



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; amending ss.
121 112.19 and 112.191, F.S., to conform references to changes
122 made by the act; providing that amendments to ss. 440.02
123 and 440.15, F.S., do not affect certain disability,
124 determination, and benefits; providing for construction of
125 the act in pari materia with laws enacted during the
126 Regular Session of the Legislature; providing effective
127 dates.

128
129 Be It Enacted by the Legislature of the State of Florida:

130
131 Section 1. Effective upon this act becoming a law,
132 subsections (1), (15), (29), (38), (39), (40), (41), and (42) of
133 section 440.02, Florida Statutes, are amended to read:

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

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



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

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

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



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

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

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

183

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

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



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

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

210 (d) "Employee" does not include:

211 1. An independent contractor, if:

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

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

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



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

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

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

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

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

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

240

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



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

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

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

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

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

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



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

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

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

294 7. Any officer of a corporation who elects to be exempt
295 from this chapter.

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

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



306 | the commencement of such activity which evidences that an
307 | employee/employer relationship does not exist.

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

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

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



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

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

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 ~~(38)(39)~~ "Insurer" means a group self-insurers' fund
365 authorized by s. 624.4621, an individual self-insurer authorized
366 by s. 440.38, a commercial self-insurance fund authorized by s.
367 624.462, an assessable mutual insurer authorized by s. 628.6011,
368 and an insurer licensed to write workers' compensation and
369 employer's liability insurance in this state. The term
370 "carrier," as used in this chapter, means an insurer as defined
371 in this subsection.

372 ~~(39)(40)~~ "Statement," for the purposes of ss. 440.105 and
373 440.106, shall include the exact fraud statement language in s.
374 440.105(7). This requirement includes, but is not limited to,
375 any notice, representation, statement, proof of injury, bill for
376 services, diagnosis, prescription, hospital or doctor record, X
377 ray, test result, or other evidence of loss, injury, or expense.

378 ~~(40)(41)~~ "Specificity" means information on the petition
379 for benefits sufficient to put the employer or carrier on notice
380 of the exact statutory classification and outstanding time
381 period of benefits being requested and includes a detailed
382 explanation of any benefits received that should be increased,
383 decreased, changed, or otherwise modified. If the petition is
384 for medical benefits, the information shall include specific
385 details as to why such benefits are being requested, why such
386 benefits are medically necessary, and why current treatment, if
387 any, is not sufficient. Any petition requesting alternate or
388 other medical care, including, but not limited to, petitions
389 requesting psychiatric or psychological treatment, must



390 specifically identify the physician, as defined in s. 440.13(1),
 391 that is recommending such treatment. A copy of a report from
 392 such physician making the recommendation for alternate or other
 393 medical care shall also be attached to the petition. A judge of
 394 compensation claims shall not order such treatment if a
 395 physician is not recommending such treatment. "Commercial
 396 ~~building" means any building or structure intended for~~
 397 ~~commercial or industrial use, or any building or structure~~
 398 ~~intended for multifamily use of more than four dwelling units,~~
 399 ~~as well as any accessory use structures constructed in~~
 400 ~~conjunction with the principal structure. The term, "commercial~~
 401 ~~building," does not include the conversion of any existing~~
 402 ~~residential building to a commercial building.~~

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

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

410 440.02 Definitions.--When used in this chapter, unless the
 411 context clearly requires otherwise, the following terms shall
 412 have the following meanings:

413 (8) "Construction industry" means for-profit activities
 414 involving ~~the carrying out of~~ any building, clearing, filling,
 415 excavation, or substantial improvement in the size or use of any
 416 structure or the appearance of any land. ~~When appropriate to the~~
 417 ~~context, "construction" refers to the act of construction or the~~



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

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

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

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

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



446 least 10 percent of the stock of such corporation and listed as
447 an officer of such corporation with the Division of Corporations
448 of the Department of State, in order to elect exemptions under
449 this chapter. For purposes of this subparagraph, the term
450 "affiliated" means and includes one or more corporations or
451 entities, any one of which is a corporation engaged in the
452 construction industry, under the same or substantially the same
453 control of a group of business entities which are connected or
454 associated so that one entity controls or has the power to
455 control each of the other business entities. The term
456 "affiliated" includes, but is not limited to, the officers,
457 directors, executives, shareholders active in management,
458 employees, and agents of the affiliated corporation. The
459 ownership by one business entity of a controlling interest in
460 another business entity or a pooling of equipment or income
461 among business entities shall be prima facie evidence that one
462 business is affiliated with the other.

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

466
467 Services are presumed to have been rendered to the corporation
468 if the officer is compensated by other than dividends upon
469 shares of stock of the corporation which the officer owns.

470 (c) "Employee" includes:

471 1. A sole proprietor or a partner who is not engaged in
472 the construction industry, devotes full time to the
473 proprietorship or partnership, and, ~~except as provided in this~~



474 ~~paragraph,~~ elects to be included in the definition of employee
475 by filing notice thereof as provided in s. 440.05. ~~Partners or~~
476 ~~sole proprietors actively engaged in the construction industry~~
477 ~~are considered employees unless they elect to be excluded from~~
478 ~~the definition of employee by filing written notice of the~~
479 ~~election with the department as provided in s. 440.05. However,~~
480 ~~no more than three partners in a partnership that is actively~~
481 ~~engaged in the construction industry may elect to be excluded. A~~
482 ~~sole proprietor or partner who is actively engaged in the~~
483 ~~construction industry and who elects to be exempt from this~~
484 ~~chapter by filing a written notice of the election with the~~
485 ~~department as provided in s. 440.05 is not an employee. For~~
486 ~~purposes of this chapter, an independent contractor is an~~
487 ~~employee unless he or she meets all of the conditions set forth~~
488 ~~in subparagraph (d)1.~~

489 2. All persons who are being paid by a construction
490 contractor as a subcontractor, unless the subcontractor has
491 validly elected an exemption as permitted by this chapter, or
492 has otherwise secured the payment of compensation coverage as a
493 subcontractor, consistent with s. 440.10, for work performed by
494 or as a subcontractor.

495 3. An independent contractor working or performing
496 services in the construction industry.

497 4. A sole proprietor who engages in the construction
498 industry and a partner or partnership that is engaged in the
499 construction industry.

500 (d) "Employee" does not include:



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

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

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

508 (II) The independent contractor holds or has applied for a
509 federal employer identification number, unless the independent
510 contractor is a sole proprietor who is not required to obtain a
511 federal employer identification number under state or federal
512 regulations;

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

516 (IV) The independent contractor holds one or more bank
517 accounts in the name of the business entity for purposes of
518 paying business expenses or other expenses related to services
519 rendered or work performed for compensation;

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

524 (VI) The independent contractor receives compensation for
525 work or services rendered on a competitive-bid basis or
526 completion of a task or a set of tasks as defined by a
527 contractual agreement, unless such contractual agreement
528 expressly states that an employment relationship exists. The



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

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

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

540 (II) The independent contractor incurs the principal
541 expenses related to the service or work that he or she performs
542 or agrees to perform.

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

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

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

551 (VI) The independent contractor has continuing or
552 recurring business liabilities or obligations.

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



557 ~~the independent contractor is a sole proprietor who is not~~
558 ~~required to obtain a federal employer identification number~~
559 ~~under state or federal requirements;~~

560 c. Notwithstanding anything to the contrary in this
561 subparagraph, an individual claiming to be an independent
562 contractor has the burden of proving that he or she is an
563 independent contractor for purposes of this chapter. The
564 ~~independent contractor performs or agrees to perform specific~~
565 ~~services or work for specific amounts of money and controls the~~
566 ~~means of performing the services or work;~~

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

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

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

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

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

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

584



585 ~~However, the determination as to whether an individual included~~
586 ~~in the Standard Industrial Classification Manual of 1987,~~
587 ~~Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782,~~
588 ~~0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449,~~
589 ~~or a newspaper delivery person, is an independent contractor is~~
590 ~~governed not by the criteria in this paragraph but by common-law~~
591 ~~principles, giving due consideration to the business activity of~~
592 ~~the individual.~~

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

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

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



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

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

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

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

632 7. Unless otherwise prohibited by this chapter, any
633 officer of a corporation who elects to be exempt from this
634 chapter. Such officer is not an employee for any reason under
635 this chapter until the notice of revocation of election filed
636 pursuant to s. 440.05 is effective.

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



639 a ~~partnership~~ that is ~~actively~~ engaged in the construction
640 industry, who elects to be exempt from the provisions of this
641 chapter, as otherwise permitted by this chapter. Such ~~sole~~
642 ~~proprietor, officer, or partner~~ is not an employee for any
643 reason until the notice of revocation of election filed pursuant
644 to s. 440.05 is effective.

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

650 10. A taxicab, limousine, or other passenger vehicle-for-
651 hire driver who operates said vehicles pursuant to a written
652 agreement with a company which provides any dispatch, marketing,
653 insurance, communications, or other services under which the
654 driver and any fees or charges paid by the driver to the company
655 for such services are not conditioned upon, or expressed as a
656 proportion of, fare revenues.

657 11. A person who performs services as a sports official
658 for an entity sponsoring an interscholastic sports event or for
659 a public entity or private, nonprofit organization that sponsors
660 an amateur sports event. For purposes of this subparagraph, such
661 a person is an independent contractor. For purposes of this
662 subparagraph, the term "sports official" means any person who is
663 a neutral participant in a sports event, including, but not
664 limited to, umpires, referees, judges, linespersons,
665 scorekeepers, or timekeepers. This subparagraph does not apply
666 to any person employed by a district school board who serves as



667 a sports official as required by the employing school board or
668 who serves as a sports official as part of his or her
669 responsibilities during normal school hours.

670 12. Medicaid-enrolled clients under chapter 393 who are
671 excluded from the definition of employment under s.
672 443.036(21)(d)5. and served by Adult Day Training Services under
673 the Home and Community-Based Medicaid Waiver program in a
674 sheltered workshop setting licensed by the United States
675 Department of Labor for the purpose of training and earning less
676 than the federal hourly minimum wage.

677 (16)(a) "Employer" means the state and all political
678 subdivisions thereof, all public and quasi-public corporations
679 therein, every person carrying on any employment, and the legal
680 representative of a deceased person or the receiver or trustees
681 of any person. "Employer" also includes employment agencies,
682 employee leasing companies, and similar agents who provide
683 employees to other persons. If the employer is a corporation,
684 parties in actual control of the corporation, including, but not
685 limited to, the president, officers who exercise broad corporate
686 powers, directors, and all shareholders who directly or
687 indirectly own a controlling interest in the corporation, are
688 considered the employer for the purposes of ss. 440.105, ~~and~~
689 440.106, and 440.107.

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



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

700 Section 3. Effective January 1, 2004, subsections (3),
701 (4), (6), (10), (11), and (12) of section 440.05, Florida
702 Statutes, are amended, present subsection (13) is renumbered as
703 subsection (11) and amended, and new subsections (12), (13),
704 (14), and (15) are added to said section, to read:

705 440.05 Election of exemption; revocation of election;
706 notice; certification.--

707 (3) Each ~~sole proprietor, partner, or~~ officer of a
708 corporation who is ~~actively~~ engaged in the construction industry
709 and who elects an exemption from this chapter or who, after
710 electing such exemption, revokes that exemption, must mail a
711 written notice to such effect to the department on a form
712 prescribed by the department. The notice of election to be
713 exempt from the provisions of this chapter must be notarized and
714 under oath. The notice of election to be exempt which is
715 submitted to the department by the ~~sole proprietor, partner, or~~
716 officer of a corporation who is allowed to claim an exemption as
717 provided by this chapter must list the name, federal tax
718 identification number, social security number, all certified or
719 registered licenses issued pursuant to chapter 489 held by the
720 person seeking the exemption, a copy of relevant documentation
721 as to employment status filed with the Internal Revenue Service



722 as specified by the department, a copy of the relevant
723 occupational license in the primary jurisdiction of the
724 business, and, ~~for corporate officers and partners,~~ the
725 registration number of the corporation ~~or partnership~~ filed with
726 the Division of Corporations of the Department of State along
727 with a copy of the stock certificate evidencing the required
728 ownership under this chapter. The notice of election to be
729 exempt must identify each ~~sole proprietorship, partnership, or~~
730 corporation that employs the person electing the exemption and
731 must list the social security number or federal tax
732 identification number of each such employer and the additional
733 documentation required by this section. In addition, the notice
734 of election to be exempt must provide that the ~~sole proprietor,~~
735 ~~partner, or~~ officer electing an exemption is not entitled to
736 benefits under this chapter, must provide that the election does
737 not exceed exemption limits for officers ~~and partnerships~~
738 provided in s. 440.02, and must certify that any employees of
739 the corporation whose ~~sole proprietor, partner, or~~ officer
740 elects ~~electing~~ an exemption are covered by workers'
741 compensation insurance. Upon receipt of the notice of the
742 election to be exempt, receipt of all application fees, and a
743 determination by the department that the notice meets the
744 requirements of this subsection, the department shall issue a
745 certification of the election to the ~~sole proprietor, partner,~~
746 ~~or~~ officer, unless the department determines that the
747 information contained in the notice is invalid. The department
748 shall revoke a certificate of election to be exempt from
749 coverage upon a determination by the department that the person



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

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



778 (6) A construction industry certificate of election to be
779 exempt which is issued in accordance with this section shall be
780 valid for 2 years after the effective date stated thereon. Both
781 the effective date and the expiration date must be listed on the
782 face of the certificate by the department. The construction
783 industry certificate must expire at midnight, 2 years from its
784 issue date, as noted on the face of the exemption certificate.
785 Any person who has received from the division a construction
786 industry certificate of election to be exempt which is in effect
787 on December 31, 1998, shall file a new notice of election to be
788 exempt by the last day in his or her birth month following
789 December 1, 1998. A construction industry certificate of
790 election to be exempt may be revoked before its expiration by
791 the ~~sole proprietor, partner, or~~ officer for whom it was issued
792 or by the department for the reasons stated in this section. At
793 least 60 days prior to the expiration date of a construction
794 industry certificate of exemption issued after December 1, 1998,
795 the department shall send notice of the expiration date and an
796 application for renewal to the certificateholder at the address
797 on the certificate.

798 (10) Each ~~sole proprietor, partner, or~~ officer of a
799 corporation who is actively engaged in the construction industry
800 and who elects an exemption from this chapter shall maintain
801 business records as specified by the division by rule, which
802 rules must include the provision that any corporation with
803 exempt officers ~~and any partnership~~ actively engaged in the
804 construction industry ~~with exempt partners~~ must maintain written



805 statements of those exempted persons affirmatively acknowledging
806 each such individual's exempt status.

