensable
3594 permanent impairment or disability which, when the effects of
3595 both are considered together, result in a permanent impairment
3596 or disability rating which is greater than the sum of the two
3597 permanent impairment or disability ratings when each impairment
3598 or disability is considered individually.

3599 ~~(6) OBLIGATION TO REHIRE.--If the employer has not in good~~
3600 ~~faith made available to the employee, within a 100-mile radius~~
3601 ~~of the employee's residence, work appropriate to the employee's~~
3602 ~~physical limitations within 30 days after the carrier notifies~~
3603 ~~the employer of maximum medical improvement and the employee's~~
3604 ~~physical limitations, the employer shall pay to the department~~
3605 ~~for deposit into the Workers' Compensation Administration Trust~~
3606 ~~Fund a fine of \$250 for every \$5,000 of the employer's workers'~~
3607 ~~compensation premium or payroll, not to exceed \$2,000 per~~
3608 ~~violation, as the department requires by rule. The employer is~~
3609 ~~not subject to this subsection if the employee is receiving~~
3610 ~~permanent total disability benefits or if the employer has 50 or~~
3611 ~~fewer employees.~~



3612 ~~(6)~~~~(7)~~ EMPLOYEE REFUSES EMPLOYMENT.--If an injured
3613 employee refuses employment suitable to the capacity thereof,
3614 offered to or procured therefor, such employee shall not be
3615 entitled to any compensation at any time during the continuance
3616 of such refusal unless at any time in the opinion of the judge
3617 of compensation claims such refusal is justifiable. Time periods
3618 for the payment of benefits in accordance with this section
3619 shall be counted in determining the limitation of benefits as
3620 provided for in paragraphs (2)(a), (3)(c), and (4)(b).

3621 ~~(7)~~~~(8)~~ EMPLOYEE LEAVES EMPLOYMENT.--If an injured
3622 employee, when receiving compensation for temporary partial
3623 disability, leaves the employment of the employer by whom she or
3624 he was employed at the time of the accident for which such
3625 compensation is being paid, the employee shall, upon securing
3626 employment elsewhere, give to such former employer an affidavit
3627 in writing containing the name of her or his new employer, the
3628 place of employment, and the amount of wages being received at
3629 such new employment; and, until she or he gives such affidavit,
3630 the compensation for temporary partial disability will cease.
3631 The employer by whom such employee was employed at the time of
3632 the accident for which such compensation is being paid may also
3633 at any time demand of such employee an additional affidavit in
3634 writing containing the name of her or his employer, the place of
3635 her or his employment, and the amount of wages she or he is
3636 receiving; and if the employee, upon such demand, fails or
3637 refuses to make and furnish such affidavit, her or his right to
3638 compensation for temporary partial disability shall cease until
3639 such affidavit is made and furnished. If the employee leaves her



3640 or his employment while receiving temporary partial benefits
3641 without just cause as determined by the judge of compensation
3642 claims, temporary partial benefits shall be payable based on the
3643 deemed earnings of the employee as if she or he had remained
3644 employed.

3645 ~~(8)(9)~~ EMPLOYEE BECOMES INMATE OF INSTITUTION.--In case an
3646 employee becomes an inmate of a public institution, then no
3647 compensation shall be payable unless she or he has dependent
3648 upon her or him for support a person or persons defined as
3649 dependents elsewhere in this chapter, whose dependency shall be
3650 determined as if the employee were deceased and to whom
3651 compensation would be paid in case of death; and such
3652 compensation as is due such employee shall be paid such
3653 dependents during the time she or he remains such inmate.

3654 ~~(9)(10)~~ EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
3655 AND FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE ACT.--

3656 (a) Weekly compensation benefits payable under this
3657 chapter for disability resulting from injuries to an employee
3658 who becomes eligible for benefits under 42 U.S.C. s. 423 shall
3659 be reduced to an amount whereby the sum of such compensation
3660 benefits payable under this chapter and such total benefits
3661 otherwise payable for such period to the employee and her or his
3662 dependents, had such employee not been entitled to benefits
3663 under this chapter, under 42 U.S.C. ss. 402 and 423, does not
3664 exceed 80 percent of the employee's average weekly wage.
3665 However, this provision shall not operate to reduce an injured
3666 worker's benefits under this chapter to a greater extent than
3667 such benefits would have otherwise been reduced under 42 U.S.C.



3668 s. 424(a). This reduction of compensation benefits is not
3669 applicable to any compensation benefits payable for any week
3670 subsequent to the week in which the injured worker reaches the
3671 age of 62 years.

3672 (b) If the provisions of 42 U.S.C. s. 424(a) are amended
3673 to provide for a reduction or increase of the percentage of
3674 average current earnings that the sum of compensation benefits
3675 payable under this chapter and the benefits payable under 42
3676 U.S.C. ss. 402 and 423 can equal, the amount of the reduction of
3677 benefits provided in this subsection shall be reduced or
3678 increased accordingly. The department may by rule specify forms
3679 and procedures governing the method for calculating and
3680 administering the offset of benefits payable under this chapter
3681 and benefits payable under 42 U.S.C. ss. 402 and 423. The
3682 department shall have first priority in taking any available
3683 social security offsets on dates of accidents occurring before
3684 July 1, 1984.

3685 (c) No disability compensation benefits payable for any
3686 week, including those benefits provided by paragraph (1)(f),
3687 shall be reduced pursuant to this subsection until the Social
3688 Security Administration determines the amount otherwise payable
3689 to the employee under 42 U.S.C. ss. 402 and 423 and the employee
3690 has begun receiving such social security benefit payments. The
3691 employee shall, upon demand by the department, the employer, or
3692 the carrier, authorize the Social Security Administration to
3693 release disability information relating to her or him and
3694 authorize the Division of Unemployment Compensation to release
3695 unemployment compensation information relating to her or him, in



3696 accordance with rules to be adopted by the department
3697 prescribing the procedure and manner for requesting the
3698 authorization and for compliance by the employee. Neither the
3699 department nor the employer or carrier shall make any payment of
3700 benefits for total disability or those additional benefits
3701 provided by paragraph (1)(f) for any period during which the
3702 employee willfully fails or refuses to authorize the release of
3703 information in the manner and within the time prescribed by such
3704 rules. The authority for release of disability information
3705 granted by an employee under this paragraph shall be effective
3706 for a period not to exceed 12 months, such authority to be
3707 renewable as the department may prescribe by rule.

3708 (d) If compensation benefits are reduced pursuant to this
3709 subsection, the minimum compensation provisions of s. 440.12(2)
3710 do not apply.

3711 (10)~~(11)~~ EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
3712 WHO HAS RECEIVED OR IS ENTITLED TO RECEIVE UNEMPLOYMENT
3713 COMPENSATION.--

3714 (a) No compensation benefits shall be payable for
3715 temporary total disability or permanent total disability under
3716 this chapter for any week in which the injured employee has
3717 received, or is receiving, unemployment compensation benefits.

3718 (b) If an employee is entitled to temporary partial
3719 benefits pursuant to subsection (4) and unemployment
3720 compensation benefits, such unemployment compensation benefits
3721 shall be primary and the temporary partial benefits shall be
3722 supplemental only, the sum of the two benefits not to exceed the



3723 amount of temporary partial benefits which would otherwise be
3724 payable.

3725 (11)~~(12)~~ FULL-PAY STATUS FOR CERTAIN LAW ENFORCEMENT
3726 OFFICERS.--Any law enforcement officer as defined in s.
3727 943.10(1), (2), or (3) who, while acting within the course of
3728 employment as provided by s. 440.091, is maliciously or
3729 intentionally injured and who thereby sustains a job-connected
3730 disability compensable under this chapter shall be carried in
3731 full-pay status rather than being required to use sick, annual,
3732 or other leave. Full-pay status shall be granted only after
3733 submission to the employing agency's head of a medical report
3734 which gives a current diagnosis of the employee's recovery and
3735 ability to return to work. In no case shall the employee's
3736 salary and workers' compensation benefits exceed the amount of
3737 the employee's regular salary requirements.

3738 (12)~~(13)~~ REPAYMENT.--If an employee has received a sum as
3739 an indemnity benefit under any classification or category of
3740 benefit under this chapter to which she or he is not entitled,
3741 the employee is liable to repay that sum to the employer or the
3742 carrier or to have that sum deducted from future benefits,
3743 regardless of the classification of benefits, payable to the
3744 employee under this chapter; however, a partial payment of the
3745 total repayment may not exceed 20 percent of the amount of the
3746 biweekly payment.

3747 Section 19. Subsections (1), (2), and (3) of section
3748 440.151, Florida Statutes, are amended to read:

3749 440.151 Occupational diseases.--



3750 (1)(a) Where the employer and employee are subject to the
3751 provisions of the Workers' Compensation Law, the disablement or
3752 death of an employee resulting from an occupational disease as
3753 hereinafter defined shall be treated as the happening of an
3754 injury by accident, notwithstanding any other provisions of this
3755 chapter, and the employee or, in case of death, the employee's
3756 dependents shall be entitled to compensation as provided by this
3757 chapter, except as hereinafter otherwise provided; and the
3758 practice and procedure prescribed by this chapter shall apply to
3759 all proceedings under this section, except as hereinafter
3760 otherwise provided. Provided, however, that in no case shall an
3761 employer be liable for compensation under the provisions of this
3762 section unless such disease has resulted from the nature of the
3763 employment in which the employee was engaged under such
3764 employer, ~~and~~ and was actually contracted while so engaged, and the
3765 nature of the employment was the major contributing cause of the
3766 disease. Major contributing cause must be shown by medical
3767 evidence only, as demonstrated by physical examination findings
3768 and diagnostic testing. meaning by "Nature of the employment"
3769 means that in to the occupation in which the employee was so
3770 engaged there is attached a particular hazard of such disease
3771 that distinguishes it from the usual run of occupations, or the
3772 incidence of such disease is substantially higher in the
3773 occupation in which the employee was so engaged than in the
3774 usual run of occupations. In claims for death under s. 440.16,
3775 death must occur ~~or, in case of death, unless death follows~~
3776 ~~continuous disability from such disease, commencing within the~~
3777 ~~period above limited, for which compensation has been paid or~~



3778 ~~awarded, or timely claim made as provided in this section, and~~
3779 ~~results~~ within 350 weeks after ~~such~~ last exposure. Both
3780 causation and sufficient exposure to a specific harmful
3781 substance shown to be present in the workplace to support
3782 causation shall be proven by clear and convincing evidence.

3783 (b) No compensation shall be payable for an occupational
3784 disease if the employee, at the time of entering into the
3785 employment of the employer by whom the compensation would
3786 otherwise be payable, falsely represents herself or himself in
3787 writing as not having previously been disabled, laid off or
3788 compensated in damages or otherwise, because of such disease.

3789 (c) Where an occupational disease is aggravated by any
3790 other disease or infirmity, not itself compensable, or where
3791 disability or death from any other cause, not itself
3792 compensable, is aggravated, prolonged, accelerated or in anywise
3793 contributed to by an occupational disease, the compensation
3794 shall be payable only if the occupational disease is the major
3795 contributing cause of the injury. Any compensation shall be
3796 reduced and limited to such proportion only of the compensation
3797 that would be payable if the occupational disease were the sole
3798 cause of the disability or death as such occupational disease,
3799 as a causative factor, bears to all the causes of such
3800 disability or death, such reduction in compensation to be
3801 effected by reducing the number of weekly or monthly payments or
3802 the amounts of such payments, as under the circumstances of the
3803 particular case may be for the best interest of the claimant or
3804 claimants. Major contributing cause must be demonstrated by



3805 medical evidence based on physical examination findings and
3806 diagnostic testing.

3807 (d) No compensation for death from an occupational disease
3808 shall be payable to any person whose relationship to the
3809 deceased, which under the provisions of this Workers'
3810 Compensation Law would give right to compensation, arose
3811 subsequent to the beginning of the first compensable disability,
3812 save only to afterborn children of a marriage existing at the
3813 beginning of such disability.

3814 (e) No compensation shall be payable for disability or
3815 death resulting from tuberculosis arising out of and in the
3816 course of employment by the Department of Health at a state
3817 tuberculosis hospital, or aggravated by such employment, when
3818 the employee had suffered from said disease at any time prior to
3819 the commencement of such employment.

3820 (2) Whenever used in this section the term "occupational
3821 disease" shall be construed to mean only a disease which is due
3822 to causes and conditions which are characteristic of and
3823 peculiar to a particular trade, occupation, process, or
3824 employment, and to exclude all ordinary diseases of life to
3825 which the general public is exposed, unless the incidence of the
3826 disease is substantially higher in the particular trade,
3827 occupation, process, or employment than for the general public.
3828 "Occupational disease" means only a disease for which there are
3829 epidemiological studies showing that exposure to the specific
3830 substance involved, at the levels to which the employee was
3831 exposed, may cause the precise disease sustained by the
3832 employee.