807 ~~(11) Any sole proprietor or partner actively engaged in~~
808 ~~the construction industry claiming an exemption under this~~
809 ~~section shall maintain a copy of his or her federal income tax~~
810 ~~records for each of the immediately previous 3 years in which he~~
811 ~~or she claims an exemption. Such federal income tax records must~~
812 ~~include a complete copy of the following for each year in which~~
813 ~~an exemption is claimed:~~

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

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

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

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



833 ~~of an established business, the division shall require such sole~~
834 ~~proprietor or partner to provide copies of the most recently~~
835 ~~filed Federal Income Tax Form 1040. The division shall establish~~
836 ~~by rule such other criteria to show that the sole proprietor or~~
837 ~~partner intends to engage in a legitimate enterprise within the~~
838 ~~construction industry and is not otherwise attempting to evade~~
839 ~~the requirements of this section. The division shall establish~~
840 ~~by rule the form and format of financial information required to~~
841 ~~be submitted by such employers.~~

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



860 (12) Certificates of election to be exempt issued under
861 subsection (3) shall apply only to the corporate officer named
862 on the notice of election to be exempt and apply only within the
863 scope of the business or trade listed on the notice of election
864 to be exempt.

865 (13) Notices of election to be exempt and certificates of
866 election to be exempt shall be subject to revocation if, at any
867 time after the filing of the notice or the issuance of the
868 certificate, the person named on the notice or certificate no
869 longer meets the requirements of this section for issuance of a
870 certificate. The department shall revoke a certificate at any
871 time for failure of the person named on the certificate to meet
872 the requirements of this section.

873 (14) An officer of a corporation who elects exemption from
874 this chapter by filing a certificate of election under this
875 section may not recover benefits or compensation under this
876 chapter. For purposes of determining the appropriate premium for
877 workers' compensation coverage, carriers may not consider any
878 officer of a corporation who validly meets the requirements of
879 this section to be an employee.

880 (15) Any corporate officer who is an affiliated person
881 of a person who is delinquent in paying a stop-work order and
882 penalty assessment order issued pursuant to s. 440.107, or owed
883 pursuant to a court order, is ineligible for an election of
884 exemption. The stop-work order and penalty assessment shall be
885 in effect against any such affiliated person. As used in this
886 subsection, the term "affiliated person" means:

887 (a) The spouse of such other person;



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

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

895 (d) Any person or group of persons who directly or
896 indirectly control, are controlled by, or are under common
897 control with such other person;

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

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

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

906 Section 4. Section 440.06, Florida Statutes, is amended to
907 read:

908 440.06 Failure to secure compensation; effect.--Every
909 employer who fails to secure the payment of compensation, as
910 provided in s. 440.10, by failing to meet the requirements of
911 ~~under this chapter as provided in s. 440.38~~ may not, in any suit
912 brought against him or her by an employee subject to this
913 chapter to recover damages for injury or death, defend such a
914 suit on the grounds that the injury was caused by the negligence
915 of a fellow servant, that the employee assumed the risk of his



916 or her employment, or that the injury was due to the comparative
917 negligence of the employee.

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

920 440.077 When a corporate sole proprietor, partner, or
921 officer rejects chapter, effect.--~~An A sole proprietor, partner,~~
922 ~~or~~ officer of a corporation who is permitted to elect an
923 exemption under this chapter actively engaged in the
924 construction industry and who elects to be exempt from the
925 provisions of this chapter may not recover benefits under this
926 chapter.

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

930 440.09 Coverage.--

931 (1) The employer must ~~shall~~ pay compensation or furnish
932 benefits required by this chapter if the employee suffers an
933 accidental compensable injury or death arising out of work
934 performed in the course and the scope of employment. The injury,
935 its occupational cause, and any resulting manifestations or
936 disability must ~~shall~~ be established to a reasonable degree of
937 medical certainty, based on and by objective relevant medical
938 findings, and the accidental compensable injury must be the
939 major contributing cause of any resulting injuries. For purposes
940 of this section, "major contributing cause" means the cause
941 which is more than 50 percent responsible for the injury as
942 compared to all other causes combined for which treatment or
943 benefits are sought. In cases involving occupational disease or



944 repetitive exposure, both causation and sufficient exposure to
945 support causation must be proven by clear and convincing
946 evidence. Pain or other subjective complaints alone, in the
947 absence of objective relevant medical findings, are not
948 compensable. For purposes of this section, "objective relevant
949 medical findings" are those objective findings that correlate to
950 the subjective complaints of the injured employee and are
951 confirmed by physical examination findings or diagnostic
952 testing. Establishment of the causal relationship between a
953 compensable accident and injuries for conditions that are not
954 readily observable must be by medical evidence only, as
955 demonstrated by physical examination findings or diagnostic
956 testing. Major contributing cause must be demonstrated by
957 medical evidence only. ~~Mental or nervous injuries occurring as a~~
958 ~~manifestation of an injury compensable under this section shall~~
959 ~~be demonstrated by clear and convincing evidence.~~

960 (a) This chapter does not require any compensation or
961 benefits for any subsequent injury the employee suffers as a
962 result of an original injury arising out of and in the course of
963 employment unless the original injury is the major contributing
964 cause of the subsequent injury. Major contributing cause must be
965 demonstrated by medical evidence only.

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



972 for the injury as compared to all other causes combined and
973 thereafter remains the major contributing cause of the
974 disability or need for treatment. Major contributing cause must
975 be demonstrated by medical evidence only.

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

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

990 (4)(a) An employee shall not be entitled to compensation
991 or benefits under this chapter if any judge of compensation
992 claims, administrative law judge, court, or jury convened in
993 this state determines that the employee has knowingly or
994 intentionally engaged in any of the acts described in s. 440.105
995 or any criminal act for the purpose of securing workers'
996 compensation benefits. For purposes of this section, the term
997 "intentional" shall include, but is not limited to, pleas of
998 guilty or nolo contendere in criminal matters. This section
999 shall apply to accidents, regardless of the date of the



1000 accident. For injuries occurring prior to January 1, 1994, this
1001 section shall pertain to the acts of the employee described in
1002 s. 440.105 or criminal activities occurring subsequent to
1003 January 1, 1994.

1004 (b) A judge of compensation claims, administrative law
1005 judge, or court of this state shall take judicial notice of a
1006 finding of insurance fraud by a court of competent jurisdiction
1007 and terminate or otherwise disallow benefits.

1008 (c) Upon the denial of benefits in accordance with this
1009 section, a judge of compensation claims shall have the
1010 jurisdiction to order any benefits payable to the employee to be
1011 paid into the court registry or an escrow account during the
1012 pendency of an appeal or until such time as the time in which to
1013 file an appeal has expired.

1014 (7)

1015 (e) As a part of rebutting any presumptions under
1016 paragraph (b), the injured worker must prove the actual
1017 quantitative amounts of the drug or its metabolites as measured
1018 on the initial and confirmation post-accident drug tests of the
1019 injured worker's urine sample and provide additional evidence
1020 regarding the absence of drug influence other than the worker's
1021 denial of being under the influence of a drug. No drug test
1022 conducted on a urine sample shall be rejected as to its results
1023 or the presumption imposed under paragraph (b) on the basis of
1024 the urine being bodily fluid tested.

1025 Section 7. Section 440.093, Florida Statutes, is created
1026 to read:

1027 440.093 Mental and nervous injuries.--



1028 (1) A mental or nervous injury due to stress, fright, or
1029 excitement only is not an injury by accident arising out of the
1030 employment. Nothing in this section shall be construed to allow
1031 for the payment of benefits under this chapter for mental or
1032 nervous injuries without an accompanying physical injury
1033 requiring medical treatment. A physical injury resulting from
1034 mental or nervous injuries unaccompanied by physical trauma
1035 requiring medical treatment shall not be compensable under this
1036 chapter.

1037 (2) Mental or nervous injuries occurring as a
1038 manifestation of an injury compensable under this chapter shall
1039 be demonstrated by clear and convincing medical evidence by a
1040 licensed psychiatrist meeting criteria established in the most
1041 recent edition of the diagnostic and statistical manual of
1042 mental disorders published by the American Psychiatric
1043 Association. The compensable physical injury must be and remain
1044 the major contributing cause of the mental or nervous condition
1045 and the compensable physical injury as determined by reasonable
1046 medical certainty must be at least 50 percent responsible for
1047 the mental or nervous condition as compared to all other
1048 contributing causes combined. Compensation is not payable for
1049 the mental, psychological, or emotional injury arising out of
1050 depression from being out of work or losing employment
1051 opportunities, resulting from a preexisting mental,
1052 psychological, or emotional condition or due to pain or other
1053 subjective complaints that cannot be substantiated by objective,
1054 relevant medical findings.



1055 (3) Subject to the payment of permanent benefits under s.
1056 440.15, in no event shall temporary benefits for a compensable
1057 mental or nervous injury be paid for more than 6 months after
1058 the date of maximum medical improvement for the injured
1059 employee's physical injury or injuries, which shall be included
1060 in the period of 104 weeks as provided in s. 440.15(2) and (4).
1061 Mental or nervous injuries are compensable only in accordance
1062 with the terms of this section.

1063 Section 8. Effective January 1, 2004, subsection (1) of
1064 section 440.10, Florida Statutes, is amended to read:

1065 440.10 Liability for compensation.--

1066 (1)(a) Every employer coming within the provisions of this
1067 ~~chapter, including any brought within the chapter by waiver of~~
1068 ~~exclusion or of exemption,~~ shall be liable for, and shall
1069 secure, the payment to his or her employees, or any physician,
1070 surgeon, or pharmacist providing services under the provisions
1071 of s. 440.13, of the compensation payable under ss. 440.13,
1072 440.15, and 440.16. Any contractor or subcontractor who engages
1073 in any public or private construction in the state shall secure
1074 and maintain compensation for his or her employees under this
1075 chapter as provided in s. 440.38.

1076 (b) In case a contractor sublets any part or parts of his
1077 or her contract work to a subcontractor or subcontractors, all
1078 of the employees of such contractor and subcontractor or
1079 subcontractors engaged on such contract work shall be deemed to
1080 be employed in one and the same business or establishment,⁺ and
1081 the contractor shall be liable for, and shall secure, the



1082 payment of compensation to all such employees, except to
1083 employees of a subcontractor who has secured such payment.

1084 (c) A contractor shall ~~may~~ require a subcontractor to
1085 provide evidence of workers' compensation insurance ~~or a copy of~~
1086 ~~his or her certificate of election~~. A subcontractor who is a
1087 corporation and has an officer who elects ~~electing~~ to be exempt
1088 as permitted under this chapter ~~a sole proprietor, partner, or~~
1089 ~~officer of a corporation~~ shall provide a copy of his or her
1090 certificate of exemption ~~election~~ to the contractor.

1091 (d)1. If a contractor becomes liable for the payment of
1092 compensation to the employees of a subcontractor who has failed
1093 to secure such payment in violation of s. 440.38, the contractor
1094 or other third-party payor shall be entitled to recover from the
1095 subcontractor all benefits paid or payable plus interest unless
1096 the contractor and subcontractor have agreed in writing that the
1097 contractor will provide coverage.

1098 2. If a contractor or third-party payor becomes liable for
1099 the payment of compensation to the corporate officer ~~employee~~ of
1100 a subcontractor who is ~~actively~~ engaged in the construction
1101 industry and has elected to be exempt from the provisions of
1102 this chapter, but whose election is invalid, the contractor or
1103 third-party payor may recover from the claimant, ~~partnership,~~ or
1104 corporation all benefits paid or payable plus interest, unless
1105 the contractor and the subcontractor have agreed in writing that
1106 the contractor will provide coverage.

1107 (e) A subcontractor providing services in conjunction with
1108 a contractor on the same project or contract work is not liable
1109 for the payment of compensation to the employees of another



1110 subcontractor or the contractor on such contract work and is ~~not~~
1111 protected by the exclusiveness-of-liability provisions of s.
1112 440.11 from any action at law or in admiralty on account of
1113 injury to an ~~of such~~ employee of another subcontractor, or of
1114 the contractor, provided that:

1115 1. The subcontractor has secured workers' compensation
1116 insurance for its employees or the contractor has secured such
1117 insurance on behalf of the subcontractor and its employees in
1118 accordance with paragraph (b); and

1119 2. The subcontractor's own gross negligence was not the
1120 major contributing cause of the injury.

1121 (f) If an employer fails to secure compensation as
1122 required by this chapter, the department shall ~~may~~ assess
1123 against the employer a penalty not to exceed \$5,000 for each
1124 employee of that employer who is classified by the employer as
1125 an independent contractor but who is found by the department to
1126 not meet the criteria for an independent contractor that are set
1127 forth in s. 440.02. The division shall adopt rules to administer
1128 the provisions of this paragraph.

1129 (g) Subject to s. 440.38, any employer who has employees
1130 engaged in work in this state shall obtain a Florida policy or
1131 endorsement for such employees which utilizes Florida class
1132 codes, rates, rules, and manuals that are in compliance with and
1133 approved under the provisions of this chapter and the Florida
1134 Insurance Code. Failure to comply with this paragraph is a
1135 felony of the second degree, punishable as provided in s.
1136 775.082, s. 775.083, or s. 775.084. The department shall adopt
1137 rules for construction industry and nonconstruction-industry



1138 employers with regard to the activities that define what
1139 constitutes being "engaged in work" in this state, using the
1140 following standards:

1141 1. For employees of nonconstruction-industry employers who
1142 have their headquarters outside of Florida and also operate in
1143 Florida and who are routinely crossing state lines, but usually
1144 return to their homes each night, the employee shall be assigned
1145 to the headquarters' state. However, the construction industry
1146 employees performing new construction or alterations in Florida
1147 shall be assigned to Florida even if the employees return to
1148 their home state each night.

1149 2. The payroll of executive supervisors who may visit a
1150 Florida location but who are not in direct charge of a Florida
1151 location shall be assigned to the state in which the
1152 headquarters is located.

1153 3. For construction contractors who maintain a permanent
1154 staff of employees and superintendents, if any of these
1155 employees or superintendents are assigned to a job that is
1156 located in Florida, either for the duration of the job or any
1157 portion thereof, their payroll shall be assigned to Florida
1158 rather than headquarters' state.

1159 4. Employees who are hired for a specific project in
1160 Florida shall be assigned to Florida. ~~For purposes of this~~
1161 ~~section, a person is conclusively presumed to be an independent~~
1162 ~~contractor if:~~

1163 ~~1. The independent contractor provides the general~~
1164 ~~contractor with an affidavit stating that he or she meets all~~
1165 ~~the requirements of s. 440.02; and~~



1166 2. ~~The independent contractor provides the general~~
1167 ~~contractor with a valid certificate of workers' compensation~~
1168 ~~insurance or a valid certificate of exemption issued by the~~
1169 ~~department.~~

1170

1171 ~~A sole proprietor, partner, or officer of a corporation who~~
1172 ~~elects exemption from this chapter by filing a certificate of~~
1173 ~~election under s. 440.05 may not recover benefits or~~
1174 ~~compensation under this chapter. An independent contractor who~~
1175 ~~provides the general contractor with both an affidavit stating~~
1176 ~~that he or she meets the requirements of s. 440.02 and a~~
1177 ~~certificate of exemption is not an employee under s. 440.02 and~~
1178 ~~may not recover benefits under this chapter. For purposes of~~
1179 ~~determining the appropriate premium for workers' compensation~~
1180 ~~coverage, carriers may not consider any person who meets the~~
1181 ~~requirements of this paragraph to be an employee.~~

1182 Section 9. Section 440.1025, Florida Statutes, is amended
1183 to read:

1184 440.1025 ~~Consideration of public~~ Employer workplace safety
1185 program in rate-setting; program requirements; rulemaking.—

1186 (1) For a public or private employer to be eligible for
1187 receipt of specific identifiable consideration under s. 627.0915
1188 for a workplace safety program in the setting of rates, the
1189 ~~public~~ employer must have a workplace safety program. At a
1190 minimum, the program must include a written safety policy and
1191 safety rules, and make provision for safety inspections,
1192 preventative maintenance, safety training, first-aid, accident
1193 investigation, and necessary recordkeeping. ~~For purposes of this~~



1194 ~~section, "public employer" means any agency within state,~~
1195 ~~county, or municipal government employing individuals for~~
1196 ~~salary, wages, or other remuneration.~~ The division may adopt
1197 ~~promulgate~~ rules for insurers to utilize in determining ~~public~~
1198 employer compliance with the requirements of this section.

1199 (2) The division shall publicize on the Internet, and
1200 shall encourage insurers to publicize, the availability of free
1201 safety consultation services and safety program resources.

1202 Section 10. Section 440.103, Florida Statutes, is amended
1203 to read:

1204 440.103 Building permits; identification of minimum
1205 premium policy. ~~---Except as otherwise provided in this chapter,~~
1206 Every employer shall, as a condition to applying for and
1207 receiving a building permit, show proof and certify to the
1208 permit issuer that it has secured compensation for its employees
1209 under this chapter as provided in ss. 440.10 and 440.38. Such
1210 proof of compensation must be evidenced by a certificate of
1211 coverage issued by the carrier, a valid exemption certificate
1212 approved by the department ~~or the former Division of Workers'~~
1213 ~~Compensation of the Department of Labor and Employment Security,~~
1214 or a copy of the employer's authority to self-insure and shall
1215 be presented each time the employer applies for a building
1216 permit. As provided in s. 627.413(5), each certificate of
1217 coverage must show, on its face, whether or not coverage is
1218 secured under the minimum premium provisions of rules adopted by
1219 rating organizations licensed by the department. The words
1220 "minimum premium policy" or equivalent language shall be typed,
1221 printed, stamped, or legibly handwritten.



1222 Section 11. Section 440.105, Florida Statutes, is amended
1223 to read:

1224 440.105 Prohibited activities; reports; penalties;
1225 limitations.--

1226 (1)(a) Any insurance carrier, any individual self-insured,
1227 any commercial or group self-insurance fund, any professional
1228 practitioner licensed or regulated by the Department of Health
1229 ~~Business and Professional Regulation~~, except as otherwise
1230 provided by law, any medical review committee as defined in s.
1231 766.101, any private medical review committee, and any insurer,
1232 agent, or other person licensed under the insurance code, or any
1233 employee thereof, having knowledge or who believes that a
1234 fraudulent act or any other act or practice which, upon
1235 conviction, constitutes a felony or misdemeanor under this
1236 chapter is being or has been committed shall send to the
1237 Division of Insurance Fraud, Bureau of Workers' Compensation
1238 Fraud, a report or information pertinent to such knowledge or
1239 belief and such additional information relative thereto as the
1240 bureau may require. The bureau shall review such information or
1241 reports and select such information or reports as, in its
1242 judgment, may require further investigation. It shall then cause
1243 an independent examination of the facts surrounding such
1244 information or report to be made to determine the extent, if
1245 any, to which a fraudulent act or any other act or practice
1246 which, upon conviction, constitutes a felony or a misdemeanor
1247 under this chapter is being committed. The bureau shall report
1248 any alleged violations of law which its investigations disclose
1249 to the appropriate licensing agency and state attorney or other



1250 prosecuting agency having jurisdiction with respect to any such
1251 violations of this chapter. If prosecution by the state attorney
1252 or other prosecuting agency having jurisdiction with respect to
1253 such violation is not begun within 60 days of the bureau's
1254 report, the state attorney or other prosecuting agency having
1255 jurisdiction with respect to such violation shall inform the
1256 bureau of the reasons for the lack of prosecution.

1257 (b) In the absence of fraud or bad faith, a person is not
1258 subject to civil liability for libel, slander, or any other
1259 relevant tort by virtue of filing reports, without malice, or
1260 furnishing other information, without malice, required by this
1261 section or required by the bureau, and no civil cause of action
1262 of any nature shall arise against such person:

1263 1. For any information relating to suspected fraudulent
1264 acts furnished to or received from law enforcement officials,
1265 their agents, or employees;

1266 2. For any information relating to suspected fraudulent
1267 acts furnished to or received from other persons subject to the
1268 provisions of this chapter; or

1269 3. For any such information relating to suspected
1270 fraudulent acts furnished in reports to the bureau, or the
1271 National Association of Insurance Commissioners.

1272 (2) Whoever violates any provision of this subsection
1273 commits a misdemeanor of the first ~~second~~ degree, punishable as
1274 provided in s. 775.082 or s. 775.083.

1275 (a) It shall be unlawful for any employer to knowingly:



1276 1. Coerce or attempt to coerce, as a precondition to
1277 employment or otherwise, an employee to obtain a certificate of
1278 election of exemption pursuant to s. 440.05.

1279 2. Discharge or refuse to hire an employee or job
1280 applicant because the employee or applicant has filed a claim
1281 for benefits under this chapter.

1282 3. Discharge, discipline, or take any other adverse
1283 personnel action against any employee for disclosing information
1284 to the department or any law enforcement agency relating to any
1285 violation or suspected violation of any of the provisions of
1286 this chapter or rules promulgated hereunder.

1287 4. Violate a stop-work order issued by the department
1288 pursuant to s. 440.107.

1289 (b) It shall be unlawful for any insurance entity to
1290 revoke or cancel a workers' compensation insurance policy or
1291 membership because an employer has returned an employee to work
1292 or hired an employee who has filed a workers' compensation
1293 claim.

1294 (3) Whoever violates any provision of this subsection
1295 commits a misdemeanor of the first degree, punishable as
1296 provided in s. 775.082 or s. 775.083.

1297 (a) It shall be unlawful for any employer to knowingly
1298 fail to update applications for coverage as required by s.
1299 440.381(1) and department ~~of Insurance~~ rules within 7 days after
1300 the reporting date for any change in the required information,
1301 or to post notice of coverage pursuant to s. 440.40.

1302 (b) It shall be unlawful for any employer to knowingly
1303 participate in the creation of the employment relationship in



1304 which the employee has used any false, fraudulent, or misleading
1305 oral or written statement as evidence of identity.

1306 ~~(c)(b)~~ It is unlawful for any attorney or other person, in
1307 his or her individual capacity or in his or her capacity as a
1308 public or private employee, or for any firm, corporation,
1309 partnership, or association to receive any fee or other
1310 consideration or any gratuity from a person on account of
1311 services rendered for a person in connection with any
1312 proceedings arising under this chapter, unless such fee,
1313 consideration, or gratuity is approved by a judge of
1314 compensation claims or by the Deputy Chief Judge of Compensation
1315 Claims.

1316 (4) Whoever violates any provision of this subsection
1317 commits insurance fraud, punishable as provided in paragraph
1318 (f).

1319 (a) It shall be unlawful for any employer to knowingly:

1320 1. Present or cause to be presented any false, fraudulent,
1321 or misleading oral or written statement to any person as
1322 evidence of compliance with s. 440.38.

1323 2. Make a deduction from the pay of any employee entitled
1324 to the benefits of this chapter for the purpose of requiring the
1325 employee to pay any portion of premium paid by the employer to a
1326 carrier or to contribute to a benefit fund or department
1327 maintained by such employer for the purpose of providing
1328 compensation or medical services and supplies as required by
1329 this chapter.

1330 3. Fail to secure payment of compensation if required to
1331 do so by this chapter.



1332 (b) It shall be unlawful for any person:

1333 1. To knowingly make, or cause to be made, any false,
1334 fraudulent, or misleading oral or written statement for the
1335 purpose of obtaining or denying any benefit or payment under
1336 this chapter.

1337 2. To present or cause to be presented any written or oral
1338 statement as part of, or in support of, a claim for payment or
1339 other benefit pursuant to any provision of this chapter, knowing
1340 that such statement contains any false, incomplete, or
1341 misleading information concerning any fact or thing material to
1342 such claim.

1343 3. To prepare or cause to be prepared any written or oral
1344 statement that is intended to be presented to any employer,
1345 insurance company, or self-insured program in connection with,
1346 or in support of, any claim for payment or other benefit
1347 pursuant to any provision of this chapter, knowing that such
1348 statement contains any false, incomplete, or misleading
1349 information concerning any fact or thing material to such claim.

1350 4. To knowingly assist, conspire with, or urge any person
1351 to engage in activity prohibited by this section.

1352 5. To knowingly make any false, fraudulent, or misleading
1353 oral or written statement, or to knowingly omit or conceal
1354 material information, required by s. 440.185 or s. 440.381, for
1355 the purpose of obtaining workers' compensation coverage or for
1356 the purpose of avoiding, delaying, or diminishing the amount of
1357 payment of any workers' compensation premiums.

1358 6. To knowingly misrepresent or conceal payroll,
1359 classification of workers, or information regarding an



1360 employer's loss history which would be material to the
1361 computation and application of an experience rating modification
1362 factor for the purpose of avoiding or diminishing the amount of
1363 payment of any workers' compensation premiums.

1364 7. To knowingly present or cause to be presented any
1365 false, fraudulent, or misleading oral or written statement to
1366 any person as evidence of compliance with s. 440.38, as evidence
1367 of eligibility for a certificate of exemption under s. 440.05.

1368 8. To knowingly violate a stop-work order issued by the
1369 department pursuant to s. 440.107.

1370 9. To knowingly present or cause to be presented any
1371 false, fraudulent, or misleading oral or written statement to
1372 any person as evidence of identity for the purpose of obtaining
1373 employment or filing or supporting a claim for workers'
1374 compensation benefits.

1375 (c) It shall be unlawful for any physician licensed under
1376 chapter 458, osteopathic physician licensed under chapter 459,
1377 chiropractic physician licensed under chapter 460, podiatric
1378 physician licensed under chapter 461, optometric physician
1379 licensed under chapter 463, or any other practitioner licensed
1380 under the laws of this state to knowingly and willfully assist,
1381 conspire with, or urge any person to fraudulently violate any of
1382 the provisions of this chapter.

1383 (d) It shall be unlawful for any person or governmental
1384 entity licensed under chapter 395 to maintain or operate a
1385 hospital in such a manner so that such person or governmental
1386 entity knowingly and willfully allows the use of the facilities



1387 of such hospital by any person, in a scheme or conspiracy to
1388 fraudulently violate any of the provisions of this chapter.

1389 (e) It shall be unlawful for any attorney or other person,
1390 in his or her individual capacity or in his or her capacity as a
1391 public or private employee, or any firm, corporation,
1392 partnership, or association, to knowingly assist, conspire with,
1393 or urge any person to fraudulently violate any of the provisions
1394 of this chapter.

1395 (f) If the monetary value ~~amount~~ of any ~~claim or workers'~~
1396 ~~compensation insurance premium involved in any~~ violation of this
1397 subsection:

1398 1. Is less than \$20,000, the offender commits a felony of
1399 the third degree, punishable as provided in s. 775.082, s.
1400 775.083, or s. 775.084.

1401 2. Is \$20,000 or more, but less than \$100,000, the
1402 offender commits a felony of the second degree, punishable as
1403 provided in s. 775.082, . 775.083, or s. 775.084.

1404 3. Is \$100,000 or more, the offender commits a felony of
1405 the first degree, punishable as provided in s. 775.082, s.
1406 775.083, or s. 775.084.

1407 (5) It shall be unlawful for any attorney or other person,
1408 in his or her individual capacity or in his or her capacity as a
1409 public or private employee or for any firm, corporation,
1410 partnership, or association, to unlawfully solicit any business
1411 in and about city or county hospitals, courts, or any public
1412 institution or public place; in and about private hospitals or
1413 sanitariums; in and about any private institution; or upon
1414 private property of any character whatsoever for the purpose of



1415 making workers' compensation claims. Whoever violates any
1416 provision of this subsection commits a felony of the second
1417 ~~third~~ degree, punishable as provided in s. 775.082, s. 775.083,
1418 or s. 775.085.

1419 (6) This section shall not be construed to preclude the
1420 applicability of any other provision of criminal law that
1421 applies or may apply to any transaction.

1422 ~~(7) For the purpose of the section, the term "statement"~~
1423 ~~includes, but is not limited to, any notice, representation,~~
1424 ~~statement, proof of injury, bill for services, diagnosis,~~
1425 ~~prescription, hospital or doctor records, X ray, test result, or~~
1426 ~~other evidence of loss, injury, or expense.~~

1427 (7)(8) An injured employee or any other party making a
1428 claim under this chapter shall provide his or her personal
1429 signature attesting that he or she has reviewed, understands,
1430 and acknowledges ~~All claim forms as provided for in this chapter~~
1431 ~~shall contain a notice that clearly states in substance the~~
1432 ~~following statement: "Any person who, knowingly and with intent~~
1433 ~~to injure, defraud, or deceive any employer or employee,~~
1434 ~~insurance company, or self-insured program, files a statement of~~
1435 ~~claim containing any false or misleading information commits~~
1436 ~~insurance fraud, punishable as provided in s. 817.234." If the~~
1437 injured employee or other party refuses to sign the document
1438 attesting ~~Each claimant shall personally sign the claim form and~~
1439 ~~attest that he or she has reviewed, understands, and~~
1440 ~~acknowledges the~~ statement, benefits or payments under this
1441 chapter shall be suspended until such signature is obtained
1442 ~~foregoing notice.~~



1443 Section 12. Subsection (3) of section 440.1051, Florida
1444 Statutes, is amended to read:

1445 440.1051 Fraud reports; civil immunity; criminal
1446 penalties.--

1447 (2) Any person who reports workers' compensation fraud to
1448 the division under subsection (1) is immune from civil liability
1449 for doing so, and the person or entity alleged to have committed
1450 the fraud may not retaliate against him or her for providing
1451 such report, unless the person making the report knows it to be
1452 false.