3833 (3) Except as ~~hereinafter~~ otherwise provided in this
 3834 section, "disablement" means disability as described in s.
 3835 440.02(13) ~~the event of an employee's becoming actually~~
 3836 ~~incapacitated, partially or totally, because of an occupational~~
 3837 ~~disease, from performing her or his work in the last occupation~~
 3838 ~~in which injuriously exposed to the hazards of such disease; and~~
 3839 ~~"disability" means the state of being so incapacitated.~~

3840 Section 20. Subsections (1) and (7) of section 440.16,
 3841 Florida Statutes, are amended to read:

3842 440.16 Compensation for death.--

3843 (1) If death results from the accident within 1 year
 3844 thereafter or follows continuous disability and results from the
 3845 accident within 5 years thereafter, the employer shall pay:

3846 (a) Within 14 days after receiving the bill, actual
 3847 funeral expenses not to exceed \$7,500 ~~\$5,000~~.

3848 (b) Compensation, in addition to the above, in the
 3849 following percentages of the average weekly wages to the
 3850 following persons entitled thereto on account of dependency upon
 3851 the deceased, and in the following order of preference, subject
 3852 to the limitation provided in subparagraph 2., but such
 3853 compensation shall be subject to the limits provided in s.
 3854 440.12(2), shall not exceed \$150,000 ~~\$100,000~~, and may be less
 3855 than, but shall not exceed, for all dependents or persons
 3856 entitled to compensation, 66 2/3 percent of the average wage:

3857 1. To the spouse, if there is no child, 50 percent of the
 3858 average weekly wage, such compensation to cease upon the
 3859 spouse's death.



3860 2. To the spouse, if there is a child or children, the
3861 compensation payable under subparagraph 1. and, in addition, 16
3862 2/3 percent on account of the child or children. However, when
3863 the deceased is survived by a spouse and also a child or
3864 children, whether such child or children are the product of the
3865 union existing at the time of death or of a former marriage or
3866 marriages, the judge of compensation claims may provide for the
3867 payment of compensation in such manner as may appear to the
3868 judge of compensation claims just and proper and for the best
3869 interests of the respective parties and, in so doing, may
3870 provide for the entire compensation to be paid exclusively to
3871 the child or children; and, in the case of death of such spouse,
3872 33 1/3 percent for each child. However, upon the surviving
3873 spouse's remarriage, the spouse shall be entitled to a lump-sum
3874 payment equal to 26 weeks of compensation at the rate of 50
3875 percent of the average weekly wage as provided in s. 440.12(2),
3876 unless the \$150,000 ~~\$100,000~~ limit provided in this paragraph is
3877 exceeded, in which case the surviving spouse shall receive a
3878 lump-sum payment equal to the remaining available benefits in
3879 lieu of any further indemnity benefits. In no case shall a
3880 surviving spouse's acceptance of a lump-sum payment affect
3881 payment of death benefits to other dependents.

3882 3. To the child or children, if there is no spouse, 33 1/3
3883 percent for each child.

3884 4. To the parents, 25 percent to each, such compensation
3885 to be paid during the continuance of dependency.

3886 5. To the brothers, sisters, and grandchildren, 15 percent
3887 for each brother, sister, or grandchild.



3888 (c) To the surviving spouse, payment of postsecondary
3889 student fees for instruction at any area technical center
3890 established under s. 1001.44 for up to 1,800 classroom hours or
3891 payment of student fees at any community college established
3892 under part III of chapter 1004 for up to 80 semester hours. The
3893 spouse of a deceased state employee shall be entitled to a full
3894 waiver of such fees as provided in ss. 1009.22 and 1009.23 in
3895 lieu of the payment of such fees. The benefits provided for in
3896 this paragraph shall be in addition to other benefits provided
3897 for in this section and shall terminate 7 years after the death
3898 of the deceased employee, or when the total payment in eligible
3899 compensation under paragraph (b) has been received. To qualify
3900 for the educational benefit under this paragraph, the spouse
3901 shall be required to meet and maintain the regular admission
3902 requirements of, and be registered at, such area technical
3903 center or community college, and make satisfactory academic
3904 progress as defined by the educational institution in which the
3905 student is enrolled.

3906 (7) Compensation under this chapter to aliens not
3907 residents (or about to become nonresidents) of the United States
3908 or Canada shall be the same in amount as provided for residents,
3909 except that dependents in any foreign country shall be limited
3910 to surviving spouse and child or children, or if there be no
3911 surviving spouse or child or children, to surviving father or
3912 mother whom the employee has supported, either wholly or in
3913 part, for the period of 1 year prior to the date of the injury,
3914 and except that the judge of compensation claims may, at the
3915 option of the judge of compensation claims, or upon the



3916 application of the insurance carrier, commute all future
3917 installments of compensation to be paid to such aliens by paying
3918 or causing to be paid to them one-half of the commuted amount of
3919 such future installments of compensation as determined by the
3920 judge of compensation claims, and provided further that
3921 compensation to dependents referred to in this subsection shall
3922 in no case exceed \$75,000 ~~\$50,000~~.

3923 Section 21. Subsection (9) of section 440.185, Florida
3924 Statutes, is amended, and subsection (12) is added to said
3925 section, to read:

3926 440.185 Notice of injury or death; reports; penalties for
3927 violations.--

3928 (9) Any employer or carrier who fails or refuses to timely
3929 send any form, report, or notice required by this section shall
3930 be subject to an administrative fine by the department ~~a civil~~
3931 ~~penalty~~ not to exceed \$1,000 ~~\$500~~ for each such failure or
3932 refusal. If, within 1 calendar year, an employer fails to timely
3933 submit to the carrier more than 10 percent of its notices of
3934 injury or death, the employer shall be subject to an
3935 administrative fine by the department not to exceed \$2,000 for
3936 each such failure or refusal. However, any employer who fails to
3937 notify the carrier of the injury on the prescribed form or by
3938 letter within the 7 days required in subsection (2) shall be
3939 liable for the administrative fine ~~civil penalty~~, which shall be
3940 paid by the employer and not the carrier. Failure by the
3941 employer to meet its obligations under subsection (2) shall not
3942 relieve the carrier from liability for the administrative fine



3943 ~~civil penalty~~ if it fails to comply with subsections (4) and
 3944 (5).

3945 (12) Upon receiving notice of an injury from an employee
 3946 under subsection (1), the employer or carrier shall provide the
 3947 employee with a written notice, in the form and manner
 3948 determined by the department by rule, of the availability of
 3949 services from the Employee Assistance and Ombudsman Office. The
 3950 substance of the notice to the employee shall include:

3951 (a) A description of the scope of services provided by the
 3952 office.

3953 (b) A listing of the toll-free telephone number of, the
 3954 email address, and the postal address of the office.

3955 (c) A statement that the informational brochure referred
 3956 to in subsection (4) will be mailed to the employee within 3
 3957 days after the carrier receives notice of the injury.

3958 (d) Any other information regarding access to assistance
 3959 that the department finds is immediately necessary for an
 3960 injured employee.

3961 Section 22. Subsections (1) and (2) of section 440.192,
 3962 Florida Statutes, are amended, and subsection (9) is added to
 3963 said section, to read:

3964 440.192 Procedure for resolving benefit disputes.—

3965 (1) ~~Subject to s. 440.191,~~ Any employee may, for any
 3966 benefit that is ripe, due, and owing, who has not received a
 3967 benefit to which the employee believes she or he is entitled
 3968 under this chapter shall file by certified mail, or by
 3969 electronic means approved by the Deputy Chief Judge, with the
 3970 Office of the Judges of Compensation Claims a petition for



3971 benefits which meets the requirements of this section and the
3972 definition of specificity in s. 440.02. The department shall
3973 inform employees of the location of the Office of the Judges of
3974 Compensation Claims for purposes of filing a petition for
3975 benefits. The employee shall also serve copies of the petition
3976 for benefits by certified mail, or by electronic means approved
3977 by the Deputy Chief Judge, upon the employer and the employer's
3978 carrier. The ~~Deputy~~ Chief Judge shall refer the petitions to the
3979 judges of compensation claims.

3980 (2) Upon receipt, the Office of the Judges of Compensation
3981 Claims shall review each petition and shall dismiss each
3982 petition or any portion of such a petition, ~~upon the judge's own~~
3983 ~~motion or upon the motion of any party~~, that does not on its
3984 face specifically identify or itemize the following:

3985 (a) Name, address, telephone number, and social security
3986 number of the employee.

3987 (b) Name, address, and telephone number of the employer.

3988 (c) A detailed description of the injury and cause of the
3989 injury, including the location of the occurrence and the date or
3990 dates of the accident.

3991 (d) A detailed description of the employee's job, work
3992 responsibilities, and work the employee was performing when the
3993 injury occurred.

3994 (e) The time period for which compensation and the
3995 specific classification of compensation were not timely
3996 provided.



3997 (f) Date of maximum medical improvement, character of
3998 disability, and specific statement of all benefits or
3999 compensation that the employee is seeking.

4000 (g) All specific travel costs to which the employee
4001 believes she or he is entitled, including dates of travel and
4002 purpose of travel, means of transportation, and mileage and
4003 including the date the request for mileage was filed with the
4004 carrier and a copy of the request filed with the carrier.

4005 (h) Specific listing of all medical charges alleged
4006 unpaid, including the name and address of the medical provider,
4007 the amounts due, and the specific dates of treatment.

4008 (i) The type or nature of treatment care or attendance
4009 sought and the justification for such treatment. If the employee
4010 is under the care of a physician for an injury identified under
4011 paragraph (c), a copy of the physician's request, authorization,
4012 or recommendation for treatment, care, or attendance must
4013 accompany the petition.

4014 (j) Specific explanation of any other disputed issue that
4015 a judge of compensation claims will be called to rule upon.

4016
4017 The dismissal of any petition or portion of such a petition
4018 under this section is without prejudice and does not require a
4019 hearing.

4020 (9) A petition for benefits must contain claims for all
4021 benefits that are ripe, due, and owing on the date the petition
4022 is filed. Unless stipulated in writing by the parties, only
4023 claims which have been properly raised in a petition for



4024 benefits and have undergone mediation may be considered for
 4025 adjudication by a judge of compensation claims.

4026 Section 23. Section 440.1926, Florida Statutes, is created
 4027 to read:

4028 440.1926 Alternate dispute resolution; claim
 4029 arbitration.--Notwithstanding any other provision of this
 4030 chapter, the employer, carrier, and employee may mutually agree
 4031 to seek consent from a judge of compensation claims to enter
 4032 into binding claim arbitration in lieu of any other remedy
 4033 provided for in this chapter to resolve all issues in dispute
 4034 regarding an injury. Arbitrations agreed to pursuant to this
 4035 section shall be governed by chapter 682, the Florida
 4036 Arbitration Code, except that, notwithstanding any provision in
 4037 chapter 682, the term "court" shall mean a judge of compensation
 4038 claims. An arbitration award in accordance with this section
 4039 shall be enforceable in the same manner and with the same powers
 4040 as any final compensation order.

4041 Section 24. Subsections (2), (3), (4), (6), and (8) and
 4042 paragraph (d) of subsection (11) of section 440.20, Florida
 4043 Statutes, are amended to read:

4044 440.20 Time for payment of compensation and medical bills;
 4045 penalties for late payment.--

4046 (2)(a) The carrier must pay the first installment of
 4047 compensation for total disability or death benefits or deny
 4048 compensability no later than the 14th calendar day after the
 4049 employer receives notification ~~notice~~ of the injury or death,
 4050 when disability is immediate and continuous for 8 calendar days
 4051 or more after the injury. If the first 7 days after disability



4052 are nonconsecutive or delayed, the first installment of
4053 compensation is due on the 6th day after the first 8 calendar
4054 days of disability. The carrier shall thereafter pay
4055 compensation in biweekly installments or as otherwise provided
4056 in s. 440.15, unless the judge of compensation claims determines
4057 or the parties agree that an alternate installment schedule is
4058 in the best interests of the employee.

4059 (b) The carrier must pay, disallow, or deny all medical,
4060 dental, pharmacy, and hospital bills submitted to the carrier in
4061 accordance with department rule no later than 45 calendar days
4062 after the carrier's receipt of the bill.

4063 (3) Upon making initial payment of indemnity benefits, or
4064 upon suspension or cessation of payment for any reason, the
4065 carrier shall immediately notify the injured employee, the
4066 employer, and the department that it has commenced, suspended,
4067 or ceased payment of compensation. The department may require
4068 such notification to the injured employee, employer, and the
4069 department in a ~~any~~ format and manner it deems necessary to
4070 obtain accurate and timely notification ~~reporting~~.

4071 (4) If the carrier is uncertain of its obligation to
4072 provide all benefits or compensation, ~~it may initiate payment~~
4073 ~~without prejudice and without admitting liability.~~ the carrier
4074 shall immediately and in good faith commence investigation of
4075 the employee's entitlement to benefits under this chapter and
4076 shall admit or deny compensability within 120 days after the
4077 initial provision of compensation or benefits as required under
4078 subsection (2) or s. 440.192(8). Additionally, the carrier shall
4079 initiate payment and continue the provision of all benefits and



4080 compensation as if the claim had been accepted as compensable,
4081 without prejudice and without admitting liability. Upon
4082 commencement of payment as required under subsection (2) or s.
4083 440.192 (8), the carrier shall provide written notice to the
4084 employee that it has elected to pay ~~all or part of~~ the claim
4085 pending further investigation, and that it will advise the
4086 employee of claim acceptance or denial within 120 days. A
4087 carrier that fails to deny compensability within 120 days after
4088 the initial provision of benefits or payment of compensation as
4089 required under subsection (2) or s. 440.192(8) waives the right
4090 to deny compensability, unless the carrier can establish
4091 material facts relevant to the issue of compensability that it
4092 could not have discovered through reasonable investigation
4093 within the 120-day period. The initial provision of compensation
4094 or benefits, for purposes of this subsection, means the first
4095 installment of compensation or benefits to be paid by the
4096 carrier under subsection (2) or pursuant to a petition for
4097 benefits under s. 440.192(8).