1453 (3) A person who calls and, knowingly and falsely, reports
1454 workers' compensation fraud or who, in violation of subsection
1455 (2) retaliates against a person for making such report, commits
1456 ~~is guilty of a~~ felony misdemeanor of the third ~~first~~ degree,
1457 punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s.
1458 775.084 both.

1459 Section 13. Section 440.107, Florida Statutes, is amended
1460 to read:

1461 440.107 Department powers to enforce employer compliance
1462 with coverage requirements.--

1463 (1) The Legislature finds that the failure of an employer
1464 to comply with the workers' compensation coverage requirements
1465 under this chapter poses an immediate danger to public health,
1466 safety, and welfare. ~~The Legislature authorizes the department~~
1467 ~~to secure employer compliance with the workers' compensation~~
1468 ~~coverage requirements and authorizes the department to conduct~~
1469 ~~investigations for the purpose of ensuring employer compliance.~~



1470 (2) For the purposes of this section, "securing the
1471 payment of workers' compensation" means obtaining coverage that
1472 meets the requirements of this chapter and the Florida Insurance
1473 Code. However, if at any time an employer materially understates
1474 or conceals payroll, materially misrepresents or conceals
1475 employee duties so as to avoid proper classification for premium
1476 calculations, or materially misrepresents or conceals
1477 information pertinent to the computation and application of an
1478 experience rating modification factor, such employer shall be
1479 deemed to have failed to secure payment of workers' compensation
1480 and shall be subject to the sanctions set forth in this section.
1481 A stop-work order issued because an employer is deemed to have
1482 failed to secure the payment of workers' compensation required
1483 under this chapter because the employer has materially
1484 understated or concealed payroll, materially misrepresented or
1485 concealed employee duties so as to avoid proper classification
1486 for premium calculations, or materially misrepresented or
1487 concealed information pertinent to the computation and
1488 application of an experience rating modification factor shall
1489 have no effect upon an employer's or carrier's duty to provide
1490 benefits under this chapter or upon any of the employer's or
1491 carrier's rights and defenses under this chapter, including
1492 exclusive remedy. The department and its authorized
1493 ~~representatives may enter and inspect any place of business at~~
1494 ~~any reasonable time for the limited purpose of investigating~~
1495 ~~compliance with workers' compensation coverage requirements~~
1496 ~~under this chapter. Each employer shall keep true and accurate~~
1497 ~~business records that contain such information as the department~~



1498 ~~prescribes by rule. The business records must contain~~
1499 ~~information necessary for the department to determine compliance~~
1500 ~~with workers' compensation coverage requirements and must be~~
1501 ~~maintained within this state by the business, in such a manner~~
1502 ~~as to be accessible within a reasonable time upon request by the~~
1503 ~~department. The business records must be open to inspection and~~
1504 ~~be available for copying by the department at any reasonable~~
1505 ~~time and place and as often as necessary. The department may~~
1506 ~~require from any employer any sworn or unsworn reports,~~
1507 ~~pertaining to persons employed by that employer, deemed~~
1508 ~~necessary for the effective administration of the workers'~~
1509 ~~compensation coverage requirements.~~

1510 (3) The department shall enforce workers' compensation
1511 coverage requirements, including the requirement that the
1512 employer secure the payment of workers' compensation, and the
1513 requirement that the employer provide the carrier with
1514 information to accurately determine payroll and correctly assign
1515 classification codes. In addition to any other powers under this
1516 chapter, the department shall have the power to:

1517 (a) Conduct investigations for the purpose of ensuring
1518 employer compliance.

1519 (b) Enter and inspect any place of business at any
1520 reasonable time for the purpose of investigating employer
1521 compliance.

1522 (c) Examine and copy business records.

1523 (d) Administer oaths and affirmations.

1524 (e) Certify to official acts.



1525 (f) Issue and serve subpoenas for attendance of witnesses
1526 or production of business records, books, papers,
1527 correspondence, memoranda, and other records.

1528 (g) Issue stop-work orders, penalty assessment orders, and
1529 any other orders necessary for the administration of this
1530 section.

1531 (h) Enforce the terms of a stop-work order.

1532 (i) Levy and pursue actions to recover penalties.

1533 (j) Seek injunctions and other appropriate relief. In
1534 ~~discharging its duties, the department may administer oaths and~~
1535 ~~affirmations, certify to official acts, issue subpoenas to~~
1536 ~~compel the attendance of witnesses and the production of books,~~
1537 ~~papers, correspondence, memoranda, and other records deemed~~
1538 ~~necessary by the department as evidence in order to ensure~~
1539 ~~proper compliance with the coverage provisions of this chapter.~~

1540 (4) The department shall designate representatives who may
1541 serve subpoenas and other process of the department issued under
1542 this section.

1543 (5) The department shall specify by rule the business
1544 records that employers must maintain and produce to comply with
1545 this section.

1546 (6)(4) If a person has refused to obey a subpoena to
1547 appear before the department or its authorized representative or
1548 ~~and~~ produce evidence requested by the department or to give
1549 testimony about the matter that is under investigation, a court
1550 has jurisdiction to issue an order requiring compliance with the
1551 subpoena if the court has jurisdiction in the geographical area
1552 where the inquiry is being carried on or in the area where the



1553 person who has refused the subpoena is found, resides, or
1554 transacts business. Failure to obey such a court order may be
1555 punished by the court as contempt, either civilly or criminally.
1556 Costs, including reasonable attorney's fees, incurred by the
1557 department to obtain an order granting, in whole or in part, a
1558 petition to enforce a subpoena or a subpoena duces tecum shall
1559 be taxed against the subpoenaed party.

1560 ~~(7)(a)(5)~~ Whenever the department determines that an
1561 employer who is required to secure the payment to his or her
1562 employees of the compensation provided for by this chapter has
1563 failed to secure the payment of workers' compensation required
1564 by this chapter or to produce the required business records
1565 under subsection (5) within 5 business days after receipt of the
1566 written request of the department ~~do so~~, such failure shall be
1567 deemed an immediate serious danger to public health, safety, or
1568 welfare sufficient to justify service by the department of a
1569 stop-work order on the employer, requiring the cessation of all
1570 business operations ~~at the place of employment or job site~~. If
1571 the department ~~division~~ makes such a determination, the
1572 department ~~division~~ shall issue a stop-work order within 72
1573 hours. The order shall take effect when served upon the ~~date of~~
1574 ~~service upon the employer or~~, for a particular employer work
1575 site, when served at that work site, ~~unless the employer~~
1576 ~~provides evidence satisfactory to the department of having~~
1577 ~~secured any necessary insurance or self-insurance and pays a~~
1578 ~~civil penalty to the department, to be deposited by the~~
1579 ~~department into the Workers' Compensation Administration Trust~~
1580 ~~Fund, in the amount of \$100 per day for each day the employer~~



1581 ~~was not in compliance with this chapter.~~ In addition to serving
1582 a stop-work order at a particular work site which shall be
1583 effective immediately, the department shall immediately proceed
1584 with service upon the employer which shall be effective upon all
1585 employer work sites in the state for which the employer is not
1586 in compliance. A stop-work order may be served with regard to an
1587 employer's work site by posting a copy of the stop-work order in
1588 a conspicuous location at the work site. The order shall remain
1589 in effect until the department issues an order releasing the
1590 stop-work order upon a finding that the employer has come into
1591 compliance with the coverage requirements of this chapter and
1592 has paid any penalty assessed under this section. The department
1593 may require an employer who is found to have failed to comply
1594 with the coverage requirements of s. 440.38 to file with the
1595 department, as a condition of release from a stop-work order,
1596 periodic reports for a probationary period that shall not exceed
1597 2 years that demonstrate the employer's continued compliance
1598 with this chapter. The department shall by rule specify the
1599 reports required and the time for filing under this subsection.

1600 (b) Stop-work orders and penalty assessment orders issued
1601 under this section against a corporation, partnership, or sole
1602 proprietorship shall be in effect against any successor
1603 corporation or business entity that has one or more of the same
1604 principals or officers as the corporation or partnership against
1605 which the stop-work order was issued and are engaged in the same
1606 or equivalent trade or activity.



1607 (c) The department shall assess a penalty of \$1,000 per
1608 day against an employer for each day that the employer conducts
1609 business operations that are in violation of a stop-work order.

1610 (d)1. In addition to any penalty, stop-work order, or
1611 injunction, the department shall assess against any employer who
1612 has failed to secure the payment of compensation as required by
1613 this chapter a penalty equal to 1.5 times the amount the
1614 employer would have paid in premium when applying approved
1615 manual rates to the employer's payroll during periods for which
1616 it failed to secure the payment of workers' compensation
1617 required by this chapter within the preceding 3-year period or
1618 \$1,000, whichever is greater.

1619 2. Any subsequent violation within 5 years after the most
1620 recent violation shall, in addition to the penalties set forth
1621 in this subsection, be deemed a knowing act within the meaning
1622 of s. 440.105.

1623 (e) When an employer fails to provide business records
1624 sufficient to enable the department to determine the employer's
1625 payroll for the period requested for the calculation of the
1626 penalty provided in paragraph (d), for penalty calculation
1627 purposes, the imputed weekly payroll for each employee,
1628 corporate officer, sole proprietor, or partner shall be the
1629 statewide average weekly wage as defined in s. 440.12(2)
1630 multiplied by 1.5.

1631 (f) In addition to any other penalties provided for in
1632 this chapter, the department may assess against the employer a
1633 penalty of \$5,000 for each employee of that employer who the
1634 employer represents to the department or carrier as an



1635 independent contractor but who is determined by the department
1636 not to be an independent contractor as defined in s. 440.02.

1637 (8)(6) In addition to the issuance of a stop-work order
1638 under subsection (7), the department may file a complaint in the
1639 circuit court in and for Leon County to enjoin any employer, who
1640 has failed to secure the payment of workers' compensation as
1641 required by this chapter, from employing individuals and from
1642 conducting business until the employer presents evidence
1643 satisfactory to the department of having secured the payment of
1644 workers' for compensation required by this chapter and pays a
1645 civil penalty assessed by ~~to~~ the department under this section,
1646 ~~to be deposited by the department into the Workers' Compensation~~
1647 ~~Administration Trust Fund, in the amount of \$100 per day for~~
1648 ~~each day the employer was not in compliance with this chapter.~~

1649 ~~(9)(7) In addition to any penalty, stop-work order, or~~
1650 ~~injunction, the department shall assess against any employer,~~
1651 ~~who has failed to secure the payment of compensation as required~~
1652 ~~by this chapter, a penalty in the following amount:~~

1653 ~~(a) An amount equal to at least the amount that the~~
1654 ~~employer would have paid or up to twice the amount the employer~~
1655 ~~would have paid during periods it illegally failed to secure~~
1656 ~~payment of compensation in the preceding 3-year period based on~~
1657 ~~the employer's payroll during the preceding 3-year period; or~~

1658 ~~(b) One thousand dollars, whichever is greater. Any~~
1659 ~~penalty assessed under this subsection is due within 30 days~~
1660 ~~after the date on which the employer is notified, except that,~~
1661 ~~if the department has posted a stop-work order or obtained~~
1662 ~~injunctive relief against the employer, payment is due, in~~



1663 ~~addition to those conditions set forth in this section, as a~~
1664 ~~condition to relief from a stop-work order or an injunction.~~
1665 ~~Interest shall accrue on amounts not paid when due at the rate~~
1666 ~~of 1 percent per month.~~ The department ~~division~~ shall adopt
1667 rules to administer this section.

1668 ~~(10)(8)~~ The department may bring an action in circuit
1669 court to recover penalties assessed under this section,
1670 including any interest owed to the department pursuant to this
1671 section. In any action brought by the department pursuant to
1672 this section in which it prevails, the circuit court shall award
1673 costs, including the reasonable costs of investigation and a
1674 reasonable attorney's fee.

1675 ~~(11)(9)~~ Any judgment obtained by the department and any
1676 penalty due pursuant to the service of a stop-work order or
1677 otherwise due under this section shall, until collected,
1678 constitute a lien upon the entire interest of the employer,
1679 legal or equitable, in any property, real or personal, tangible
1680 or intangible; however, such lien is subordinate to claims for
1681 unpaid wages and any prior recorded liens, and a lien created by
1682 this section is not valid against any person who, subsequent to
1683 such lien and in good faith and for value, purchases real or
1684 personal property from such employer or becomes the mortgagee on
1685 real or personal property of such employer, or against a
1686 subsequent attaching creditor, unless, with respect to real
1687 estate of the employer, a notice of the lien is recorded in the
1688 public records of the county where the real estate is located,
1689 and with respect to personal property of the employer, the
1690 notice is recorded with the Secretary of State.



1691 ~~(12)~~~~(10)~~ Any law enforcement agency in the state may, at
 1692 the request of the department, render any assistance necessary
 1693 to carry out the provisions of this section, including, but not
 1694 limited to, preventing any employee or other person from
 1695 remaining at a place of employment or job site after a stop-work
 1696 order or injunction has taken effect.

1697 ~~(13)~~~~(11)~~ Agency action ~~Actions~~ by the department under
 1698 this section, if contested, must be contested as provided in
 1699 chapter 120. All ~~civil~~ penalties assessed by the department must
 1700 be paid into the Workers' Compensation Administration Trust
 1701 Fund. ~~The department shall return any sums previously paid, upon~~
 1702 ~~conclusion of an action, if the department fails to prevail and~~
 1703 ~~if so directed by an order of court or an administrative hearing~~
 1704 ~~officer. The requirements of this subsection may be met by~~
 1705 ~~posting a bond in an amount equal to twice the penalty and in a~~
 1706 ~~form approved by the department.~~

1707 ~~(14)~~~~(12)~~ If the department ~~division~~ finds that an employer
 1708 who is certified or registered under part I or part II of
 1709 chapter 489 and who is required to secure the payment of
 1710 workers' ~~the~~ compensation under ~~provided for by~~ this chapter to
 1711 his or her employees has failed to do so, the department
 1712 ~~division~~ shall immediately notify the Department of Business and
 1713 Professional Regulation.