4098 (6)(a) If any installment of compensation for death or
4099 dependency benefits, or compensation for disability benefits,
4100 ~~permanent impairment, or wage loss~~ payable without an award is
4101 not paid within 7 days after it becomes due, as provided in
4102 subsection (2), subsection (3), or subsection (4), there shall
4103 be added to such unpaid installment a ~~punitive~~ penalty of an
4104 amount equal to 20 percent of the unpaid installment ~~or \$5,~~
4105 which shall be paid at the same time as, but in addition to,
4106 such installment of compensation. This penalty shall not apply
4107 for late payments resulting ~~, unless notice is filed under~~



4108 ~~subsection (4) or unless such nonpayment results~~ from conditions
4109 over which the employer or carrier had no control. When any
4110 installment of compensation payable without an award has not
4111 been paid within 7 days after it became due and the claimant
4112 concludes the prosecution of the claim before a judge of
4113 compensation claims without having specifically claimed
4114 additional compensation in the nature of a penalty under this
4115 section, the claimant will be deemed to have acknowledged that,
4116 owing to conditions over which the employer or carrier had no
4117 control, such installment could not be paid within the period
4118 prescribed for payment and to have waived the right to claim
4119 such penalty. However, during the course of a hearing, the judge
4120 of compensation claims shall on her or his own motion raise the
4121 question of whether such penalty should be awarded or excused.
4122 The department may assess without a hearing the ~~punitive~~ penalty
4123 against either the employer or the ~~insurance~~ carrier, depending
4124 upon who was at fault in causing the delay. The insurance policy
4125 cannot provide that this sum will be paid by the carrier if the
4126 department or the judge of compensation claims determines that
4127 the ~~punitive~~ penalty should be paid ~~made~~ by the employer rather
4128 than the carrier. Any additional installment of compensation
4129 paid by the carrier pursuant to this section shall be paid
4130 directly to the employee by check or, if authorized by the
4131 employee, by direct deposit into the employee's account at a
4132 financial institution. ~~As used in this subsection, the term~~
4133 ~~"financial institution" means a financial institution as defined~~
4134 ~~in s. 655.005(1)(h).~~



4135 (b) For medical services provided on or after January 1,
4136 2004, the department shall require that all medical, hospital,
4137 pharmacy, or dental bills properly submitted by the provider,
4138 except for bills that are disallowed or denied by the carrier or
4139 its authorized vendor in accordance with department rule, are
4140 timely paid within 45 calendar days after the carrier's receipt
4141 of the bill. The department shall impose penalties for late
4142 payments or disallowances or denials of medical, hospital,
4143 pharmacy, or dental bills that are below a minimum 95 percent
4144 timely performance standard. The carrier shall pay to the
4145 Workers' Compensation Administration Trust Fund a penalty of:

4146 1. Twenty-five dollars for each bill below the 95 percent
4147 timely performance standard, but meeting a 90 percent timely
4148 standard.

4149 2. Fifty dollars for each bill below a 90 percent timely
4150 performance standard.

4151 (8)(a) In addition to any other penalties provided by this
4152 chapter for late payment, if any installment of compensation is
4153 not paid when it becomes due, the employer, carrier, or
4154 servicing agent shall pay interest thereon at the rate of 12
4155 percent per year from the date the installment becomes due until
4156 it is paid, whether such installment is payable without an order
4157 or under the terms of an order. The interest payment shall be
4158 the greater of the amount of interest due or \$5.

4159 ~~(a) Within 30 days after final payment of compensation has~~
4160 ~~been made, the employer, carrier, or servicing agent shall send~~
4161 ~~to the department a notice, in accordance with a format and~~
4162 ~~manner prescribed by the department, stating that such final~~



4163 ~~payment has been made and stating the total amount of~~
4164 ~~compensation paid, the name of the employee and of any other~~
4165 ~~person to whom compensation has been paid, the date of the~~
4166 ~~injury or death, and the date to which compensation has been~~
4167 ~~paid.~~

4168 ~~(b) If the employer, carrier, or servicing agent fails to~~
4169 ~~so notify the department within such time, the department shall~~
4170 ~~assess against such employer, carrier, or servicing agent a~~
4171 ~~civil penalty in an amount not over \$100.~~

4172 (b)(e) In order to ensure carrier compliance under this
4173 chapter and provisions of the Florida Insurance Code, the office
4174 department shall monitor, audit, and investigate the performance
4175 of carriers ~~by conducting market conduct examinations, as~~
4176 ~~provided in s. 624.3161, and conducting investigations, as~~
4177 ~~provided in s. 624.317.~~ The office department shall require
4178 establish by rule minimum performance standards for carriers to
4179 ensure that a minimum of 90 percent of all compensation benefits
4180 are timely paid in accordance with this section. The office
4181 department shall impose penalties ~~fine a carrier as provided in~~
4182 ~~s. 440.13(11)(b) up to \$50 for each late payments payment of~~
4183 ~~compensation that are is below a the minimum 95 90 percent~~
4184 timely payment performance standard. The carrier shall pay to
4185 the Workers' Compensation Administration Trust Fund a penalty
4186 of:

4187 1. Fifty dollars per number of installments of
4188 compensation below the 95 percent timely payment performance
4189 standard and equal to or greater than a 90 percent timely
4190 payment performance standard.



4191 2. One hundred dollars per number of installments of
4192 compensation below a 90 percent timely payment performance
4193 standard.

4194

4195 This section does not affect the imposition of any penalties or
4196 interest due to the claimant. If a carrier contracts with a
4197 servicing agent to fulfill its administrative responsibilities
4198 under this chapter, the payment practices of the servicing agent
4199 are deemed the payment practices of the carrier for the purpose
4200 of assessing penalties against the carrier.

4201 (11)

4202 (d)1. With respect to any lump-sum settlement under this
4203 subsection, a judge of compensation claims must consider at the
4204 time of the settlement, whether the settlement allocation
4205 provides for the appropriate recovery of child support
4206 arrearages. An employer or carrier does not have a duty to
4207 investigate or collect information regarding child support
4208 arrearages.

4209 2. When reviewing any settlement of lump-sum payment
4210 pursuant to this subsection, judges of compensation claims shall
4211 consider the interests of the worker and the worker's family
4212 when approving the settlement, which must consider and provide
4213 for appropriate recovery of past due support.

4214 3. With respect to any lump-sum settlement under this
4215 subsection, any correspondence to a clerk of the circuit court
4216 of this state regarding child support documentation shall be
4217 exempt from any fees or costs ordinarily assessed by the clerk's
4218 office.



4219 Section 25. Section 440.25, Florida Statutes, is amended
4220 to read:

4221 440.25 Procedures for mediation and hearings.--

4222 (1) Forty days ~~Within 90 days~~ after a petition for
4223 benefits is filed under s. 440.192, ~~a mediation conference~~
4224 ~~concerning such petition shall be held. Within 40 days after~~
4225 ~~such petition is filed,~~ the judge of compensation claims shall
4226 notify the interested parties by order that a mediation
4227 conference concerning such petition has been scheduled ~~will be~~
4228 ~~held~~ unless the parties have notified the judge ~~Office of the~~
4229 ~~Judges~~ of compensation claims that a private mediation has been
4230 held or is scheduled to be held. A mediation, whether private or
4231 public, shall be held within 130 days after the filing of the
4232 petition. Such order must give the date ~~by which~~ the mediation
4233 conference is to ~~must~~ be held. Such order may be served
4234 personally upon the interested parties or may be sent to the
4235 interested parties by mail. If multiple petitions are pending,
4236 or if additional petitions are filed after the scheduling of a
4237 mediation, the judge of compensation claims shall consolidate
4238 all petitions into one mediation. The claimant or the adjuster
4239 of the employer or carrier may, at the mediator's discretion,
4240 attend the mediation conference by telephone or, if agreed to by
4241 the parties, other electronic means. A continuance may be
4242 granted upon the agreement of the parties or if the requesting
4243 party demonstrates to the judge of compensation claims that the
4244 reason for requesting the continuance arises from circumstances
4245 beyond the party's control. Any order granting a continuance
4246 must set forth the date of the rescheduled mediation conference.



4247 A mediation conference may not be used solely for the purpose of
4248 mediating attorney's fees.

4249 (2) Any party who participates in a mediation conference
4250 shall not be precluded from requesting a hearing following the
4251 mediation conference should both parties not agree to be bound
4252 by the results of the mediation conference. A mediation
4253 conference is required to be held unless this requirement is
4254 waived by the Deputy Chief Judge. ~~No later than 3 days prior to~~
4255 ~~the mediation conference, all parties must submit any applicable~~
4256 ~~motions, including, but not limited to, a motion to waive the~~
4257 ~~mediation conference, to the judge of compensation claims.~~

4258 (3)(a) Such mediation conference shall be conducted
4259 informally and does not require the use of formal rules of
4260 evidence or procedure. Any information from the files, reports,
4261 case summaries, mediator's notes, or other communications or
4262 materials, oral or written, relating to a mediation conference
4263 under this section obtained by any person performing mediation
4264 duties is privileged and confidential and may not be disclosed
4265 without the written consent of all parties to the conference.
4266 Any research or evaluation effort directed at assessing the
4267 mediation program activities or performance must protect the
4268 confidentiality of such information. Each party to a mediation
4269 conference has a privilege during and after the conference to
4270 refuse to disclose and to prevent another from disclosing
4271 communications made during the conference whether or not the
4272 contested issues are successfully resolved. This subsection and
4273 paragraphs (4)(a) and (b) shall not be construed to prevent or
4274 inhibit the discovery or admissibility of any information that



4275 is otherwise subject to discovery or that is admissible under
4276 applicable law or rule of procedure, except that any conduct or
4277 statements made during a mediation conference or in negotiations
4278 concerning the conference are inadmissible in any proceeding
4279 under this chapter.

4280 (a)1- Unless the parties conduct a private mediation under
4281 paragraph (b) subparagraph 2-, mediation shall be conducted by a
4282 mediator selected by the Director of the Division of
4283 Administrative Hearings from among mediators employed on a full-
4284 time basis by the Office of the Judges of Compensation Claims. A
4285 mediator must be a member of The Florida Bar for at least 5
4286 years and must complete a mediation training program approved by
4287 the Deputy Chief Judge ~~Director of the Division of~~
4288 ~~Administrative Hearings~~. Adjunct mediators may be employed by
4289 the Office of the Judges of Compensation Claims on an as-needed
4290 basis and shall be selected from a list prepared by the Director
4291 of the Division of Administrative Hearings. An adjunct mediator
4292 must be independent of all parties participating in the
4293 mediation conference. An adjunct mediator must be a member of
4294 The Florida Bar for at least 5 years and must complete a
4295 mediation training program approved by the Office of the Judges
4296 of Compensation Claims ~~Director of the Division of~~
4297 ~~Administrative Hearings~~. An adjunct mediator shall have access
4298 to the office, equipment, and supplies of the judge of
4299 compensation claims in each district.

4300 (b)2- With respect to any private mediation ~~occurring on~~
4301 ~~or after January 1, 2003~~, if the parties agree or if mediators
4302 are not available under paragraph (a), pursuant to notice from



4303 the judge of compensation claims, ~~subparagraph 1.~~ to conduct the
4304 required mediation within the period specified in this section,
4305 the parties shall hold a mediation conference at the carrier's
4306 expense within the 130-day ~~90-day~~ period set for mediation. The
4307 mediation conference shall be conducted by a mediator certified
4308 under s. 44.106. If the parties do not agree upon a mediator
4309 within 10 days after the date of the order, the claimant shall
4310 notify the judge in writing and the judge shall appoint a
4311 mediator under this subparagraph within 7 days. In the event
4312 both parties agree, the results of the mediation conference
4313 shall be binding and neither party shall have a right to appeal
4314 the results. In the event either party refuses to agree to the
4315 results of the mediation conference, the results of the
4316 mediation conference as well as the testimony, witnesses, and
4317 evidence presented at the conference shall not be admissible at
4318 any subsequent proceeding on the claim. The mediator shall not
4319 be called in to testify or give deposition to resolve any claim
4320 for any hearing before the judge of compensation claims. The
4321 employer may be represented by an attorney at the mediation
4322 conference if the employee is also represented by an attorney at
4323 the mediation conference.