1714 Section 14. Subsections (1) and (3) of section 440.11,
 1715 Florida Statutes, are amended to read:

1716 440.11 Exclusiveness of liability.--

1717 (1) The liability of an employer prescribed in s. 440.10
 1718 shall be exclusive and in place of all other liability,



1719 including vicarious liability, of such employer to any third-
1720 party tortfeasor and to the employee, the legal representative
1721 thereof, husband or wife, parents, dependents, next of kin, and
1722 anyone otherwise entitled to recover damages from such employer
1723 at law or in admiralty on account of such injury or death,
1724 except as follows: ~~that~~

1725 (a) If an employer fails to secure payment of compensation
1726 as required by this chapter, an injured employee, or the legal
1727 representative thereof in case death results from the injury,
1728 may elect to claim compensation under this chapter or to
1729 maintain an action at law or in admiralty for damages on account
1730 of such injury or death. In such action the defendant may not
1731 plead as a defense that the injury was caused by negligence of a
1732 fellow employee, that the employee assumed the risk of the
1733 employment, or that the injury was due to the comparative
1734 negligence of the employee.

1735 (b) When an employer commits an intentional tort that
1736 causes the injury or death of the employee. For purposes of this
1737 paragraph, an employer's actions shall be deemed to constitute
1738 an intentional tort and not an accident only when the employee
1739 proves, by clear and convincing evidence, that:

1740 1. The employer deliberately intended to injure the
1741 employee; or

1742 2. The employer engaged in conduct that the employer knew,
1743 based on prior similar accidents or on explicit warnings
1744 specifically identifying a known danger, was virtually certain
1745 to result in injury or death to the employee, and the employee
1746 was not aware of the risk because the danger was not apparent



1747 and the employer deliberately concealed or misrepresented the
1748 danger so as to prevent the employee from exercising informed
1749 judgment about whether to perform the work.

1750
1751 The same immunities from liability enjoyed by an employer shall
1752 extend as well to each employee of the employer when such
1753 employee is acting in furtherance of the employer's business and
1754 the injured employee is entitled to receive benefits under this
1755 chapter. Such fellow-employee immunities shall not be applicable
1756 to an employee who acts, with respect to a fellow employee, with
1757 willful and wanton disregard or unprovoked physical aggression
1758 or with gross negligence when such acts result in injury or
1759 death or such acts proximately cause such injury or death, nor
1760 shall such immunities be applicable to employees of the same
1761 employer when each is operating in the furtherance of the
1762 employer's business but they are assigned primarily to unrelated
1763 works within private or public employment. The same immunity
1764 provisions enjoyed by an employer shall also apply to any sole
1765 proprietor, partner, corporate officer or director, supervisor,
1766 or other person who in the course and scope of his or her duties
1767 acts in a managerial or policymaking capacity and the conduct
1768 which caused the alleged injury arose within the course and
1769 scope of said managerial or policymaking duties and was not a
1770 violation of a law, whether or not a violation was charged, for
1771 which the maximum penalty which may be imposed does not exceed
1772 60 days' imprisonment as set forth in s. 775.082. The immunity
1773 from liability provided in this subsection extends to county
1774 governments with respect to employees of county constitutional



1775 officers whose offices are funded by the board of county
1776 commissioners.

1777 (3) An employer's workers' compensation carrier, service
1778 agent, or safety consultant shall not be liable as a third-party
1779 tortfeasor to employees of the employer or employees of its
1780 subcontractors for assisting the employer and its
1781 subcontractors, if any, in carrying out the employer's rights
1782 and responsibilities under this chapter by furnishing any safety
1783 inspection, safety consultative service, or other safety service
1784 incidental to the workers' compensation or employers' liability
1785 coverage or to the workers' compensation or employer's liability
1786 servicing contract. Without limitation, a safety consultant may
1787 include an owner, as defined in chapter 713, or an owner's
1788 related, affiliated, or subsidiary companies and the employees
1789 of each. The exclusion from liability under this subsection
1790 shall not apply in any case in which injury or death is
1791 proximately caused by the willful and unprovoked physical
1792 aggression, or by the negligent operation of a motor vehicle, by
1793 employees, officers, or directors of the employer's workers'
1794 compensation carrier, service agent, or safety consultant.

1795 Section 15. Section 440.13, Florida Statutes, is amended
1796 to read:

1797 440.13 Medical services and supplies; penalty for
1798 violations; limitations.--

1799 (1) DEFINITIONS.--As used in this section, the term:

1800 (a) "Alternate medical care" means a change in treatment
1801 or health care provider.



1802 (b) "Attendant care" means care rendered by trained
1803 professional attendants which is beyond the scope of household
1804 duties. Family members may provide nonprofessional attendant
1805 care, but may not be compensated under this chapter for care
1806 that falls within the scope of household duties and other
1807 services normally and gratuitously provided by family members.
1808 "Family member" means a spouse, father, mother, brother, sister,
1809 child, grandchild, father-in-law, mother-in-law, aunt, or uncle.

1810 (c) "Carrier" means, for purposes of this section,
1811 insurance carrier, self-insurance fund or individually self-
1812 insured employer, or assessable mutual insurer.

1813 ~~(d) "Catastrophic injury" means an injury as defined in s.~~
1814 ~~440.02.~~

1815 (d)(e) "Certified health care provider" means a health
1816 care provider who has been certified by the agency or who has
1817 entered an agreement with a licensed managed care organization
1818 to provide treatment to injured workers under this section.
1819 Certification of such health care provider must include
1820 documentation that the health care provider has read and is
1821 familiar with the portions of the statute, impairment guides,
1822 practice parameters, protocols of treatment, and rules which
1823 govern the provision of remedial treatment, care, and
1824 attendance.

1825 (e)(f) "Compensable" means a determination by a carrier or
1826 judge of compensation claims that a condition suffered by an
1827 employee results from an injury arising out of and in the course
1828 of employment.



1829 ~~(f)~~~~(g)~~ "Emergency services and care" means emergency
1830 services and care as defined in s. 395.002.

1831 ~~(g)~~~~(h)~~ "Health care facility" means any hospital licensed
1832 under chapter 395 and any health care institution licensed under
1833 chapter 400.

1834 ~~(h)~~~~(i)~~ "Health care provider" means a physician or any
1835 recognized practitioner who provides skilled services pursuant
1836 to a prescription or under the supervision or direction of a
1837 physician and who has been certified by the agency as a health
1838 care provider. The term "health care provider" includes a health
1839 care facility.

1840 ~~(i)~~~~(j)~~ "Independent medical examiner" means a physician
1841 selected by either an employee or a carrier to render one or
1842 more independent medical examinations in connection with a
1843 dispute arising under this chapter.

1844 ~~(j)~~~~(k)~~ "Independent medical examination" means an
1845 objective evaluation of the injured employee's medical
1846 condition, including, but not limited to, impairment or work
1847 status, performed by a physician or an expert medical advisor at
1848 the request of a party, a judge of compensation claims, or the
1849 agency to assist in the resolution of a dispute arising under
1850 this chapter.

1851 ~~(k)~~~~(l)~~ "Instance of overutilization" means a specific
1852 inappropriate service or level of service provided to an injured
1853 employee that includes the provision of treatment in excess of
1854 established practice parameters and protocols of treatment
1855 established in accordance with this chapter.



1856 (1)~~(m)~~ "Medically necessary" or "medical necessity" means
1857 any medical service or medical supply which is used to identify
1858 or treat an illness or injury, is appropriate to the patient's
1859 diagnosis and status of recovery, and is consistent with the
1860 location of service, the level of care provided, and applicable
1861 practice parameters. The service should be widely accepted among
1862 practicing health care providers, based on scientific criteria,
1863 and determined to be reasonably safe. The service must not be of
1864 an experimental, investigative, or research nature, ~~except in~~
1865 ~~those instances in which prior approval of the Agency for Health~~
1866 ~~Care Administration has been obtained. The Agency for Health~~
1867 ~~Care Administration shall adopt rules providing for such~~
1868 ~~approval on a case-by-case basis when the service or supply is~~
1869 ~~shown to have significant benefits to the recovery and well-~~
1870 ~~being of the patient.~~

1871 (m)~~(n)~~ "Medicine" means a drug prescribed by an authorized
1872 health care provider and includes only generic drugs or single-
1873 source patented drugs for which there is no generic equivalent,
1874 unless the authorized health care provider writes or states that
1875 the brand-name drug as defined in s. 465.025 is medically
1876 necessary, or is a drug appearing on the schedule of drugs
1877 created pursuant to s. 465.025(6), or is available at a cost
1878 lower than its generic equivalent.

1879 (n)~~(o)~~ "Palliative care" means noncurative medical
1880 services that mitigate the conditions, effects, or pain of an
1881 injury.



1882 ~~(o)~~~~(p)~~ "Pattern or practice of overutilization" means
1883 repetition of instances of overutilization within a specific
1884 medical case or multiple cases by a single health care provider.

1885 ~~(p)~~~~(q)~~ "Peer review" means an evaluation by two or more
1886 physicians licensed under the same authority and with the same
1887 or similar specialty as the physician under review, of the
1888 appropriateness, quality, and cost of health care and health
1889 services provided to a patient, based on medically accepted
1890 standards.

1891 ~~(q)~~~~(r)~~ "Physician" or "doctor" means a physician licensed
1892 under chapter 458, an osteopathic physician licensed under
1893 chapter 459, a chiropractic physician licensed under chapter
1894 460, a podiatric physician licensed under chapter 461, an
1895 optometrist licensed under chapter 463, or a dentist licensed
1896 under chapter 466, each of whom must be certified by the agency
1897 as a health care provider.

1898 ~~(r)~~~~(s)~~ "Reimbursement dispute" means any disagreement
1899 between a health care provider or health care facility and
1900 carrier concerning payment for medical treatment.

1901 ~~(s)~~~~(t)~~ "Utilization control" means a systematic process of
1902 implementing measures that assure overall management and cost
1903 containment of services delivered, including compliance with
1904 practice parameters and protocols of treatment as provided for
1905 in this chapter.

1906 ~~(t)~~~~(u)~~ "Utilization review" means the evaluation of the
1907 appropriateness of both the level and the quality of health care
1908 and health services provided to a patient, including, but not
1909 limited to, evaluation of the appropriateness of treatment,



1910 hospitalization, or office visits based on medically accepted
1911 standards. Such evaluation must be accomplished by means of a
1912 system that identifies the utilization of medical services based
1913 on practice parameters and protocols of treatment as provided
1914 for in this chapter ~~medically accepted standards as established~~
1915 ~~by medical consultants with qualifications similar to those~~
1916 ~~providing the care under review, and that refers patterns and~~
1917 ~~practices of overutilization to the agency.~~

1918 (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.--

1919 (a) Subject to the limitations specified elsewhere in this
1920 chapter, the employer shall furnish to the employee such
1921 medically necessary remedial treatment, care, and attendance for
1922 such period as the nature of the injury or the process of
1923 recovery may require, which is in accordance with established
1924 practice parameters and protocols of treatment as provided for
1925 in this chapter, including medicines, medical supplies, durable
1926 medical equipment, orthoses, prostheses, and other medically
1927 necessary apparatus. Remedial treatment, care, and attendance,
1928 including work-hardening programs or pain-management programs
1929 accredited by the Commission on Accreditation of Rehabilitation
1930 Facilities or Joint Commission on the Accreditation of Health
1931 Organizations or pain-management programs affiliated with
1932 medical schools, shall be considered as covered treatment only
1933 when such care is given based on a referral by a physician as
1934 defined in this chapter. ~~Each facility shall maintain outcome~~
1935 ~~data, including work status at discharges, total program~~
1936 ~~charges, total number of visits, and length of stay. The~~
1937 ~~department shall utilize such data and report to the President~~



1938 ~~of the Senate and the Speaker of the House of Representatives~~
1939 ~~regarding the efficacy and cost-effectiveness of such program,~~
1940 ~~no later than October 1, 1994.~~ Medically necessary treatment,
1941 care, and attendance does not include chiropractic services in
1942 excess of 24 ~~18~~ treatments or rendered 12 ~~8~~ weeks beyond the
1943 date of the initial chiropractic treatment, whichever comes
1944 first, unless the carrier authorizes additional treatment or the
1945 employee is catastrophically injured.

1946 (b) The employer shall provide appropriate professional or
1947 nonprofessional attendant care performed only at the direction
1948 and control of a physician when such care is medically
1949 necessary. The physician shall prescribe such care in writing.
1950 The employer or carrier shall not be responsible for such care
1951 until the prescription for attendant care is received by the
1952 employer and carrier, which shall specify the time periods for
1953 such care, the level of care required, and the type of
1954 assistance required. A prescription for attendant care shall not
1955 prescribe such care retroactively. The value of nonprofessional
1956 attendant care provided by a family member must be determined as
1957 follows:

1958 1. If the family member is not employed or if the family
1959 member is employed and is providing attendant care services
1960 during hours that he or she is not engaged in employment, the
1961 per-hour value equals the federal minimum hourly wage.

1962 2. If the family member is employed and elects to leave
1963 that employment to provide attendant or custodial care, the per-
1964 hour value of that care equals the per-hour value of the family
1965 member's former employment, not to exceed the per-hour value of



1966 such care available in the community at large. A family member
1967 or a combination of family members providing nonprofessional
1968 attendant care under this paragraph may not be compensated for
1969 more than a total of 12 hours per day.

1970 3. If the family member remains employed while providing
1971 attendant or custodial care, the per-hour value of that care
1972 equals the per-hour value of the family member's employment, not
1973 to exceed the per-hour value of such care available in the
1974 community at large.

1975 (c) If the employer fails to provide initial treatment or
1976 care required by this section after request by the injured
1977 employee, the employee may obtain such initial treatment at the
1978 expense of the employer, if the initial treatment or care is
1979 compensable and medically necessary and is in accordance with
1980 established practice parameters and protocols of treatment as
1981 provided for in this chapter. There must be a specific request
1982 for the initial treatment or care, and the employer or carrier
1983 must be given a reasonable time period within which to provide
1984 the initial treatment or care. However, the employee is not
1985 entitled to recover any amount personally expended for the
1986 initial treatment or care ~~service~~ unless he or she has requested
1987 the employer to furnish that initial treatment or service and
1988 the employer has failed, refused, or neglected to do so within a
1989 reasonable time or unless the nature of the injury requires such
1990 initial treatment, nursing, and services and the employer or his
1991 or her superintendent or foreman, having knowledge of the
1992 injury, has neglected to provide the initial treatment or care
1993 ~~service.~~



1994 (d) The carrier has the right to transfer the care of an
1995 injured employee from the attending health care provider if an
1996 independent medical examination determines that the employee is
1997 not making appropriate progress in recuperation.

1998 (e) Except in emergency situations and for treatment
1999 rendered by a managed care arrangement, after any initial
2000 examination and diagnosis by a physician providing remedial
2001 treatment, care, and attendance, and before a proposed course of
2002 medical treatment begins, each insurer shall review, in
2003 accordance with the requirements of this chapter, the proposed
2004 course of treatment, to determine whether such treatment would
2005 be recognized as reasonably prudent. The review must be in
2006 accordance with all applicable workers' compensation practice
2007 parameters and protocols of treatment established in accordance
2008 with this chapter. The insurer must accept any such proposed
2009 course of treatment unless the insurer notifies the physician of
2010 its specific objections to the proposed course of treatment by
2011 the close of the tenth business day after notification by the
2012 physician, or a supervised designee of the physician, of the
2013 proposed course of treatment.

2014 (f) Upon the written request of the employee, the carrier
2015 shall give the employee the opportunity for one change of
2016 physician during the course of treatment for any one accident.
2017 Upon the granting of a change of physician, the originally
2018 authorized physician in the same specialty as the changed
2019 physician shall become deauthorized upon written notification by
2020 the employer or carrier. The carrier shall authorize an
2021 alternative physician who shall not be professionally affiliated



2022 with the previous physician within 5 days after receipt of the
2023 request. If the carrier fails to provide a change of physician
2024 as requested by the employee, the employee may select the
2025 physician and such physician shall be considered authorized if
2026 the treatment being provided is compensable and medically
2027 necessary.

2028

2029 Failure of the carrier to timely comply with this subsection
2030 shall be a violation of this chapter and the carrier shall be
2031 subject to penalties as provided for in s. 440.525. ~~The employee~~
2032 ~~shall be entitled to select another physician from among not~~
2033 ~~fewer than three carrier-authorized physicians who are not~~
2034 ~~professionally affiliated.~~

2035 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

2036 (a) As a condition to eligibility for payment under this
2037 chapter, a health care provider who renders services must be a
2038 certified health care provider and must receive authorization
2039 from the carrier before providing treatment. This paragraph does
2040 not apply to emergency care. The agency shall adopt rules to
2041 implement the certification of health care providers.

2042 (b) A health care provider who renders emergency care must
2043 notify the carrier by the close of the third business day after
2044 it has rendered such care. If the emergency care results in
2045 admission of the employee to a health care facility, the health
2046 care provider must notify the carrier by telephone within 24
2047 hours after initial treatment. Emergency care is not compensable
2048 under this chapter unless the injury requiring emergency care
2049 arose as a result of a work-related accident. Pursuant to



2050 chapter 395, all licensed physicians and health care providers
2051 in this state shall be required to make their services available
2052 for emergency treatment of any employee eligible for workers'
2053 compensation benefits. To refuse to make such treatment
2054 available is cause for revocation of a license.

2055 (c) A health care provider may not refer the employee to
2056 another health care provider, diagnostic facility, therapy
2057 center, or other facility without prior authorization from the
2058 carrier, except when emergency care is rendered. Any referral
2059 must be to a health care provider that has been certified by the
2060 agency, unless the referral is for emergency treatment, and the
2061 referral must be made in accordance with practice parameters and
2062 protocols of treatment as provided for in this chapter.

2063 (d) A carrier must respond, by telephone or in writing, to
2064 a request for authorization from an authorized health care
2065 provider by the close of the third business day after receipt of
2066 the request. A carrier who fails to respond to a written request
2067 for authorization for referral for medical treatment by the
2068 close of the third business day after receipt of the request
2069 consents to the medical necessity for such treatment. All such
2070 requests must be made to the carrier. Notice to the carrier does
2071 not include notice to the employer.

2072 (e) Carriers shall adopt procedures for receiving,
2073 reviewing, documenting, and responding to requests for
2074 authorization. Such procedures shall be for a health care
2075 provider certified under this section.

2076 (f) By accepting payment under this chapter for treatment
2077 rendered to an injured employee, a health care provider consents



2078 to the jurisdiction of the agency as set forth in subsection
2079 (11) and to the submission of all records and other information
2080 concerning such treatment to the agency in connection with a
2081 reimbursement dispute, audit, or review as provided by this
2082 section. The health care provider must further agree to comply
2083 with any decision of the agency rendered under this section.

2084 (g) The employee is not liable for payment for medical
2085 treatment or services provided pursuant to this section except
2086 as otherwise provided in this section.

2087 (h) The provisions of s. 456.053 are applicable to
2088 referrals among health care providers, as defined in subsection
2089 (1), treating injured workers.

2090 (i) Notwithstanding paragraph (d), a claim for specialist
2091 consultations, surgical operations, physiotherapeutic or
2092 occupational therapy procedures, X-ray examinations, or special
2093 diagnostic laboratory tests that cost more than \$1,000 and other
2094 specialty services that the agency identifies by rule is not
2095 valid and reimbursable unless the services have been expressly
2096 authorized by the carrier, or unless the carrier has failed to
2097 respond within 10 days to a written request for authorization,
2098 or unless emergency care is required. The insurer shall ~~not~~
2099 ~~refuse to~~ authorize such consultation or procedure unless the
2100 health care provider or facility is not authorized or certified,
2101 unless such treatment is not in accordance with practice
2102 parameters and protocols of treatment established in this
2103 chapter, or unless a judge of compensation claims an expert
2104 ~~medical adviser~~ has determined that the consultation or
2105 procedure is not medically necessary, not in accordance with the



2106 practice parameters and protocols of treatment established in
2107 this chapter, or otherwise not compensable under this chapter.
2108 Authorization of a treatment plan does not constitute express
2109 authorization for purposes of this section, except to the extent
2110 the carrier provides otherwise in its authorization procedures.
2111 This paragraph does not limit the carrier's obligation to
2112 identify and disallow overutilization or billing errors.

2113 (j) Notwithstanding anything in this chapter to the
2114 contrary, a sick or injured employee shall be entitled, at all
2115 times, to free, full, and absolute choice in the selection of
2116 the pharmacy or pharmacist dispensing and filling prescriptions
2117 for medicines required under this chapter. It is expressly
2118 forbidden for the agency, an employer, or a carrier, or any
2119 agent or representative of the agency, an employer, or a carrier
2120 to select the pharmacy or pharmacist which the sick or injured
2121 employee must use; condition coverage or payment on the basis of
2122 the pharmacy or pharmacist utilized; or to otherwise interfere
2123 in the selection by the sick or injured employee of a pharmacy
2124 or pharmacist.

2125 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
2126 DEPARTMENT.--

2127 (a) Any health care provider providing necessary remedial
2128 treatment, care, or attendance to any injured worker shall
2129 submit treatment reports to the carrier in a format prescribed
2130 by the department ~~in consultation with the agency~~. A claim for
2131 medical or surgical treatment is not valid or enforceable
2132 against such employer or employee, unless, by the close of the
2133 third business day following the first treatment, the physician



2134 providing the treatment furnishes to the employer or carrier a
2135 preliminary notice of the injury and treatment in a format ~~on~~
2136 ~~forms~~ prescribed by the department ~~in consultation with the~~
2137 ~~agency~~ and, within 15 days thereafter, furnishes to the employer
2138 or carrier a complete report, and subsequent thereto furnishes
2139 progress reports, if requested by the employer or insurance
2140 carrier, at intervals of not less than 3 weeks apart or at less
2141 frequent intervals if requested in a format ~~on forms~~ prescribed
2142 by the department ~~in consultation with the agency~~.

2143 (b) Upon the request of the department ~~or agency~~, each
2144 medical report or bill obtained or received by the employer, the
2145 carrier, or the injured employee, or the attorney for the
2146 employer, carrier, or injured employee, with respect to the
2147 remedial treatment, care, and attendance of the injured
2148 employee, including any report of an examination, diagnosis, or
2149 disability evaluation, must be produced by the health care
2150 provider to filed with the department ~~or agency~~ pursuant to
2151 rules adopted by the department ~~in consultation with the agency~~.
2152 The health care provider shall also furnish to the injured
2153 employee or ~~to~~ his or her attorney and the employer or carrier
2154 or its attorney, on demand, a copy of his or her office chart,
2155 records, and reports, and may charge the injured employee no
2156 more than 50 cents per page for copying the records and the
2157 actual direct cost to the health care provider or health care
2158 facility for X rays, microfilm, or other nonpaper records ~~an~~
2159 ~~amount authorized by the department for the copies~~. Each such
2160 health care provider shall provide to the ~~agency or~~ department



2161 information about the remedial treatment, care, and attendance
2162 which the ~~agency or~~ department reasonably requests.

2163 (c) It is the policy for the administration of the
2164 workers' compensation system that there shall be reasonable
2165 access to medical information by all parties to facilitate the
2166 self-executing features of the law. An employee who reports an
2167 injury or illness alleged to be work-related waives any
2168 physician-patient privilege with respect to any condition or
2169 complaint reasonably related to the condition for which the
2170 employee claims compensation. Notwithstanding the limitations in
2171 s. 456.057 and subject to the limitations in s. 381.004, upon
2172 the request of the employer, the carrier, an authorized
2173 qualified rehabilitation provider, or the attorney for the
2174 employer or carrier, the medical records, reports, and
2175 information of an injured employee relevant to the particular
2176 injury or illness for which compensation is sought must be
2177 furnished to those persons and the medical condition of the
2178 injured employee must be discussed with those persons, if the
2179 records and the discussions are restricted to conditions
2180 relating to the workplace injury. Release of medical information
2181 by the health care provider or other physician does not require
2182 the authorization of the injured employee. If medical records,
2183 reports, and information of an injured employee are sought from
2184 health care providers who are not subject to the jurisdiction of
2185 the state, the injured employee shall sign an authorization
2186 allowing for the employer or carrier to obtain the medical
2187 records, reports, or information. Any such discussions or
2188 release of information may be held before or after the filing of



2189 a claim or petition for benefits without the knowledge, consent,
2190 or presence of any other party or his or her agent or
2191 representative. A health care provider who willfully refuses to
2192 provide medical records or to discuss the medical condition of
2193 the injured employee, after a reasonable request is made for
2194 such information pursuant to this subsection, shall be subject
2195 by the department ~~agency~~ to one or more of the penalties set
2196 forth in paragraph (8)(b). The department may adopt rules to
2197 carry out this subsection.

2198 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

2199 (a) In any dispute concerning overutilization, medical
2200 benefits, compensability, or disability under this chapter, the
2201 carrier or the employee may select an independent medical
2202 examiner. If the parties agree, the examiner may be a health
2203 care provider treating or providing other care to the employee.
2204 An independent medical examiner may not render an opinion
2205 outside his or her area of expertise, as demonstrated by
2206 licensure and applicable practice parameters. The employer and
2207 employee shall be entitled to only one independent medical
2208 examination per accident and not one independent medical
2209 examination per medical specialty. The party requesting and
2210 selecting the independent medical examination shall be
2211 responsible for all expenses associated with said examination,
2212 including, but not limited to, medically necessary diagnostic
2213 testing performed and physician or medical care provider fees
2214 for the evaluation. The party selecting the independent medical
2215 examination shall identify the choice of the independent medical
2216 examiner to all other parties within 15 days after the date the



2217 independent medical examination is to take place. Failure to
2218 timely provide such notification shall preclude the requesting
2219 party from submitting the findings of such independent medical
2220 examiner in a proceeding before a judge of compensation claims.
2221 The independent medical examiner may not provide followup care
2222 if such recommendation for care is found to be medically
2223 necessary. If the employee prevails in a medical dispute as
2224 determined in an order by a judge of compensation claims or if
2225 benefits are paid or treatment provided after the employee has
2226 obtained an independent medical examination based upon the
2227 examiner's findings, the costs of such examination shall be paid
2228 by the employer or carrier.

2229 (b) Each party is bound by his or her selection of an
2230 independent medical examiner, including the selection of the
2231 independent medical examiner in accordance with s. 440.134 and
2232 the opinions of such independent medical examiner. Each party
2233 ~~and~~ is entitled to an alternate examiner only if:

2234 1. The examiner is not qualified to render an opinion upon
2235 an aspect of the employee's illness or injury which is material
2236 to the claim or petition for benefits;

2237 2. The examiner ceases to practice in the specialty
2238 relevant to the employee's condition;

2239 3. The examiner is unavailable due to injury, death, or
2240 relocation outside a reasonably accessible geographic area; or

2241 4. The parties agree to an alternate examiner.

2242

2243 ~~Any party may request, or a judge of compensation claims may~~
2244 ~~require, designation of an agency medical advisor as an~~



2245 ~~independent medical examiner. The opinion of the advisors acting~~
2246 ~~as examiners shall not be afforded the presumption set forth in~~
2247 ~~paragraph (9)(c).~~

2248 (c) The carrier may, at its election, contact the claimant
2249 directly to schedule a reasonable time for an independent
2250 medical examination. The carrier must confirm the scheduling
2251 agreement in writing with the claimant and the ~~within 5 days and~~
2252 ~~notify~~ claimant's counsel, if any, at least 7 days before the
2253 date upon which the independent medical examination is scheduled
2254 to occur. An attorney representing a claimant is not authorized
2255 to schedule the self-insured employer's or carrier's independent
2256 medical evaluations under this subsection. Neither the self-
2257 insured employer nor the carrier shall be responsible for
2258 scheduling any independent medical examination other than an
2259 employer or carrier independent medical examination.

2260 (d) If the employee fails to appear for the independent
2261 medical examination scheduled by the employer or carrier without
2262 good cause and fails to advise the physician at least 24 hours
2263 before the scheduled date for the examination that he or she
2264 cannot appear, the employee is barred from recovering
2265 compensation for any period during which he or she has refused
2266 to submit to such examination. Further, the employee shall
2267 reimburse the employer or carrier 50 percent of the physician's
2268 cancellation or no-show fee unless the employer or carrier that
2269 schedules the examination fails to timely provide to the
2270 employee a written confirmation of the date of the examination
2271 pursuant to paragraph (c) which includes an explanation of why
2272 he or she failed to appear. The employee may appeal to a judge



2273 of compensation claims for reimbursement when the employer or
2274 carrier withholds payment in excess of the authority granted by
2275 this section.

2276 (e) No medical opinion other than the opinion of a medical
2277 advisor appointed by the judge of compensation claims or the
2278 department ~~agency~~, an independent medical examiner, or an
2279 authorized treating provider is admissible in proceedings before
2280 the judges of compensation claims.

2281 (f) Attorney's fees incurred by an injured employee in
2282 connection with delay of or opposition to an independent medical
2283 examination, including, but not limited to, motions for
2284 protective orders, are not recoverable under this chapter.