4324 ~~(b) The parties shall complete the pretrial stipulations~~
4325 ~~before the conclusion of the mediation conference if the claims,~~
4326 ~~except for attorney's fees and costs, have not been settled and~~
4327 ~~if any claims in any filed petition remain unresolved. The judge~~
4328 ~~of compensation claims may impose sanctions against a party or~~
4329 ~~both parties for failing to complete the pretrial stipulations~~
4330 ~~before the conclusion of the mediation conference.~~



4331 (4)(a) If the parties fail to agree to upon written
4332 submission of pretrial stipulations ~~at the mediation conference,~~
4333 the judge of compensation claims shall conduct a live order ~~a~~
4334 pretrial hearing ~~to occur within 14 days after the date of~~
4335 ~~mediation ordered by the judge of compensation claims.~~ The judge
4336 of compensation claims shall give the interested parties at
4337 least 14 ~~7~~ days' advance notice of the pretrial hearing by mail.
4338 ~~At the pretrial hearing, the judge of compensation claims shall,~~
4339 ~~subject to paragraph (b), set a date for the final hearing that~~
4340 ~~allows the parties at least 60 days to conduct discovery unless~~
4341 ~~the parties consent to an earlier hearing date.~~

4342 (b) The final hearing must be held and concluded within 90
4343 days after the mediation conference is held, allowing the
4344 parties sufficient time to complete discovery. Except as set
4345 forth in this section, continuances may be granted only if the
4346 requesting party demonstrates to the judge of compensation
4347 claims that the reason for requesting the continuance arises
4348 from circumstances beyond the party's control. The written
4349 consent of the claimant must be obtained before any request from
4350 a claimant's attorney is granted for an additional continuance
4351 after the initial continuance has been granted. Any order
4352 granting a continuance must set forth the date and time of the
4353 rescheduled hearing. A continuance may be granted only if the
4354 requesting party demonstrates to the judge of compensation
4355 claims that the reason for requesting the continuance arises
4356 from circumstances beyond the control of the parties. The judge
4357 of compensation claims shall report any grant of two or more
4358 continuances to the Deputy Chief Judge.



4359 (c) The judge of compensation claims shall give the
4360 interested parties at least 14 7 days' advance notice of the
4361 final hearing, served upon the interested parties by mail.

4362 (d) The final hearing shall be held within 210 days after
4363 receipt of the petition for benefits in the county where the
4364 injury occurred, if the injury occurred in this state, unless
4365 otherwise agreed to between the parties and authorized by the
4366 judge of compensation claims in the county where the injury
4367 occurred. However, the claimant may waive the timeframes within
4368 this section for good cause shown. If the injury occurred
4369 outside the state and is one for which compensation is payable
4370 under this chapter, then the final hearing may be held in the
4371 county of the employer's residence or place of business, or in
4372 any other county of the state that will, in the discretion of
4373 the Deputy Chief Judge, be the most convenient for a hearing.
4374 The final hearing shall be conducted by a judge of compensation
4375 claims, who shall, within 30 days after final hearing or closure
4376 of the hearing record, unless otherwise agreed by the parties,
4377 enter a final order on the merits of the disputed issues. The
4378 judge of compensation claims may enter an abbreviated final
4379 order in cases in which compensability is not disputed. Either
4380 party may request separate findings of fact and conclusions of
4381 law. At the final hearing, the claimant and employer may each
4382 present evidence with respect to the claims presented by the
4383 petition for benefits and may be represented by any attorney
4384 authorized in writing for such purpose. When there is a conflict
4385 in the medical evidence submitted at the hearing, the provisions
4386 of s. 440.13 shall apply. The report or testimony of the expert



4387 | medical advisor shall be admitted into evidence in a ~~made a part~~
4388 | ~~of the record of the proceeding and shall be given the same~~
4389 | ~~consideration by the judge of compensation claims as is accorded~~
4390 | ~~other medical evidence submitted in the proceeding;~~ and all
4391 | costs incurred in connection with such examination and testimony
4392 | may be assessed as costs in the proceeding, subject to the
4393 | provisions of s. 440.13. No judge of compensation claims may
4394 | make a finding of a degree of permanent impairment that is
4395 | greater than the greatest permanent impairment rating given the
4396 | claimant by any examining or treating physician, except upon
4397 | stipulation of the parties. Any benefit due but not raised at
4398 | the final hearing which was ripe, due, or owing at the time of
4399 | the final hearing is waived.

4400 | (e) The order making an award or rejecting the claim,
4401 | referred to in this chapter as a "compensation order," shall set
4402 | forth the findings of ultimate facts and the mandate; and the
4403 | order need not include any other reason or justification for
4404 | such mandate. The compensation order shall be filed in the
4405 | Office of the Judges of Compensation Claims at Tallahassee. A
4406 | copy of such compensation order shall be sent by mail to the
4407 | parties and attorneys of record at the last known address of
4408 | each, with the date of mailing noted thereon.

4409 | ~~(f) Each judge of compensation claims is required to~~
4410 | ~~submit a special report to the Deputy Chief Judge in each~~
4411 | ~~contested workers' compensation case in which the case is not~~
4412 | ~~determined within 30 days of final hearing or closure of the~~
4413 | ~~hearing record. Said form shall be provided by the director of~~
4414 | ~~the Division of Administrative Hearings and shall contain the~~



4415 ~~names of the judge of compensation claims and of the attorneys~~
4416 ~~involved and a brief explanation by the judge of compensation~~
4417 ~~claims as to the reason for such a delay in issuing a final~~
4418 ~~order.~~

4419 (f)~~(g)~~ Notwithstanding any other provision of this
4420 section, the judge of compensation claims may require the
4421 appearance of the parties and counsel before her or him without
4422 written notice for an emergency conference where there is a bona
4423 fide emergency involving the health, safety, or welfare of an
4424 employee. An emergency conference under this section may result
4425 in the entry of an order or the rendering of an adjudication by
4426 the judge of compensation claims.

4427 (g)~~(h)~~ To expedite dispute resolution and to enhance the
4428 self-executing features of the Workers' Compensation Law, the
4429 Deputy Chief Judge shall make provision by rule or order for the
4430 resolution of appropriate motions by judges of compensation
4431 claims without oral hearing upon submission of brief written
4432 statements in support and opposition, and for expedited
4433 discovery and docketing. Unless the judge of compensation
4434 claims, for good cause, orders a hearing under paragraph (h)~~(i)~~,
4435 each claim in a petition relating to the determination of the
4436 average weekly wage ~~pay~~ under s. 440.14 shall be resolved under
4437 this paragraph without oral hearing.

4438 (h)~~(i)~~ To further expedite dispute resolution and to
4439 enhance the self-executing features of the system, those
4440 petitions filed in accordance with s. 440.192 that involve a
4441 claim for benefits of \$5,000 or less shall, in the absence of
4442 compelling evidence to the contrary, be presumed to be



4443 appropriate for expedited resolution under this paragraph; and
4444 any other claim filed in accordance with s. 440.192, upon the
4445 written agreement of both parties and application by either
4446 party, may similarly be resolved under this paragraph. A claim
4447 in a petition or \$5,000 or less for medical benefits only or a
4448 petition for reimbursement for mileage for medical purposes
4449 shall, in the absence of compelling evidence to the contrary, be
4450 resolved through the expedited dispute resolution process
4451 provided in this paragraph. For purposes of expedited resolution
4452 pursuant to this paragraph, the Deputy Chief Judge shall make
4453 provision by rule or order for expedited and limited discovery
4454 and expedited docketing in such cases. At least 15 days prior to
4455 hearing, the parties shall exchange and file with the judge of
4456 compensation claims a pretrial outline of all issues, defenses,
4457 and witnesses on a form adopted by the Deputy Chief Judge;
4458 provided, in no event shall such hearing be held without 15
4459 days' written notice to all parties. No pretrial hearing shall
4460 be held and no mediation scheduled unless requested by a party.
4461 The judge of compensation claims shall limit all argument and
4462 presentation of evidence at the hearing to a maximum of 30
4463 minutes, and such hearings shall not exceed 30 minutes in
4464 length. Neither party shall be required to be represented by
4465 counsel. The employer or carrier may be represented by an
4466 adjuster or other qualified representative. The employer or
4467 carrier and any witness may appear at such hearing by telephone.
4468 The rules of evidence shall be liberally construed in favor of
4469 allowing introduction of evidence.



4470 (i)~~(j)~~ A judge of compensation claims may, upon the motion
4471 of a party or the judge's own motion, dismiss a petition for
4472 lack of prosecution if a petition, response, motion, order,
4473 request for hearing, or notice of deposition has not been filed
4474 during the previous 12 months unless good cause is shown. A
4475 dismissal for lack of prosecution is without prejudice and does
4476 not require a hearing.

4477 (j)~~(k)~~ A judge of compensation claims may not award
4478 interest on unpaid medical bills and the amount of such bills
4479 may not be used to calculate the amount of interest awarded.
4480 Regardless of the date benefits were initially requested,
4481 attorney's fees do not attach under this subsection until 30
4482 days after the date the carrier or self-insured employer
4483 receives the petition.

4484 (5)(a) Procedures with respect to appeals from orders of
4485 judges of compensation claims shall be governed by rules adopted
4486 by the Supreme Court. Such an order shall become final 30 days
4487 after mailing of copies of such order to the parties, unless
4488 appealed pursuant to such rules.

4489 (b) An appellant may be relieved of any necessary filing
4490 fee by filing a verified petition of indigency for approval as
4491 provided in s. 57.081(1) and may be relieved in whole or in part
4492 from the costs for preparation of the record on appeal if,
4493 within 15 days after the date notice of the estimated costs for
4494 the preparation is served, the appellant files with the judge of
4495 compensation claims a copy of the designation of the record on
4496 appeal, and a verified petition to be relieved of costs. A
4497 verified petition filed prior to the date of service of the



4498 notice of the estimated costs shall be deemed not timely filed.
4499 The verified petition relating to record costs shall contain a
4500 sworn statement that the appellant is insolvent and a complete,
4501 detailed, and sworn financial affidavit showing all the
4502 appellant's assets, liabilities, and income. Failure to state in
4503 the affidavit all assets and income, including marital assets
4504 and income, shall be grounds for denying the petition with
4505 prejudice. The Office of the Judges of Compensation Claims shall
4506 adopt rules as may be required pursuant to this subsection,
4507 including forms for use in all petitions brought under this
4508 subsection. The appellant's attorney, or the appellant if she or
4509 he is not represented by an attorney, shall include as a part of
4510 the verified petition relating to record costs an affidavit or
4511 affirmation that, in her or his opinion, the notice of appeal
4512 was filed in good faith and that there is a probable basis for
4513 the District Court of Appeal, First District, to find reversible
4514 error, and shall state with particularity the specific legal and
4515 factual grounds for the opinion. Failure to so affirm shall be
4516 grounds for denying the petition. A copy of the verified
4517 petition relating to record costs shall be served upon all
4518 interested parties. The judge of compensation claims shall
4519 promptly conduct a hearing on the verified petition relating to
4520 record costs, giving at least 15 days' notice to the appellant,
4521 the department, and all other interested parties, all of whom
4522 shall be parties to the proceedings. The judge of compensation
4523 claims may enter an order without such hearing if no objection
4524 is filed by an interested party within 20 days from the service
4525 date of the verified petition relating to record costs. Such



4526 proceedings shall be conducted in accordance with the provisions
4527 of this section and with the workers' compensation rules of
4528 procedure, to the extent applicable. In the event an insolvency
4529 petition is granted, the judge of compensation claims shall
4530 direct the department to pay record costs and filing fees from
4531 the Workers' Compensation Administration Trust Fund pending
4532 final disposition of the costs of appeal. The department may
4533 transcribe or arrange for the transcription of the record in any
4534 proceeding for which it is ordered to pay the cost of the
4535 record.

4536 (c) As a condition of filing a notice of appeal to the
4537 District Court of Appeal, First District, an employer who has
4538 not secured the payment of compensation under this chapter in
4539 compliance with s. 440.38 shall file with the notice of appeal a
4540 good and sufficient bond, as provided in s. 59.13, conditioned
4541 to pay the amount of the demand and any interest and costs
4542 payable under the terms of the order if the appeal is dismissed,
4543 or if the District Court of Appeal, First District, affirms the
4544 award in any amount. Upon the failure of such employer to file
4545 such bond with ~~the judge of compensation claims or~~ the District
4546 Court of Appeal, First District, along with the notice of
4547 appeal, the District Court of Appeal, First District, shall
4548 dismiss the notice of appeal.

4549 (6) An award of compensation for disability may be made
4550 after the death of an injured employee.

4551 ~~(7) An injured employee claiming or entitled to~~
4552 ~~compensation shall submit to such physical examination by a~~
4553 ~~certified expert medical advisor approved by the agency or the~~



4554 ~~judge of compensation claims as the agency or the judge of~~
4555 ~~compensation claims may require. The place or places shall be~~
4556 ~~reasonably convenient for the employee. Such physician or~~
4557 ~~physicians as the employee, employer, or carrier may select and~~
4558 ~~pay for may participate in an examination if the employee,~~
4559 ~~employer, or carrier so requests. Proceedings shall be suspended~~
4560 ~~and no compensation shall be payable for any period during which~~
4561 ~~the employee may refuse to submit to examination. Any interested~~
4562 ~~party shall have the right in any case of death to require an~~
4563 ~~autopsy, the cost thereof to be borne by the party requesting~~
4564 ~~it; and the judge of compensation claims shall have authority to~~
4565 ~~order and require an autopsy and may, in her or his discretion,~~
4566 ~~withhold her or his findings and award until an autopsy is held.~~

4567 Section 26. Subsections (1), (2), and (3) of section
4568 440.34, Florida Statutes, are amended, and subsection (7) is
4569 added to said section, to read:

4570 440.34 Attorney's fees; costs.--

4571 (1) A fee, gratuity, or other consideration may not be
4572 paid for ~~services rendered for~~ a claimant in connection with any
4573 proceedings arising under this chapter, unless approved as
4574 reasonable by the judge of compensation claims or court having
4575 jurisdiction over such proceedings. ~~Except as provided by this~~
4576 ~~subsection,~~ Any attorney's fee approved by a judge of
4577 compensation claims for benefits secured on behalf of ~~services~~
4578 ~~rendered~~ to a claimant must equal to 20 percent of the first
4579 \$5,000 of the amount of the benefits secured, 15 percent of the
4580 next \$5,000 of the amount of the benefits secured, 10 percent of
4581 the remaining amount of the benefits secured to be provided



4582 during the first 10 years after the date the claim is filed, and
4583 5 percent of the benefits secured after 10 years. The judge of
4584 compensation claims shall not approve a compensation order, a
4585 joint stipulation for lump-sum settlement, a stipulation or
4586 agreement between a claimant and his or her attorney, or any
4587 other agreement related to benefits under this chapter that
4588 provides for an attorney's fee in excess of the amount permitted
4589 by this section. The judge of compensation claims is not
4590 required to approve any retainer agreement between the claimant
4591 and his or her attorney. The retainer agreement as to fees and
4592 costs may not be for compensation in excess of the amount
4593 allowed under this section. However, The judge of compensation
4594 ~~claims shall consider the following factors in each case and may~~
4595 ~~increase or decrease the attorney's fee if, in her or his~~
4596 ~~judgment, the circumstances of the particular case warrant such~~
4597 ~~action:~~
4598 ~~(a) The time and labor required, the novelty and~~
4599 ~~difficulty of the questions involved, and the skill requisite to~~
4600 ~~perform the legal service properly.~~
4601 ~~(b) The fee customarily charged in the locality for~~
4602 ~~similar legal services.~~
4603 ~~(c) The amount involved in the controversy and the~~
4604 ~~benefits resulting to the claimant.~~
4605 ~~(d) The time limitation imposed by the claimant or the~~
4606 ~~circumstances.~~
4607 ~~(e) The experience, reputation, and ability of the lawyer~~
4608 ~~or lawyers performing services.~~
4609 ~~(f) The contingency or certainty of a fee.~~



4610 (2) In awarding a ~~reasonable~~ claimant's attorney's fee,
4611 the judge of compensation claims shall consider only those
4612 benefits secured by ~~to the claimant that~~ the attorney ~~is~~
4613 ~~responsible for securing.~~ An attorney is not entitled to
4614 attorney's fees for representation in any issue that was ripe,
4615 due, and owing and that reasonably could have been addressed,
4616 but was not addressed, during the pendency of other issues for
4617 the same injury. The amount, statutory basis, and type of
4618 benefits obtained through legal representation shall be listed
4619 on all attorney's fees awarded by the judge of compensation
4620 claims. For purposes of this section, the term "benefits
4621 secured" ~~means benefits obtained as a result of the claimant's~~
4622 ~~attorney's legal services rendered in connection with the claim~~
4623 ~~for benefits.~~ However, such term does not include future
4624 medical benefits to be provided on any date more than 5 years
4625 after the date the claim is filed. In the event an offer to
4626 settle an issue pending before a judge of compensation claims,
4627 including attorney's fees as provided for in this section, is
4628 communicated in writing to the claimant or the claimant's
4629 attorney at least 30 days prior to the trial date on such issue,
4630 for purposes of calculating the amount of attorney's fees to be
4631 taxed against the employer or carrier, the term "benefits
4632 secured" shall be deemed to include only that amount awarded to
4633 the claimant above the amount specified in the offer to settle.
4634 If multiple issues are pending before the judge of compensation
4635 claims, said offer of settlement shall address each issue
4636 pending and shall state explicitly whether or not the offer on
4637 each issue is severable. The written offer shall also



4638 unequivocally state whether or not it includes medical witness
4639 fees and expenses and all other costs associated with the claim.

4640 (3) If any party ~~the claimant~~ should prevail in any
4641 proceedings before a judge of compensation claims or court,
4642 there shall be taxed against the nonprevailing party ~~employer~~
4643 the reasonable costs of such proceedings, not to include ~~the~~
4644 attorney's fees ~~of the claimant~~. A claimant shall be
4645 responsible for the payment of her or his own attorney's fees,
4646 except that a claimant shall be entitled to recover a reasonable
4647 attorney's fee from a carrier or employer:

4648 (a) Against whom she or he successfully asserts a petition
4649 for medical benefits only, if the claimant has not filed or is
4650 not entitled to file at such time a claim for disability,
4651 permanent impairment, wage-loss, or death benefits, arising out
4652 of the same accident;

4653 (b) In any case in which the employer or carrier files a
4654 response to petition denying benefits with the Office of the
4655 Judges of Compensation Claims and the injured person has
4656 employed an attorney in the successful prosecution of the
4657 petition;

4658 (c) In a proceeding in which a carrier or employer denies
4659 that an accident occurred for which compensation benefits are
4660 payable, and the claimant prevails on the issue of
4661 compensability; or

4662 (d) In cases where the claimant successfully prevails in
4663 proceedings filed under s. 440.24 or s. 440.28.

4664



4665 Regardless of the date benefits were initially requested,
4666 attorney's fees shall not attach under this subsection until 30
4667 days after the date the carrier or employer, if self-insured,
4668 receives the petition. ~~In applying the factors set forth in~~
4669 ~~subsection (1) to cases arising under paragraphs (a), (b), (c),~~
4670 ~~and (d), the judge of compensation claims must only consider~~
4671 ~~only such benefits and the time reasonably spent in obtaining~~
4672 ~~them as were secured for the claimant within the scope of~~
4673 ~~paragraphs (a), (b), (c), and (d).~~

4674 (7) If an attorney's fee is owed under paragraph (3)(a),
4675 the judge of compensation claims may approve an alternative
4676 attorney's fee not to exceed \$1,500 only once per accident,
4677 based on a maximum hourly rate of \$150 per hour, if the judge of
4678 compensation claims expressly finds that the attorney's fee
4679 amount provided for in subsection (1), based on benefits
4680 secured, fails to fairly compensate the attorney for disputed
4681 medical-only claims as provided in paragraph (3)(a) and the
4682 circumstances of the particular case warrant such action.

4683 Section 27. Subsection (7) is added to section 440.38,
4684 Florida Statutes, to read:

4685 440.38 Security for compensation; insurance carriers and
4686 self-insurers.—

4687 (7) Any employer who meets the requirements of subsection
4688 (1) through a policy of insurance issued outside of this state
4689 must at all times, with respect to all employees working in this
4690 state, maintain the required coverage under a Florida
4691 endorsement using Florida rates and rules pursuant to payroll



4692 reporting that accurately reflects the work performed in this
4693 state by such employees.

4694 Section 28. Subsections (2) and (6) of section 440.381,
4695 Florida Statutes, are amended to read:

4696 440.381 Application for coverage; reporting payroll;
4697 payroll audit procedures; penalties.--

4698 (2) Submission of an application that contains false,
4699 misleading, or incomplete information provided with the purpose
4700 of avoiding or reducing the amount of premiums for workers'
4701 compensation coverage is a felony of the second degree,
4702 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4703 The application must contain a statement that the filing of an
4704 application containing false, misleading, or incomplete
4705 information provided with the purpose of avoiding or reducing
4706 the amount of premiums for workers' compensation coverage is a
4707 felony of the third degree, punishable as provided in s.
4708 775.082, s. 775.083, or s. 775.084. The application must contain
4709 a sworn statement by the employer attesting to the accuracy of
4710 the information submitted and acknowledging the provisions of
4711 former s. 440.37(4). The application must contain a sworn
4712 statement by the agent attesting that the agent explained to the
4713 employer or officer the classification codes that are used for
4714 premium calculations.

4715 (6)(a) If an employer understates or conceals payroll, or
4716 misrepresents or conceals employee duties so as to avoid proper
4717 classification for premium calculations, or misrepresents or
4718 conceals information pertinent to the computation and
4719 application of an experience rating modification factor, the



4720 employer, or the employer's agent or attorney, shall pay to the
4721 insurance carrier a penalty of 10 times the amount of the
4722 difference in premium paid and the amount the employer should
4723 have paid and reasonable attorney's fees. The penalty may be
4724 enforced in the circuit courts of this state.

4725 (b) If the department determines that an employer has
4726 materially understated or concealed payroll, has materially
4727 misrepresented or concealed employee duties so as to avoid
4728 proper classification for premium calculations, or has
4729 materially misrepresented or concealed information pertinent to
4730 the computation and application of an experience rating
4731 modification factor, the department shall immediately notify the
4732 employer's carrier of such determination. The carrier shall
4733 commence a physical onsite audit of the employer within 30 days
4734 after receiving notification from the department. If the carrier
4735 fails to commence the audit as required by this section, the
4736 department shall contract with auditing professionals to conduct
4737 the audit at the carrier's expense. A copy of the carrier's
4738 audit of the employer shall be provided to the department upon
4739 completion. The carrier is not required to conduct the physical
4740 onsite audit of the employer as set forth in this paragraph if
4741 the carrier gives written notice of cancellation to the employer
4742 within 30 days after receiving notification from the department
4743 of the material misrepresentation, understatement, or
4744 concealment and an audit is conducted in conjunction with the
4745 cancellation.

4746 Section 29. Subsection (3) of section 440.42, Florida
4747 Statutes, is amended to read:



4748 440.42 Insurance policies; liability.--

4749 (3) No contract or policy of insurance issued by a carrier
4750 under this chapter shall expire or be canceled until at least 30
4751 days have elapsed after a notice of cancellation has been sent
4752 to the department and to the employer in accordance with the
4753 provisions of s. 440.185(7). For cancellation due to nonpayment
4754 of premium, the insurer shall mail notification to the employer
4755 at least 10 days prior to the effective date of the
4756 cancellation. However, when duplicate or dual coverage exists by
4757 reason of two different carriers having issued policies of
4758 insurance to the same employer securing the same liability, it
4759 shall be presumed that only that policy with the later effective
4760 date shall be in force and that the earlier policy terminated
4761 upon the effective date of the latter. In the event that both
4762 policies carry the same effective date, one of the policies may
4763 be canceled instanter upon filing a notice of cancellation with
4764 the department and serving a copy thereof upon the employer in
4765 such manner as the department prescribes by rule. The department
4766 may by rule prescribe the content of the notice of retroactive
4767 cancellation and specify the time, place, and manner in which
4768 the notice of cancellation is to be served.

4769 Section 30. Paragraph (a) of subsection (4) of section
4770 440.49, Florida Statutes, is amended to read:

4771 440.49 Limitation of liability for subsequent injury
4772 through Special Disability Trust Fund.--

4773 (4) PERMANENT IMPAIRMENT OR PERMANENT TOTAL DISABILITY,
4774 TEMPORARY BENEFITS, MEDICAL BENEFITS, OR ATTENDANT CARE AFTER
4775 OTHER PHYSICAL IMPAIRMENT.--



4776 (a) *Permanent impairment*.--If an employee who has a
4777 preexisting permanent physical impairment incurs a subsequent
4778 permanent impairment from injury or occupational disease arising
4779 out of, and in the course of, her or his employment which merges
4780 with the preexisting permanent physical impairment to cause a
4781 permanent impairment, the employer shall, in the first instance,
4782 pay all benefits provided by this chapter; but, subject to the
4783 limitations specified in subsection (6), such employer shall be
4784 reimbursed from the Special Disability Trust Fund created by
4785 subsection (9) for 50 percent of all impairment benefits which
4786 the employer has been required to provide pursuant to s.
4787 440.15(3)~~(a)~~ as a result of the subsequent accident or
4788 occupational disease.

4789 Section 31. Subsection (6) of section 440.491, Florida
4790 Statutes, is amended to read:

4791 440.491 Reemployment of injured workers; rehabilitation.--

4792 (6) TRAINING AND EDUCATION.--

4793 (a) Upon referral of an injured employee by the carrier,
4794 or upon the request of an injured employee, the department shall
4795 conduct a training and education screening to determine whether
4796 it should refer the employee for a vocational evaluation and, if
4797 appropriate, approve training and education or other vocational
4798 services for the employee. The department may not approve formal
4799 training and education programs unless it determines, after
4800 consideration of the reemployment assessment, pertinent
4801 reemployment status reviews or reports, and such other relevant
4802 factors as it prescribes by rule, that the reemployment plan is
4803 likely to result in return to suitable gainful employment. The



4804 department is authorized to expend moneys from the Workers'
4805 Compensation Administration Trust Fund, established by s.
4806 440.50, to secure appropriate training and education at a
4807 community college established under part III of chapter 240 or
4808 at a vocational-technical school established under s. 230.63, or
4809 to secure other vocational services when necessary to satisfy
4810 the recommendation of a vocational evaluator. As used in this
4811 paragraph, "appropriate training and education" includes
4812 securing a general education diploma (GED), if necessary. The
4813 department shall establish training and education standards
4814 pertaining to employee eligibility, course curricula and
4815 duration, and associated costs.