2285 (g) When a medical dispute arises, the parties may
2286 mutually agree to refer the employee to a licensed physician
2287 specializing in the diagnosis and treatment of the medical
2288 condition at issue for an independent medical examination and
2289 report. Such medical examination shall be referred to as a
2290 "consensus independent medical examination." The findings and
2291 conclusions of such mutually agreed upon consensus independent
2292 medical examination shall be binding on the parties and shall
2293 constitute resolution of the medical dispute addressed in the
2294 independent consensus medical examination and in any proceeding.
2295 Agreement by the parties to a consensus independent medical
2296 examination shall not affect the employer's, carrier's, or
2297 employee's entitlement to one independent medical examination
2298 per accident as provided for in this subsection.

2299 (6) UTILIZATION REVIEW.--Carriers shall review all bills,
2300 invoices, and other claims for payment submitted by health care



2301 providers in order to identify overutilization and billing
2302 errors, including compliance with practice parameters and
2303 protocols of treatment established in accordance with this
2304 chapter, and may hire peer review consultants or conduct
2305 independent medical evaluations. Such consultants, including
2306 peer review organizations, are immune from liability in the
2307 execution of their functions under this subsection to the extent
2308 provided in s. 766.101. If a carrier finds that overutilization
2309 of medical services or a billing error has occurred, or there is
2310 a violation of the practice parameters and protocols of
2311 treatment established in accordance with this chapter, it must
2312 disallow or adjust payment for such services or error without
2313 order of a judge of compensation claims or the agency, if the
2314 carrier, in making its determination, has complied with this
2315 section and rules adopted by the agency.

2316 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

2317 (a) Any health care provider, carrier, or employer who
2318 elects to contest the disallowance or adjustment of payment by a
2319 carrier under subsection (6) must, within 30 days after receipt
2320 of notice of disallowance or adjustment of payment, petition the
2321 agency to resolve the dispute. The petitioner must serve a copy
2322 of the petition on the carrier and on all affected parties by
2323 certified mail. The petition must be accompanied by all
2324 documents and records that support the allegations contained in
2325 the petition. Failure of a petitioner to submit such
2326 documentation to the agency results in dismissal of the
2327 petition.



2328 (b) The carrier must submit to the agency within 10 days
2329 after receipt of the petition all documentation substantiating
2330 the carrier's disallowance or adjustment. Failure of the carrier
2331 to timely submit the requested documentation to the agency
2332 within 10 days constitutes a waiver of all objections to the
2333 petition.

2334 (c) Within 60 days after receipt of all documentation, the
2335 agency must provide to the petitioner, the carrier, and the
2336 affected parties a written determination of whether the carrier
2337 properly adjusted or disallowed payment. The agency must be
2338 guided by standards and policies set forth in this chapter,
2339 including all applicable reimbursement schedules, practice
2340 parameters, and protocols of treatment, in rendering its
2341 determination.

2342 (d) If the agency finds an improper disallowance or
2343 improper adjustment of payment by an insurer, the insurer shall
2344 reimburse the health care provider, facility, insurer, or
2345 employer within 30 days, subject to the penalties provided in
2346 this subsection.

2347 (e) The agency shall adopt rules to carry out this
2348 subsection. The rules may include provisions for consolidating
2349 petitions filed by a petitioner and expanding the timetable for
2350 rendering a determination upon a consolidated petition.

2351 (f) Any carrier that engages in a pattern or practice of
2352 arbitrarily or unreasonably disallowing or reducing payments to
2353 health care providers may be subject to one or more of the
2354 following penalties imposed by the agency:



2355 1. Repayment of the appropriate amount to the health care
2356 provider.

2357 2. An administrative fine assessed by the agency in an
2358 amount not to exceed \$5,000 per instance of improperly
2359 disallowing or reducing payments.

2360 3. Award of the health care provider's costs, including a
2361 reasonable attorney's fee, for prosecuting the petition.

2362 (8) PATTERN OR PRACTICE OF OVERUTILIZATION.--

2363 (a) Carriers must report to the agency all instances of
2364 overutilization including, but not limited to, all instances in
2365 which the carrier disallows or adjusts payment or a
2366 determination has been made that the provided or recommended
2367 treatment is in excess of the practice parameters and protocols
2368 of treatment established in this chapter. The agency shall
2369 determine whether a pattern or practice of overutilization
2370 exists.

2371 (b) If the agency determines that a health care provider
2372 has engaged in a pattern or practice of overutilization or a
2373 violation of this chapter or rules adopted by the agency,
2374 including a pattern or practice of providing treatment in excess
2375 of the practice parameters or protocols of treatment, it may
2376 impose one or more of the following penalties:

2377 1. An order of the agency barring the provider from
2378 payment under this chapter;

2379 2. Deauthorization of care under review;

2380 3. Denial of payment for care rendered in the future;



2381 4. Decertification of a health care provider certified as
2382 an expert medical advisor under subsection (9) or of a
2383 rehabilitation provider certified under s. 440.49;

2384 5. An administrative fine assessed by the agency in an
2385 amount not to exceed \$5,000 per instance of overutilization or
2386 violation; and

2387 6. Notification of and review by the appropriate licensing
2388 authority pursuant to s. 440.106(3).

2389 (9) EXPERT MEDICAL ADVISORS.--

2390 (a) The agency shall certify expert medical advisors in
2391 each specialty to assist the agency and the judges of
2392 compensation claims within the advisor's area of expertise as
2393 provided in this section. The agency shall, in a manner
2394 prescribed by rule, in certifying, recertifying, or decertifying
2395 an expert medical advisor, consider the qualifications,
2396 training, impartiality, and commitment of the health care
2397 provider to the provision of quality medical care at a
2398 reasonable cost. As a prerequisite for certification or
2399 recertification, the agency shall require, at a minimum, that
2400 an expert medical advisor have specialized workers' compensation
2401 training or experience under the workers' compensation system of
2402 this state and board certification or board eligibility.

2403 (b) The agency shall contract with one or more entities
2404 that employ, contract with, or otherwise secure ~~or employ~~ expert
2405 medical advisors to provide peer review or expert medical
2406 consultation, opinions, and testimony to the agency or to a
2407 judge of compensation claims in connection with resolving
2408 disputes relating to reimbursement, differing opinions of health



2409 care providers, and health care and physician services rendered
2410 under this chapter, including utilization issues. The agency
2411 shall by rule establish the qualifications of expert medical
2412 advisors, including training and experience in the workers'
2413 compensation system in the state and the expert medical
2414 advisor's knowledge of and commitment to the standards of care,
2415 practice parameters, and protocols established pursuant to this
2416 chapter. Expert medical advisors contracting with the agency
2417 shall, as a term of such contract, agree to provide consultation
2418 or services in accordance with the timetables set forth in this
2419 chapter and to abide by rules adopted by the agency, including,
2420 but not limited to, rules pertaining to procedures for review of
2421 the services rendered by health care providers and preparation
2422 of reports and testimony or recommendations for submission to
2423 the agency or the judge of compensation claims.

2424 (c) If there is disagreement in the opinions of the health
2425 care providers, if two health care providers disagree on medical
2426 evidence supporting the employee's complaints or the need for
2427 additional medical treatment, or if two health care providers
2428 disagree that the employee is able to return to work, the agency
2429 may, and the judge of compensation claims shall, upon his or her
2430 own motion or within 15 days after receipt of a written request
2431 by either the injured employee, the employer, or the carrier,
2432 order the injured employee to be evaluated by an expert medical
2433 advisor. The opinion of the expert medical advisor is presumed
2434 to be correct unless there is clear and convincing evidence to
2435 the contrary as determined by the judge of compensation claims.
2436 The expert medical advisor appointed to conduct the evaluation



2437 shall have free and complete access to the medical records of
2438 the employee. An employee who fails to report to and cooperate
2439 with such evaluation forfeits entitlement to compensation during
2440 the period of failure to report or cooperate.

2441 (d) The expert medical advisor must complete his or her
2442 evaluation and issue his or her report to the agency or to the
2443 judge of compensation claims within 15 ~~45~~ days after receipt of
2444 all medical records. The expert medical advisor must furnish a
2445 copy of the report to the carrier and to the employee.

2446 (e) An expert medical advisor is not liable under any
2447 theory of recovery for evaluations performed under this section
2448 without a showing of fraud or malice. The protections of s.
2449 766.101 apply to any officer, employee, or agent of the agency
2450 and to any officer, employee, or agent of any entity with which
2451 the agency has contracted under this subsection.

2452 (f) If the agency or a judge of compensation claims orders
2453 ~~determines that~~ the services of a certified expert medical
2454 ~~advisor are required~~ to resolve a dispute under this section,
2455 the party requesting such examination carrier must compensate
2456 the advisor for his or her time in accordance with a schedule
2457 adopted by the agency. If the employee prevails in a dispute as
2458 determined in an order by a judge of compensation claims based
2459 upon the expert medical advisor's findings, the employer or
2460 carrier shall pay for the costs of such expert medical advisor.
2461 If a judge of compensation claims, upon his or her motion, finds
2462 that an expert medical advisor is needed to resolve the dispute,
2463 the carrier must compensate the advisor for his or her time in
2464 accordance with a schedule adopted by the agency. The agency may



2465 assess a penalty not to exceed \$500 against any carrier that
2466 fails to timely compensate an advisor in accordance with this
2467 section.

2468 (10) WITNESS FEES.--Any health care provider who gives a
2469 deposition shall be allowed a witness fee. The amount charged by
2470 the witness may not exceed \$200 per hour. An expert witness who
2471 has never provided direct professional services to a party but
2472 has merely reviewed medical records and provided an expert
2473 opinion or has provided only direct professional services that
2474 were unrelated to the workers' compensation case may not be
2475 allowed a witness fee in excess of \$200 per day.

2476 (11) AUDITS BY AGENCY FOR HEALTH CARE ADMINISTRATION AND
2477 THE DEPARTMENT OF INSURANCE; JURISDICTION.--

2478 (a) The Agency for Health Care Administration may
2479 investigate health care providers to determine whether providers
2480 are complying with this chapter and with rules adopted by the
2481 agency, whether the providers are engaging in overutilization,
2482 ~~and~~ whether providers are engaging in improper billing
2483 practices, and whether providers are adhering to practice
2484 parameters and protocols established in accordance with this
2485 chapter. If the agency finds that a health care provider has
2486 improperly billed, overutilized, or failed to comply with agency
2487 rules or the requirements of this chapter, including, but not
2488 limited to, practice parameters and protocols established in
2489 accordance with this chapter, it must notify the provider of its
2490 findings and may determine that the health care provider may not
2491 receive payment from the carrier or may impose penalties as set
2492 forth in subsection (8) or other sections of this chapter. If



2493 the health care provider has received payment from a carrier for
2494 services that were improperly billed, that constitute
2495 overutilization, or that were outside practice parameters or
2496 protocols established in accordance with this chapter ~~or for~~
2497 ~~overutilization~~, it must return those payments to the carrier.
2498 The agency may assess a penalty not to exceed \$500 for each
2499 overpayment that is not refunded within 30 days after
2500 notification of overpayment by the agency or carrier.

2501 (b) The department shall monitor and audit carriers as
2502 provided in s. 624.3161, to determine if medical bills are paid
2503 in accordance with this section and department rules. Any
2504 employer, if self-insured, or carrier found by the division not
2505 to be within 90 percent compliance as to the payment of medical
2506 bills after July 1, 1994, must be assessed a fine not to exceed
2507 1 percent of the prior year's assessment levied against such
2508 entity under s. 440.51 for every quarter in which the entity
2509 fails to attain 90-percent compliance. The department shall fine
2510 or otherwise discipline an employer or carrier, pursuant to this
2511 chapter, the insurance code, or rules adopted by the department,
2512 for each late payment of compensation that is below the minimum
2513 95-percent ~~90-percent~~ performance standard. Any carrier that is
2514 found to be not in compliance in subsequent consecutive quarters
2515 must implement a medical-bill review program approved by the
2516 division, and the carrier is subject to disciplinary action by
2517 the Department of Insurance.

2518 (c) The agency has exclusive jurisdiction to decide any
2519 matters concerning reimbursement, to resolve any overutilization
2520 dispute under subsection (7), and to decide any question



2521 concerning overutilization under subsection (8), which question
2522 or dispute arises after January 1, 1994.

2523 (d) The following agency actions do not constitute agency
2524 action subject to review under ss. 120.569 and 120.57 and do not
2525 constitute actions subject to s. 120.56: referral by the entity
2526 responsible for utilization review; a decision by the agency to
2527 refer a matter to a peer review committee; establishment by a
2528 health care provider or entity of procedures by which a peer
2529 review committee reviews the rendering of health care services;
2530 and the review proceedings, report, and recommendation of the
2531 peer review committee.

2532 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
2533 REIMBURSEMENT ALLOWANCES.--

2534 (a) A three-member panel is created, consisting of the
2535 Insurance Commissioner, or the Insurance Commissioner's
2536 designee, and two members to be appointed by the Governor,
2537 subject to confirmation by the Senate, one member who, on
2538 account of present or previous vocation, employment, or
2539 affiliation, shall be classified as a representative of
2540 employers, the other member who, on account of previous
2541 vocation, employment, or affiliation, shall be classified as a
2542 representative of employees. The panel shall determine statewide
2543 schedules of maximum reimbursement allowances for medically
2544 necessary treatment, care, and attendance provided by
2545 physicians, hospitals, ambulatory surgical centers, work-
2546 hardening programs, pain programs, and durable medical
2547 equipment. The maximum reimbursement allowances for inpatient
2548 hospital care shall be based on a schedule of per diem rates, to



2549 be approved by the three-member panel no later than March 1,
2550 1994, to be used in conjunction with a precertification manual
2551 as determined by the department, including maximum hours in
2552 which an outpatient may remain in observation status, which
2553 shall not exceed 23 hours ~~agency~~. All compensable charges for
2554 hospital outpatient care shall be reimbursed at 75 percent of
2555 usual and customary charges, except as otherwise provided by
2556 this subsection. Until the three-member panel approves a
2557 ~~schedule of per diem rates for inpatient hospital care and it~~
2558 ~~becomes effective, all compensable charges for hospital~~
2559 ~~inpatient care must be reimbursed at 75 percent of their usual~~
2560 ~~and customary charges.~~ Annually, the three-member panel shall
2561 adopt schedules of maximum reimbursement allowances for
2562 physicians, hospital inpatient care, hospital outpatient care,
2563 ambulatory surgical centers, work-hardening programs, and pain
2564 programs. ~~However, the maximum percentage of increase in the~~
2565 ~~individual reimbursement allowance may not exceed the percentage~~
2566 ~~of increase in the Consumer Price Index for the previous year.~~
2567 An individual physician, hospital, ambulatory surgical center,
2568 pain program, or work-hardening program shall be reimbursed
2569 either ~~the usual and customary charge for treatment, care, and~~
2570 ~~attendance,~~ the agreed-upon contract price, or the maximum
2571 reimbursement allowance in the appropriate schedule, ~~whichever~~
2572 ~~is less.~~

2573 (b) It is the intent of the Legislature to increase the
2574 schedule of maximum reimbursement allowances for selected
2575 physicians effective January 1, 2004, and to pay for the
2576 increases through reductions in payments to hospitals. Revisions



2577 developed pursuant to this subsection are limited to the
2578 following:

2579 1. Payments for outpatient physical, occupational, and
2580 speech therapy provided by hospitals shall be reduced to the
2581 schedule of maximum reimbursement allowances for these services
2582 which applies to nonhospital providers.