4816 (b) When ~~it appears that~~ an employee who has attained
4817 maximum medical improvement is unable to earn at least 80
4818 percent of the compensation rate and requires training and
4819 education to obtain suitable gainful employment, the employer or
4820 carrier shall pay the employee additional training and education
4821 temporary total compensation benefits while the employee
4822 receives such training and education for a period not to exceed
4823 26 weeks, which period may be extended for an additional 26
4824 weeks or less, if such extended period is determined to be
4825 necessary and proper by a judge of compensation claims. The
4826 benefits provided under this paragraph shall not be in addition
4827 to the 104 weeks as specified in s. 440.15(2). However, a
4828 carrier or employer is not precluded from voluntarily paying
4829 additional temporary total disability compensation beyond that
4830 period. If an employee requires temporary residence at or near a
4831 facility or an institution providing training and education



4832 which is located more than 50 miles away from the employee's
 4833 customary residence, the reasonable cost of board, lodging, or
 4834 travel must be borne by the department from the Workers'
 4835 Compensation Administration Trust Fund established by s. 440.50.
 4836 An employee who refuses to accept training and education that is
 4837 recommended by the vocational evaluator and considered necessary
 4838 by the department will forfeit any additional training and
 4839 education benefits and any additional payment for lost wages
 4840 under this chapter. The department shall adopt rules to
 4841 implement this section, which shall include requirements placed
 4842 upon the carrier to notify the injured employee of the
 4843 availability of training and education benefits as specified in
 4844 this chapter. The department shall also include information
 4845 regarding the eligibility for training and education benefits in
 4846 informational materials specified in ss. 440.207 and 440.40 ~~is~~
 4847 ~~subject to a 50 percent reduction in weekly compensation~~
 4848 ~~benefits, including wage loss benefits, as determined under s.~~
 4849 ~~440.15(3)(b).~~

4850 Section 32. Section 440.525, Florida Statutes, is amended
 4851 to read:

4852 440.525 Examination and investigation of carriers and
 4853 claims-handling entities.--

4854 (1) The department may examine, or investigate any each
 4855 carrier, third-party administrator, servicing agent, or other
 4856 claims-handling entity as often as is warranted to ensure that
 4857 it is carriers are fulfilling its their obligations under this
 4858 chapter the law. The examination may cover any period of the
 4859 carrier's operations since the last previous examination.



4860 (2) An examination may cover any period of the carrier's,
4861 third-party administrator's, servicing agent's, or other claims-
4862 handling entity's operations since the last previous
4863 examination. An investigation based upon a reasonable belief by
4864 the department that a material violation of this chapter has
4865 occurred may cover any time period, but may not predate the last
4866 examination by more than 5 years. The department may by rule
4867 establish procedures, standards, and protocols for examinations
4868 and investigations. If the department finds any violation of
4869 this chapter, it may impose administrative penalties pursuant to
4870 this chapter. If the department finds any self-insurer in
4871 violation of this chapter, it may take action pursuant s.
4872 440.38(3). Examinations or investigations by the department may
4873 address, but are not limited to addressing, patterns or
4874 practices of unreasonable delay in claims handling; timeliness
4875 and accuracy of payments and reports under ss. 440.13, 440.16,
4876 and 440.185; or patterns or practices of harassment, coercion,
4877 or intimidation of claimants. The department may also specify by
4878 rule the documentation to be maintained for each claim file.

4879 (3) As to any examination or investigation conducted under
4880 this chapter, the department shall have the power to conduct
4881 onsite inspections of claims records and documentation of a
4882 carrier, third-party administrator, servicing agent, or other
4883 claims-handling entity, and conduct interviews, both sworn and
4884 unsworn, of claims-handling personnel. Carriers, third-party
4885 administrators, servicing agents, and other claims-handling
4886 entities shall make all claims records, documentation,
4887 communication, and correspondence available to department



4888 personnel during regular business hours. If any person fails to
4889 comply with a request for production of records or documents or
4890 fails to produce an employee for interview, the department may
4891 compel production or attendance by subpoena. The results of an
4892 examination or investigation shall be provided to the carrier,
4893 third-party administrator, servicing agent, or other claims-
4894 handling entity in a written report setting forth the basis for
4895 any violations that are asserted. Such report is agency action
4896 for purposes of chapter 120, and the aggrieved party may request
4897 a proceeding under s. 120.57 with regard to the findings and
4898 conclusion of the report.

4899 (4) If the department finds that violations of this
4900 chapter have occurred, the department may impose an
4901 administrative penalty upon the offending entity or entities.
4902 For each offending entity, such penalties shall not exceed
4903 \$2,500 for each pattern or practice constituting nonwillful
4904 violation and shall not exceed an aggregate amount of \$10,000
4905 for all nonwillful violations arising out of the same action. If
4906 the department finds a pattern of practice that constitutes a
4907 willful violation, the department may impose an administrative
4908 penalty upon each offending entity not to exceed \$20,000 for
4909 each willful pattern or practice. Such fines shall not exceed
4910 \$100,000 for all willful violations arising out of the same
4911 action. No penalty assessed under this section may be recouped
4912 by any carrier in the rate base, the premium, or any rate
4913 filing. Any administrative penalty imposed under this section
4914 for a nonwillful violation shall not duplicate an administrative
4915 penalty imposed under another provision of this chapter or the



4916 Insurance Code. The department may adopt rules to implement this
4917 section. The department shall adopt penalty guidelines by rule
4918 to set penalties under this chapter.

4919 Section 33. Subsection (2) of section 627.162, Florida
4920 Statutes, is amended to read:

4921 627.162 Requirements for premium installments;
4922 delinquency, collection, and check return charges; attorney's
4923 fees.--

4924 (2) Insurers providing workers' compensation coverage
4925 under chapter 440 may charge the insured a delinquency and
4926 collection fee on each installment in default for a period of
4927 not less than 5 days in an amount not to exceed \$25 ~~\$10~~ or 5
4928 percent of the delinquent installment, whichever is greater.
4929 Only one such delinquency and collection fee may be collected on
4930 any such installment regardless of the period during which it
4931 remains in default.

4932 Section 34. Section 627.285, Florida Statutes, is created
4933 to read:

4934 627.285 Independent actuarial peer review of workers'
4935 compensation rating organization.--The Financial Services
4936 Commission shall at least once every other year contract for an
4937 independent actuarial peer review and analysis of the ratemaking
4938 processes of any licensed rating organization that makes rate
4939 filings for workers' compensation insurance and the rating
4940 organization shall fully cooperate in the peer review. The
4941 contract shall require submission of a final report to the
4942 commission, the President of the Senate, and the Speaker of the
4943 House of Representatives by February 1. The first report shall



4944 be submitted by February 1, 2004. The costs of the independent
 4945 actuarial peer review shall be paid from the Workers'
 4946 Compensation Administration Trust Fund.

4947 Section 35. Effective July, 1, 2003, paragraphs (b), (c),
 4948 and (d) of subsection (4) of section 627.311, Florida Statutes,
 4949 are amended to read

4950 627.311 Joint underwriters and joint reinsurers.--

4951 (4)

4952 (b) The operation of the plan is subject to the
 4953 supervision of a 9-member ~~13-member~~ board of governors. The
 4954 board of governors shall be comprised of:

4955 1. Three members appointed by the Financial Services
 4956 Commission. Each member appointed by the commission shall serve
 4957 at the pleasure of the commission;

4958 ~~2.1-~~ Two ~~Five~~ of the 20 domestic insurers, as defined in
 4959 s. 624.06(1), having the largest voluntary direct premiums
 4960 written in this state for workers' compensation and employer's
 4961 liability insurance, which shall be elected by those 20 domestic
 4962 insurers;

4963 ~~3.2-~~ Two ~~Five~~ of the 20 foreign insurers as defined in s.
 4964 624.06(2) having the largest voluntary direct premiums written
 4965 in this state for workers' compensation and employer's liability
 4966 insurance, which shall be elected by those 20 foreign insurers;

4967 ~~3. One person, who shall serve as the chair, appointed by~~
 4968 ~~the Insurance Commissioner;~~

4969 4. One person appointed by the largest property and
 4970 casualty insurance agents' association in this state; and



4971 5. The consumer advocate appointed under s. 627.0613 or
 4972 the consumer advocate's designee.

4973
 4974 Each board member shall serve a 4-year term and may serve
 4975 consecutive terms. A vacancy on the board shall be filled in the
 4976 same manner as the original appointment for the unexpired
 4977 portion of the term. The Financial Services Commission shall
 4978 designate a member of the board to serve as chair. No board
 4979 member shall be an insurer which provides service to the plan or
 4980 which has an affiliate which provides services to the plan or
 4981 which is serviced by a service company or third-party
 4982 administrator which provides services to the plan or which has
 4983 an affiliate which provides services to the plan. The minutes,
 4984 audits, and procedures of the board of governors are subject to
 4985 chapter 119.

4986 (c) The operation of the plan shall be governed by a plan
 4987 of operation that is prepared at the direction of the board of
 4988 governors. The plan of operation may be changed at any time by
 4989 the board of governors or upon request of the department. The
 4990 plan of operation and all changes thereto are subject to the
 4991 approval of the department. The plan of operation shall:

4992 1. Authorize the board to engage in the activities
 4993 necessary to implement this subsection, including, but not
 4994 limited to, borrowing money.

4995 2. Develop criteria for eligibility for coverage by the
 4996 plan, including, but not limited to, documented rejection by at
 4997 least two insurers which reasonably assures that insureds
 4998 covered under the plan are unable to acquire coverage in the



4999 voluntary market. Any insured may voluntarily elect to accept
5000 coverage from an insurer for a premium equal to or greater than
5001 the plan premium if the insurer writing the coverage adheres to
5002 the provisions of s. 627.171.

5003 3. Require notice from the agent to the insured at the
5004 time of the application for coverage that the application is for
5005 coverage with the plan and that coverage may be available
5006 through an insurer, group self-insurers' fund, commercial self-
5007 insurance fund, or assessable mutual insurer through another
5008 agent at a lower cost.

5009 4. Establish programs to encourage insurers to provide
5010 coverage to applicants of the plan in the voluntary market and
5011 to insureds of the plan, including, but not limited to:

5012 a. Establishing procedures for an insurer to use in
5013 notifying the plan of the insurer's desire to provide coverage
5014 to applicants to the plan or existing insureds of the plan and
5015 in describing the types of risks in which the insurer is
5016 interested. The description of the desired risks must be on a
5017 form developed by the plan.

5018 b. Developing forms and procedures that provide an insurer
5019 with the information necessary to determine whether the insurer
5020 wants to write particular applicants to the plan or insureds of
5021 the plan.

5022 c. Developing procedures for notice to the plan and the
5023 applicant to the plan or insured of the plan that an insurer
5024 will insure the applicant or the insured of the plan, and notice
5025 of the cost of the coverage offered; and developing procedures



5026 for the selection of an insuring entity by the applicant or
5027 insured of the plan.

5028 d. Provide for a market-assistance plan to assist in the
5029 placement of employers. All applications for coverage in the
5030 plan received 45 days before the effective date for coverage
5031 shall be processed through the market-assistance plan. A market-
5032 assistance plan specifically designed to serve the needs of
5033 small good policyholders as defined by the board must be
5034 finalized by January 1, 1994.

5035 5. Provide for policy and claims services to the insureds
5036 of the plan of the nature and quality provided for insureds in
5037 the voluntary market.

5038 6. Provide for the review of applications for coverage
5039 with the plan for reasonableness and accuracy, using any
5040 available historic information regarding the insured.

5041 7. Provide for procedures for auditing insureds of the
5042 plan which are based on reasonable business judgment and are
5043 designed to maximize the likelihood that the plan will collect
5044 the appropriate premiums.

5045 8. Authorize the plan to terminate the coverage of and
5046 refuse future coverage for any insured that submits a fraudulent
5047 application to the plan or provides fraudulent or grossly
5048 erroneous records to the plan or to any service provider of the
5049 plan in conjunction with the activities of the plan.

5050 9. Establish service standards for agents who submit
5051 business to the plan.

5052 10. Establish criteria and procedures to prohibit any
5053 agent who does not adhere to the established service standards



5054 from placing business with the plan or receiving, directly or
5055 indirectly, any commissions for business placed with the plan.

5056 11. Provide for the establishment of reasonable safety
5057 programs for all insureds in the plan. All insureds of the plan
5058 must participate in the safety program.

5059 12. Authorize the plan to terminate the coverage of and
5060 refuse future coverage to any insured who fails to pay premiums
5061 or surcharges when due; who, at the time of application, is
5062 delinquent in payments of workers' compensation or employer's
5063 liability insurance premiums or surcharges owed to an insurer,
5064 group self-insurers' fund, commercial self-insurance fund, or
5065 assessable mutual insurer licensed to write such coverage in
5066 this state; or who refuses to substantially comply with any
5067 safety programs recommended by the plan.

5068 13. Authorize the board of governors to provide the
5069 services required by the plan through staff employed by the
5070 plan, through reasonably compensated service providers who
5071 contract with the plan to provide services as specified by the
5072 board of governors, or through a combination of employees and
5073 service providers.

5074 14. Provide for service standards for service providers,
5075 methods of determining adherence to those service standards,
5076 incentives and disincentives for service, and procedures for
5077 terminating contracts for service providers that fail to adhere
5078 to service standards.

5079 15. Provide procedures for selecting service providers and
5080 standards for qualification as a service provider that
5081 reasonably assure that any service provider selected will



5082 continue to operate as an ongoing concern and is capable of
5083 providing the specified services in the manner required.

5084 16. Provide for reasonable accounting and data-reporting
5085 practices.

5086 17. Provide for annual review of costs associated with the
5087 administration and servicing of the policies issued by the plan
5088 to determine alternatives by which costs can be reduced.

5089 18. Authorize the acquisition of such excess insurance or
5090 reinsurance as is consistent with the purposes of the plan.

5091 19. Provide for an annual report to the department on a
5092 date specified by the department and containing such information
5093 as the department reasonably requires.

5094 20. Establish multiple rating plans for various
5095 classifications of risk which reflect risk of loss, hazard
5096 grade, actual losses, size of premium, and compliance with loss
5097 control. At least one of such plans must be a preferred-rating
5098 plan to accommodate small-premium policyholders with good
5099 experience as defined in sub-subparagraph 22.a.

5100 21. Establish agent commission schedules.

5101 22. Establish four ~~three~~ subplans as follows:

5102 a. Subplan "A" must include those insureds whose annual
5103 premium does not exceed \$2,500 and who have neither incurred any
5104 lost-time claims nor incurred medical-only claims exceeding 50
5105 percent of their premium for the immediate 2 years.

5106 b. Subplan "B" must include insureds that are employers
5107 identified by the board of governors as high-risk employers due
5108 solely to the nature of the operations being performed by those



5109 insureds and for whom no market exists in the voluntary market,
5110 and whose experience modifications are less than 1.00.

5111 c. Subplan "C" must include all ~~other~~ insureds within the
5112 plan that are not eligible for subplan "A," subplan "B," or
5113 subplan "D."

5114 d. Subplan "D" must include any employer, regardless of
5115 the length of time for which it has conducted business
5116 operations, which has an experience modification factor of 1.10
5117 or less and either employs 15 or fewer employees or is an
5118 organization that is exempt from federal income tax pursuant to
5119 s. 501(c)(3) of the Internal Revenue Code and receives more than
5120 50 percent of its funding from gifts, grants, endowments, or
5121 federal or state contracts. The rate plan for subplan "D" shall
5122 be the same rate plan as the plan approved under ss. 627.091-
5123 627.151 and each participant in subplan "D" shall pay the
5124 premium determined under such rate plan, plus a surcharge
5125 determined by the board to be sufficient to ensure that the plan
5126 does not compete with the voluntary market rate for any
5127 participant, but not to exceed 25 percent. However, the
5128 surcharge shall not exceed 10 percent for an organization that
5129 is exempt from federal income tax pursuant to s. 501(c)(3) of
5130 the Internal Revenue Code.

5131 23. Provide for a depopulation program to reduce the
5132 number of insureds in subplan "D." If an employer insured
5133 through subplan "D" is offered coverage from a voluntary market
5134 carrier:

5135 a. During the first 30 days of coverage under the subplan;
5136 b. Before a policy is issued under the subplan;



5137 c. By issuance of a policy upon expiration or cancellation
5138 of the policy under the subplan; or

5139 d. By assumption of the subplan's obligation with respect
5140 to an in-force policy,

5141
5142 that employer is no longer eligible for coverage through the
5143 plan. The premium for risks assumed by the voluntary market
5144 carrier must be the same premium plus, for the first 2 years,
5145 the surcharge as determined in sub-subparagraph 22.d. A premium
5146 under this subparagraph, including surcharge, is deemed approved
5147 and is not an excess premium for purposes of s. 627.171.

5148 24. Require that policies issued under subplan "D" and
5149 applications for such policies must include a notice that the
5150 policy issued under subplan "D" could be replaced by a policy
5151 issued from a voluntary market carrier and that, if an offer of
5152 coverage is obtained from a voluntary market carrier, the
5153 policyholder is no longer eligible for coverage through subplan
5154 "D." The notice must also specify that acceptance of coverage
5155 under subplan "D" creates a conclusive presumption that the
5156 applicant or policyholder is aware of this potential.

5157 (d)1. The plan must be funded through actuarially sound
5158 premiums charged to insureds of the plan.

5159 2. The plan may issue assessable policies only to those
5160 insureds in subplan "C" and subplan "D." Subject to
5161 verification by the department, the board may levy assessments
5162 against insureds in subplan "C" or subplan "D," on a pro rata
5163 earned premium basis, to fund any deficits that exist in those
5164 subplans. Assessments levied against subplan "C" participants



5165 shall cover only the deficits attributable to subplan "C," and
 5166 assessments levied against subplan "D" participants shall cover
 5167 only the deficits attributable to subplan "D." In no event may
 5168 the plan levy assessments against any person or entity, except
 5169 as authorized by this paragraph. Those assessable policies must
 5170 be clearly identified as assessable by containing, in
 5171 contrasting color and in not less than 10-point type, the
 5172 following statements: "This is an assessable policy. If the plan
 5173 is unable to pay its obligations, policyholders will be required
 5174 to contribute on a pro rata earned premium basis the money
 5175 necessary to meet any assessment levied."

5176 3. The plan may issue assessable policies with differing
 5177 terms and conditions to different groups within subplans "C" and
 5178 "D" ~~the plan~~ when a reasonable basis exists for the
 5179 differentiation.

5180 4. The plan may offer rating, dividend plans, and other
 5181 plans to encourage loss prevention programs.

5182 Section 36. Paragraphs (c) and (e) of subsection (3) of
 5183 section 921.0022, Florida Statutes, are amended to read:

5184 921.0022 Criminal Punishment Code; offense severity
 5185 ranking chart.--

5186 (3) OFFENSE SEVERITY RANKING CHART

Florida	Felony	
Statute	Degree	Description
		(c) LEVEL 3
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.

5189



5190	316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in marked patrol vehicle with siren and lights activated.
5191	319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
5192	319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
5193	319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
5194	319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
5195	327.35(2)(b)	3rd	Felony BUI.
5196	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
5197	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
	376.302(5)	3rd	Fraud related to reimbursement for



cleanup expenses under the Inland Protection Trust Fund.

5198 440.105(3)(b) 3rd Receipt of fee or consideration without approval by judge of compensation claims.

5199 440.1051(3) 3rd False report of workers' compensation fraud or retaliation for making such a report.

5200 501.001(2)(b) 2nd Tamper with a consumer product or the container using materially false/misleading information.

5201 697.08 3rd Equity skimming.

5202 790.15(3) 3rd Person directs another to discharge firearm from a vehicle.

5203 796.05(1) 3rd Live on earnings of a prostitute.

5204 806.10(1) 3rd Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.

5205 806.10(2) 3rd Interferes with or assaults firefighter in performance of duty.

5206 810.09(2)(c) 3rd Trespass on property other than structure or conveyance armed with



firearm or dangerous weapon.

5207	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
5208	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
5209	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
5210	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
5211	817.233	3rd	Burning to defraud insurer.
5212	817.234(8)&(9)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
5213	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
5214	817.505(4)	3rd	Patient brokering.
5215	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
5216	831.28(2)(a)	3rd	Counterfeiting a payment instrument



with intent to defraud or possessing a counterfeit payment instrument.

5217

831.29 2nd Possession of instruments for counterfeiting drivers' licenses or identification cards.

5218

838.021(3)(b) 3rd Threatens unlawful harm to public servant.

5219

843.19 3rd Injure, disable, or kill police dog or horse.

5220

870.01(2) 3rd Riot; inciting or encouraging.

5221

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).

5222

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.

5223

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.

5224

893.13(6)(a) 3rd Possession of any controlled substance
 other than felony possession of
 cannabis.

5225

893.13(7)(a)8. 3rd Withhold information from practitioner
 regarding previous receipt of or
 prescription for a controlled
 substance.

5226

893.13(7)(a)9. 3rd Obtain or attempt to obtain controlled
 substance by fraud, forgery,
 misrepresentation, etc.

5227

893.13(7)(a)10. 3rd Affix false or forged label to package
 of controlled substance.

5228

893.13(7)(a)11. 3rd Furnish false or fraudulent material
 information on any document or record
 required by chapter 893.

5229

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.

5230

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.

5231

893.13(8)(a)3. 3rd

Knowingly write a prescription for a controlled substance for a fictitious person.

5232

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.

5233

918.13(1)(a) 3rd

Alter, destroy, or conceal investigation evidence.

5234

944.47(1)(a)1.- 3rd
2.

Introduce contraband to correctional facility.

5235

944.47(1)(c) 2nd

Possess contraband while upon the grounds of a correctional institution.

5236

985.3141 3rd

Escapes from a juvenile facility (secure detention or residential commitment facility).



5237			(e) LEVEL 5
5238	316.027(1)(a)	3rd	Accidents involving personal injuries, failure to stop; leaving scene.
5239	316.1935(4)	2nd	Aggravated fleeing or eluding.
5240	322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
5241	327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
5242	381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
5243			
5244	<u>440.10(1)(g)</u>	<u>2nd</u>	<u>Failure to obtain workers' compensation coverage.</u>
5245	<u>440.105(5)</u>	<u>2nd</u>	<u>Unlawful solicitation for the purpose of making workers' compensation claims.</u>
5246	<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>
5247			



5248	790.01(2)	3rd	Carrying a concealed firearm.
5249	790.162	2nd	Threat to throw or discharge destructive device.
5250	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
5251	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
5252	790.23	2nd	Felons in possession of firearms or electronic weapons or devices.
5253	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
5254	800.04(7)(c)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
5255	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
5256	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.



5257	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
5258	812.131(2)(b)	3rd	Robbery by sudden snatching.
5259	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
5260	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
5261	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
5262	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.
5263	817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device or reencoder.
5264	825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
5265	827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by



a child.

5266

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.

5267

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

5268

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

5269

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).

5270

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.

5271

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.



5272

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.

5273

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.

5274

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).

5275

5276

5277

5278

5279

5280

5281

5282

Section 37. Report to the Legislature regarding outstanding enforcement issues.--The Department of Financial Services shall, no later than January 1, 2004, provide a report to the President of the Senate, the Speaker of the House of Representatives, the minority leaders of the Senate and the House of Representatives, and the chairs of the standing committees of the Senate and the House of Representatives having



5283 jurisdiction over insurance issues, containing the following
5284 information:

5285 (1) Any provision of chapter 440, Florida Statutes,
5286 relating to workers' compensation carrier compliance and
5287 enforcement, that the department finds it is unable to enforce.

5288 (2) Any administrative rule relating to workers'
5289 compensation carrier compliance and enforcement that the
5290 department finds it is unable to enforce.

5291 (3) Any other impediment to enforcement of chapter 440,
5292 Florida Statutes, resulting from the transfer of activities from
5293 the former Department of Labor and Employment Security to the
5294 department or the reorganization of the former Department of
5295 Insurance into the department.

5296 Section 38. Subsection (2) of section 946.523, Florida
5297 Statutes, is amended to read:

5298 946.523 Prison industry enhancement (PIE) programs.--

5299 (2) Notwithstanding any other law to the contrary,
5300 including s. 440.15~~(8)-(9)~~, private sector employers shall
5301 provide workers' compensation coverage to inmates who
5302 participate in prison industry enhancement (PIE) programs under
5303 subsection (1). However, inmates are not entitled to
5304 unemployment compensation.

5305 Section 39. Paragraph (c) of subsection (5) of section
5306 985.315, Florida Statutes, is amended to read:

5307 985.315 Educational/technical and vocational work-related
5308 programs.--

5309 (5)



5310 (c) Notwithstanding any other law to the contrary,
5311 including s. 440.15~~(8)~~~~(9)~~, private sector employers shall
5312 provide juveniles participating in juvenile work programs under
5313 paragraph (b) with workers' compensation coverage, and juveniles
5314 shall be entitled to the benefits of such coverage. Nothing in
5315 this subsection shall be construed to allow juveniles to
5316 participate in unemployment compensation benefits.

5317 Section 40. (1) There is established a Joint Select
5318 Committee on Workers' Compensation Rating Reform. The committee
5319 shall study the merits of requiring each workers' compensation
5320 insurer to individually file its expense and profit portion of a
5321 rate filing, while permitting each insurer to use a lost cost
5322 filing made by a licensed rating organization. The committee
5323 shall also study options for the current prior approval system
5324 for workers' compensation rate filings, including, but not
5325 limited to, rate filing procedures that would promote greater
5326 competition and would encourage insurers to write workers'
5327 compensation coverage in the state while protecting employers
5328 from rates that are excessive, inadequate, or unfairly
5329 discriminatory.

5330 (2) The committee shall be composed of three Senators
5331 appointed by the President of the Senate and three
5332 Representatives appointed by the Speaker of the House of
5333 Representatives. The appointed members of the committee shall
5334 elect a chair and vice chair. The Department of Financial
5335 Services shall provide information and assistance as requested
5336 by the committee.



5337 (3) The committee shall issue its final report and
5338 recommendations to the President of the Senate and the Speaker
5339 of the House of Representatives by December 1, 2003. The
5340 committee shall terminate on December 1, 2003.

5341 Section 41. The board of governors of the joint
5342 underwriting plan for workers' compensation insurance created by
5343 s. 627.311(4), Florida Statutes, shall, by January 1, 2005,
5344 submit a report to the President of the Senate, the Speaker of
5345 the House of Representatives, the minority party leaders of the
5346 Senate and the House of Representatives, and the chairs of the
5347 standing committees of the Senate and the House of
5348 Representatives having jurisdiction over matters relating to
5349 workers' compensation. The report shall include the board's
5350 findings and recommendations on the following issues:

5351 (1) The number of policies and the aggregate premium of
5352 the workers' compensation joint underwriting plan, before and
5353 after enactment of this act, and projections for future policy
5354 and premium growth.

5355 (2) Increases or decreases in availability of workers'
5356 compensation coverage in the voluntary market and the
5357 effectiveness of this act in improving the availability of
5358 workers' compensation coverage in the state.

5359 (3) The board's efforts to depopulate the plan and the
5360 willingness of insurers in the voluntary market to avail
5361 themselves of depopulation incentives.

5362 (4) Further actions that could be taken by the Legislature
5363 to improve availability of workers' compensation coverage in the
5364 voluntary and residual markets.



5365 (5) Actions that the board has taken to restructure the
 5366 joint underwriting plan and recommendations for legislative
 5367 action to restructure the plan.

5368 (6) Projected surpluses or deficits and possible means of
 5369 providing funding to ensure the continued solvency of the plan.

5370 (7) An independent actuarial review of all rates under the
 5371 plan. The costs of the independent actuarial review shall be
 5372 paid from the Workers' Compensation Administration Trust Fund,
 5373 pursuant to a budget amendment approved by the Legislative
 5374 Budget Commission. The board shall submit a plan for such review
 5375 to the Legislative Budget Commission by October 1, 2003.

5376 (8) Such other issues as the board determines are worthy
 5377 of the Legislature's consideration.

5378 Section 42. Subsections (1) and (2) of section 443.1715,
 5379 Florida Statutes, are amended to read:

5380 443.1715 Disclosure of information; confidentiality.--

5381 (1) RECORDS AND REPORTS.--Information revealing the
 5382 employing unit's or individual's identity obtained from the
 5383 employing unit or from any individual pursuant to the
 5384 administration of this chapter, and any determination revealing
 5385 such information, except to the extent necessary for the proper
 5386 presentation of a claim or upon written authorization of the
 5387 claimant who has a workers' compensation claim pending or is
 5388 receiving compensation benefits, must be held confidential and
 5389 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
 5390 of the State Constitution. Such information may be made
 5391 available only to public employees in the performance of their
 5392 public duties, including employees of the Department of



5393 Education in obtaining information for the Florida Education and
5394 Training Placement Information Program and the Office of
5395 Tourism, Trade, and Economic Development in its administration
5396 of the qualified defense contractor tax refund program
5397 authorized by s. 288.1045 and the qualified target industry tax
5398 refund program authorized by s. 288.106. Except as otherwise
5399 provided by law, public employees receiving such information
5400 must retain the confidentiality of such information. Any
5401 claimant, or the claimant's legal representative, at a hearing
5402 before an appeals referee or the commission shall be supplied
5403 with information from such records to the extent necessary for
5404 the proper presentation of her or his claim. Any employee or
5405 member of the commission or any employee of the division, or any
5406 other person receiving confidential information, who violates
5407 any provision of this subsection commits a misdemeanor of the
5408 second degree, punishable as provided in s. 775.082 or s.
5409 775.083. However, the division may furnish to any employer
5410 copies of any report previously submitted by such employer, upon
5411 the request of such employer, and may furnish to any claimant
5412 copies of any report previously submitted by such claimant, upon
5413 the request of such claimant, and the division is authorized to
5414 charge therefor such reasonable fee as the division may by rule
5415 prescribe not to exceed the actual reasonable cost of the
5416 preparation of such copies. Fees received by the division for
5417 copies as provided in this subsection must be deposited to the
5418 credit of the Employment Security Administration Trust Fund.

5419 (2) DISCLOSURE OF INFORMATION.—



5420 (a) Subject to such restrictions as the division
5421 prescribes by rule, information declared confidential under this
5422 section may be made available to any agency of this or any other
5423 state, or any federal agency, charged with the administration of
5424 any unemployment compensation law or the maintenance of a system
5425 of public employment offices, or the Bureau of Internal Revenue
5426 of the United States Department of the Treasury, or the Florida
5427 Department of Revenue and information obtained in connection
5428 with the administration of the employment service may be made
5429 available to persons or agencies for purposes appropriate to the
5430 operation of a public employment service or a job-preparatory or
5431 career education or training program. The division shall on a
5432 quarterly basis, furnish the National Directory of New Hires
5433 with information concerning the wages and unemployment
5434 compensation paid to individuals, by such dates, in such format
5435 and containing such information as the Secretary of Health and
5436 Human Services shall specify in regulations. Upon request
5437 therefor, the division shall furnish any agency of the United
5438 States charged with the administration of public works or
5439 assistance through public employment, and may furnish to any
5440 state agency similarly charged, the name, address, ordinary
5441 occupation, and employment status of each recipient of benefits
5442 and such recipient's rights to further benefits under this
5443 chapter. Except as otherwise provided by law, the receiving
5444 agency must retain the confidentiality of such information as
5445 provided in this section. The division may request the
5446 Comptroller of the Currency of the United States to cause an
5447 examination of the correctness of any return or report of any



5448 national banking association rendered pursuant to the provisions
5449 of this chapter and may in connection with such request transmit
5450 any such report or return to the Comptroller of the Currency of
5451 the United States as provided in s. 3305(c) of the federal
5452 Internal Revenue Code.

5453 (b)1. The employer or the employer's workers' compensation
5454 carrier against whom a claim for benefits under chapter 440 has
5455 been made, or a representative of either, may request from the
5456 division records of wages of the employee reported to the
5457 division by any employer for the quarter that includes the date
5458 of the accident that is the subject of such claim and for
5459 subsequent quarters. The request must be made with the
5460 authorization or consent of the employee or any employer who
5461 paid wages to the employee subsequent to the date of the
5462 accident.

5463 2. The employer or carrier shall make the request on a
5464 form prescribed by rule for such purpose by the division. Such
5465 form shall contain a certification by the requesting party that
5466 it is a party entitled to the information requested as
5467 authorized by this paragraph.

5468 3. The division shall provide the most current information
5469 readily available within 15 days after receiving the request.

5470 Section 43. Subsection (9) of section 626.989, Florida
5471 Statutes, is amended to read:

5472 626.989 Investigation by department or Division of
5473 Insurance Fraud; compliance; immunity; confidential information;
5474 reports to division; division investigator's power of arrest.--



5475 (9) In recognition of the complementary roles of
5476 investigating instances of workers' compensation fraud and
5477 enforcing compliance with the workers' compensation coverage
5478 requirements under chapter 440, the Department of Financial
5479 Services shall ~~Insurance is directed to~~ prepare and submit a
5480 joint performance report to the President of the Senate and the
5481 Speaker of the House of Representatives by November 1, 2003, and
5482 then by January 1 of each year ~~November 1 every 3 years~~
5483 ~~thereafter, describing the results obtained in achieving~~
5484 ~~compliance with the workers' compensation coverage requirements~~
5485 ~~and reducing the incidence of workers' compensation fraud.~~ The
5486 annual report must include, but need not be limited to:

5487 (a) The total number of initial referrals received, cases
5488 opened, cases presented for prosecution, cases closed, and
5489 convictions resulting from cases presented for prosecution by
5490 the Bureau of Workers' Compensation Insurance Fraud by type of
5491 workers' compensation fraud and circuit.

5492 (b) The number of referrals received from insurers and the
5493 Division of Workers' Compensation and the outcome of those
5494 referrals.

5495 (c) The number of investigations undertaken by the office
5496 which were not the result of a referral from an insurer or the
5497 Division of Workers' Compensation.

5498 (d) The number of investigations that resulted in a
5499 referral to a regulatory agency and the disposition of those
5500 referrals.



5501 (e) The number and reasons provided by local prosecutors
5502 or the statewide prosecutor for declining prosecution of a case
5503 presented by the office by circuit.

5504 (f) The total number of employees assigned to the office
5505 and the Division of Workers' Compliance unit delineated by
5506 location of staff assigned and the number and location of
5507 employees assigned to the office who were assigned to work other
5508 types of fraud cases.

5509 (g) The average caseload and turnaround time by type of
5510 case for each investigator and division compliance employee.

5511 (h) The training provided during the year to workers'
5512 compensation fraud investigators and the division's compliance
5513 employees.

5514 Section 44. Section 626.9891, Florida Statutes, is amended
5515 to read:

5516 626.9891 Insurer anti-fraud investigative units; reporting
5517 requirements; penalties for noncompliance.--

5518 (1) Every insurer admitted to do business in this state
5519 who in the previous calendar year, at any time during that year,
5520 had \$10 million or more in direct premiums written shall:

5521 (a) Establish and maintain a unit or division within the
5522 company to investigate possible fraudulent claims by insureds or
5523 by persons making claims for services or repairs against
5524 policies held by insureds; or

5525 (b) Contract with others to investigate possible
5526 fraudulent claims for services or repairs against policies held
5527 by insureds.

5528



5529 An insurer subject to this subsection shall file with the
5530 Division of Insurance Fraud of the department on or before July
5531 1, 1996, a detailed description of the unit or division
5532 established pursuant to paragraph (a) or a copy of the contract
5533 and related documents required by paragraph (b).

5534 (2) Every insurer admitted to do business in this state,
5535 which in the previous calendar year had less than \$10 million in
5536 direct premiums written, must adopt an anti-fraud plan and file
5537 it with the Division of Insurance Fraud of the department on or
5538 before July 1, 1996. An insurer may, in lieu of adopting and
5539 filing an anti-fraud plan, comply with the provisions of
5540 subsection (1).

5541 (3) Each insurers anti-fraud plans shall include:

5542 (a) A description of the insurer's procedures for
5543 detecting and investigating possible fraudulent insurance acts;

5544 (b) A description of the insurer's procedures for the
5545 mandatory reporting of possible fraudulent insurance acts to the
5546 Division of Insurance Fraud of the department;

5547 (c) A description of the insurer's plan for anti-fraud
5548 education and training of its claims adjusters or other
5549 personnel; and

5550 (d) A written description or chart outlining the
5551 organizational arrangement of the insurer's anti-fraud personnel
5552 who are responsible for the investigation and reporting of
5553 possible fraudulent insurance acts.

5554 (4) Any insurer who obtains a certificate of authority
5555 after July 1, 1995, shall have 18 months in which to comply with
5556 the requirements of this section.



5557 (5) For purposes of this section, the term "unit or
5558 division" includes the assignment of fraud investigation to
5559 employees whose principal responsibilities are the investigation
5560 and disposition of claims. If an insurer creates a distinct unit
5561 or division, hires additional employees, or contracts with
5562 another entity to fulfill the requirements of this section, the
5563 additional cost incurred must be included as an administrative
5564 expense for ratemaking purposes.

5565 (6) Each insurer writing workers' compensation insurance
5566 shall report to the department, on or before August 1 of each
5567 year, on its experience in implementing and maintaining an anti-
5568 fraud investigative unit or an anti-fraud plan. The report must
5569 include, at a minimum:

5570 (a) The dollar amount of recoveries and losses
5571 attributable to workers' compensation fraud delineated by the
5572 type of fraud: claimant, employer, provider, agent, or other.

5573 (b) The number of referrals to the Bureau of Workers'
5574 Compensation Fraud for the prior year.

5575 (c) A description of the organization of the anti-fraud
5576 investigative unit, if applicable, including the position titles
5577 and descriptions of staffing.

5578 (d) The rationale for the level of staffing and resources
5579 being provided for the anti-fraud investigative unit, which may
5580 include objective criteria such as number of policies written,
5581 number of claims received on an annual basis, volume of
5582 suspected fraudulent claims currently being detected, other
5583 factors, and an assessment of optimal caseload that can be
5584 handled by an investigator on an annual basis.



5585 (e) The in-service education and training provided to
5586 underwriting and claims personnel to assist in identifying and
5587 evaluating instances of suspected fraudulent activity in
5588 underwriting or claims activities.

5589 (f) A description of a public awareness program focused on
5590 the costs and frequency of insurance fraud and methods by which
5591 the public can prevent it.

5592 (7) If an insurer fails to submit a final anti-fraud plan
5593 or otherwise fails to submit a plan, fails to implement the
5594 provisions of a plan or an anti-fraud investigative unit, or
5595 otherwise refuses to comply with the provisions of this section,
5596 the department may:

5597 (a) Impose an administrative fine of not more than \$2,000
5598 per day for such failure by an insurer, until the department
5599 deems the insurer to be in compliance;

5600 (b) Impose upon the insurer a fraud detection and
5601 prevention plan that is deemed to be appropriate by the
5602 department and that must be implemented by the insurer; or

5603 (c) Impose the provisions of both paragraphs (a) and (b).

5604 (8) The department may adopt rules to administer this
5605 section.

5606 Section 45. Section 440.1925, Florida Statutes, is
5607 repealed.

5608 Section 46. The amendments to ss. 440.02 and 440.15,
5609 Florida Statutes, which are made by this act shall not be
5610 construed to affect any determination of disability under s.
5611 112.18, s. 112.181, or s. 112.19, Florida Statutes.



5612 Section 47. If any law amended by this act was also
5613 amended by a law enacted at the 2003 Regular Session of the
5614 Legislature, such laws shall be construed as if they had been
5615 enacted at the same session of the Legislature, and full effect
5616 shall be given to each if possible.

5617 Section 48. Except as otherwise provided herein, this act
5618 shall take effect October 1, 2003.