2583 2. Payments for scheduled outpatient nonemergency
2584 radiological and clinical laboratory services that are not
2585 provided in conjunction with a surgical procedure shall be
2586 reduced to the schedule of maximum reimbursement allowances for
2587 these services which applies to nonhospital providers.

2588 3. Outpatient reimbursement for scheduled surgeries shall
2589 be reduced from 75 percent of charges to 60 percent of charges.

2590 4. Maximum reimbursement for a physician licensed under
2591 chapter 458 or chapter 459 shall be increased to 110 percent of
2592 the reimbursement allowed by Medicare, using appropriate codes
2593 and modifiers or the medical reimbursement level adopted by the
2594 three-member panel as of January 1, 2003, whichever is greater.

2595 5. Maximum reimbursement for surgical procedures shall be
2596 increased to 140 percent of the reimbursement allowed by
2597 Medicare or the medical reimbursement level adopted by the
2598 three-member panel as of January 1, 2003, whichever is greater.

2599 (c)(b) As to reimbursement for a prescription medication,
2600 the reimbursement amount for a prescription shall be the average
2601 wholesale price ~~times 1.2~~ plus \$4.18 for the dispensing fee,
2602 except where the carrier has contracted for a lower amount. Fees
2603 for pharmaceuticals and pharmaceutical services shall be
2604 reimbursable at the applicable fee schedule amount. Where the



2605 employer or carrier has contracted for such services and the
2606 employee elects to obtain them through a provider not a party to
2607 the contract, the carrier shall reimburse at the schedule,
2608 negotiated, or contract price, whichever is lower. No such
2609 contract shall rely on a provider that is not reasonably
2610 accessible to the employee.

2611 (d)(e) Reimbursement for all fees and other charges for
2612 such treatment, care, and attendance, including treatment, care,
2613 and attendance provided by any hospital or other health care
2614 provider, ambulatory surgical center, work-hardening program, or
2615 pain program, must not exceed the amounts provided by the
2616 uniform schedule of maximum reimbursement allowances as
2617 determined by the panel or as otherwise provided in this
2618 section. This subsection also applies to independent medical
2619 examinations performed by health care providers under this
2620 chapter. ~~Until the three member panel approves a uniform~~
2621 ~~schedule of maximum reimbursement allowances and it becomes~~
2622 ~~effective, all compensable charges for treatment, care, and~~
2623 ~~attendance provided by physicians, ambulatory surgical centers,~~
2624 ~~work-hardening programs, or pain programs shall be reimbursed at~~
2625 ~~the lowest maximum reimbursement allowance across all 1992~~
2626 ~~schedules of maximum reimbursement allowances for the services~~
2627 ~~provided regardless of the place of service. In determining the~~
2628 uniform schedule, the panel shall first approve the data which
2629 it finds representative of prevailing charges in the state for
2630 similar treatment, care, and attendance of injured persons. Each
2631 health care provider, health care facility, ambulatory surgical
2632 center, work-hardening program, or pain program receiving



2633 workers' compensation payments shall maintain records verifying
2634 their usual charges. In establishing the uniform schedule of
2635 maximum reimbursement allowances, the panel must consider:

2636 1. The levels of reimbursement for similar treatment,
2637 care, and attendance made by other health care programs or
2638 third-party providers;

2639 2. The impact upon cost to employers for providing a level
2640 of reimbursement for treatment, care, and attendance which will
2641 ensure the availability of treatment, care, and attendance
2642 required by injured workers;

2643 3. The financial impact of the reimbursement allowances
2644 upon health care providers and health care facilities, including
2645 trauma centers as defined in s. 395.4001, and its effect upon
2646 their ability to make available to injured workers such
2647 medically necessary remedial treatment, care, and attendance.
2648 The uniform schedule of maximum reimbursement allowances must be
2649 reasonable, must promote health care cost containment and
2650 efficiency with respect to the workers' compensation health care
2651 delivery system, and must be sufficient to ensure availability
2652 of such medically necessary remedial treatment, care, and
2653 attendance to injured workers; and

2654 4. The most recent average maximum allowable rate of
2655 increase for hospitals determined by the Health Care Board under
2656 chapter 408.

2657 (e)~~(d)~~ In addition to establishing the uniform schedule of
2658 maximum reimbursement allowances, the panel shall:

2659 1. Take testimony, receive records, and collect data to
2660 evaluate the adequacy of the workers' compensation fee schedule,



2661 nationally recognized fee schedules and alternative methods of
2662 reimbursement to certified health care providers and health care
2663 facilities for inpatient and outpatient treatment and care.

2664 2. Survey certified health care providers and health care
2665 facilities to determine the availability and accessibility of
2666 workers' compensation health care delivery systems for injured
2667 workers.

2668 3. Survey carriers to determine the estimated impact on
2669 carrier costs and workers' compensation premium rates by
2670 implementing changes to the carrier reimbursement schedule or
2671 implementing alternative reimbursement methods.

2672 4. Submit recommendations on or before January 1, 2003,
2673 and biennially thereafter, to the President of the Senate and
2674 the Speaker of the House of Representatives on methods to
2675 improve the workers' compensation health care delivery system.

2676
2677 The division shall provide data to the panel, including but not
2678 limited to, utilization trends in the workers' compensation
2679 health care delivery system. The division shall provide the
2680 panel with an annual report regarding the resolution of medical
2681 reimbursement disputes and any actions pursuant to s. 440.13(8).
2682 The division shall provide administrative support and service to
2683 the panel to the extent requested by the panel.

2684 (13) REMOVAL OF PHYSICIANS FROM LISTS OF THOSE AUTHORIZED
2685 TO RENDER MEDICAL CARE.--The agency shall remove from the list
2686 of physicians or facilities authorized to provide remedial
2687 treatment, care, and attendance under this chapter the name of



2688 any physician or facility found after reasonable investigation
2689 to have:

2690 (a) Engaged in professional or other misconduct or
2691 incompetency in connection with medical services rendered under
2692 this chapter;

2693 (b) Exceeded the limits of his or her or its professional
2694 competence in rendering medical care under this chapter, or to
2695 have made materially false statements regarding his or her or
2696 its qualifications in his or her application;

2697 (c) Failed to transmit copies of medical reports to the
2698 employer or carrier, or failed to submit full and truthful
2699 medical reports of all his or her or its findings to the
2700 employer or carrier as required under this chapter;

2701 (d) Solicited, or employed another to solicit for himself
2702 or herself or itself or for another, professional treatment,
2703 examination, or care of an injured employee in connection with
2704 any claim under this chapter;

2705 (e) Refused to appear before, or to answer upon request
2706 of, the agency or any duly authorized officer of the state, any
2707 legal question, or to produce any relevant book or paper
2708 concerning his or her conduct under any authorization granted to
2709 him or her under this chapter;

2710 (f) Self-referred in violation of this chapter or other
2711 laws of this state; or

2712 (g) Engaged in a pattern of practice of overutilization or
2713 a violation of this chapter or rules adopted by the agency,
2714 including failure to adhere to practice parameters and protocols
2715 established in accordance with this chapter.



2716 (14) PAYMENT OF MEDICAL FEES.--

2717 (a) Except for emergency care treatment, fees for medical
2718 services are payable only to a health care provider certified
2719 and authorized to render remedial treatment, care, or attendance
2720 under this chapter. Carriers shall pay, disallow, or deny
2721 payment to health care providers in the manner and at times set
2722 forth in this chapter. A health care provider may not collect or
2723 receive a fee from an injured employee within this state, except
2724 as otherwise provided by this chapter. Such providers have
2725 recourse against the employer or carrier for payment for
2726 services rendered in accordance with this chapter. Payment to
2727 health care providers or physicians shall be subject to the
2728 medical fee schedule and applicable practice parameters and
2729 protocols, regardless of whether the health care provider or
2730 claimant is asserting that the payment should be made.

2731 (b) Fees charged for remedial treatment, care, and
2732 attendance, except for independent medical examinations and
2733 consensus independent medical examinations, may not exceed the
2734 applicable fee schedules adopted under this chapter and
2735 department rule. Notwithstanding any other provision in this
2736 chapter, if a physician or health care provider specifically
2737 agrees in writing to follow identified procedures aimed at
2738 providing quality medical care to injured workers at reasonable
2739 costs, deviations from established fee schedules shall be
2740 permitted. Written agreements warranting deviations may include,
2741 but are not limited to, the timely scheduling of appointments
2742 for injured workers, participating in return-to-work programs
2743 with injured workers' employers, expediting the reporting of



2744 treatments provided to injured workers, and agreeing to
2745 continuing education, utilization review, quality assurance,
2746 precertification, and case management systems that are designed
2747 to provide needed treatment for injured workers.

2748 (c) Notwithstanding any other provision of this chapter,
2749 following overall maximum medical improvement from an injury
2750 compensable under this chapter, the employee is obligated to pay
2751 a copayment of \$10 per visit for medical services. The copayment
2752 shall not apply to emergency care provided to the employee.

2753 (15) PRACTICE PARAMETERS.--The practice parameters and
2754 protocols mandated under this chapter shall be the practice
2755 parameters and protocols adopted by the United States Agency for
2756 Healthcare Research and Quality in effect on January 1, 2003.

2757 ~~(a) The Agency for Health Care Administration, in~~
2758 ~~conjunction with the department and appropriate health~~
2759 ~~professional associations and health-related organizations shall~~
2760 ~~develop and may adopt by rule scientifically sound practice~~
2761 ~~parameters for medical procedures relevant to workers'~~
2762 ~~compensation claimants. Practice parameters developed under this~~
2763 ~~section must focus on identifying effective remedial treatments~~
2764 ~~and promoting the appropriate utilization of health care~~
2765 ~~resources. Priority must be given to those procedures that~~
2766 ~~involve the greatest utilization of resources either because~~
2767 ~~they are the most costly or because they are the most frequently~~
2768 ~~performed. Practice parameters for treatment of the 10 top~~
2769 ~~procedures associated with workers' compensation injuries~~
2770 ~~including the remedial treatment of lower-back injuries must be~~
2771 ~~developed by December 31, 1994.~~



2772 ~~(b) The guidelines may be initially based on guidelines~~
2773 ~~prepared by nationally recognized health care institutions and~~
2774 ~~professional organizations but should be tailored to meet the~~
2775 ~~workers' compensation goal of returning employees to full~~
2776 ~~employment as quickly as medically possible, taking into~~
2777 ~~consideration outcomes data collected from managed care~~
2778 ~~providers and any other inpatient and outpatient facilities~~
2779 ~~servicing workers' compensation claimants.~~

2780 ~~(c) Procedures must be instituted which provide for the~~
2781 ~~periodic review and revision of practice parameters based on the~~
2782 ~~latest outcomes data, research findings, technological~~
2783 ~~advancements, and clinical experiences, at least once every 3~~
2784 ~~years.~~

2785 ~~(d) Practice parameters developed under this section must~~
2786 ~~be used by carriers and the agency in evaluating the~~
2787 ~~appropriateness and overutilization of medical services provided~~
2788 ~~to injured employees.~~

2789 (16) STANDARDS OF CARE.--The following standards of care
2790 shall be followed in providing medical care under this chapter:

2791 (a) Abnormal anatomical findings alone, in the absence of
2792 objective relevant medical findings, shall not be an indicator
2793 of injury or illness, a justification for the provision of
2794 remedial medical care or the assignment of restrictions, or a
2795 foundation for limitations.

2796 (b) At all times during evaluation and treatment, the
2797 provider shall act on the premise that returning to work is an
2798 integral part of the treatment plan. The goal of removing all
2799 restrictions and limitations as early as appropriate shall be



2800 part of the treatment plan on a continuous basis. The assignment
2801 of restrictions and limitations shall be reviewed with each
2802 patient exam and upon receipt of new information, such as
2803 progress reports from physical therapists and other providers.
2804 Consideration shall be given to upgrading or removing the
2805 restrictions and limitations with each patient exam, based upon
2806 the presence or absence of objective relevant medical findings.

2807 (c) Reasonable necessary medical care of injured employees
2808 shall in all situations:

2809 1. Utilize a high intensity, short duration treatment
2810 approach that focuses on early activation and restoration of
2811 function whenever possible.

2812 2. Include reassessment of the treatment plans, regimes,
2813 therapies, prescriptions, and functional limitations or
2814 restrictions prescribed by the provider every 30 days.

2815 3. Be focused on treatment of the individual employee's
2816 specific clinical dysfunction or status and shall not be based
2817 upon nondescript diagnostic labels.

2818

2819 All treatment shall be inherently scientifically logical and the
2820 evaluation or treatment procedure must match the documented
2821 physiologic and clinical problem. Treatment shall match the
2822 type, intensity, and duration of service required by the problem
2823 identified.

2824 (17) Failure to comply with this section shall be
2825 considered a violation of this chapter and is subject to
2826 penalties as provided for in s. 440.525.



2827 Section 16. Paragraphs (d) and (i) of subsection (1) and
2828 subsections (2), (6), (7), (8), (9), (10), (11), (17), and (25)
2829 of section 440.134, Florida Statutes, are amended to read:

2830 440.134 Workers' compensation managed care arrangement.--

2831 (1) As used in this section, the term:

2832 (d) "Grievance" means a written complaint, other than a
2833 petition for benefits, filed by the injured worker pursuant to
2834 the requirements of the managed care arrangement, expressing
2835 dissatisfaction with the ~~medical care provided by an insurer's~~
2836 workers' compensation managed care arrangement's refusal to
2837 provide medical care or the medical care provided ~~arrangement~~
2838 health care providers, expressed in writing by an injured
2839 worker.

2840 (i) "Medical care coordinator" means a primary care
2841 provider within a provider network who is responsible for
2842 managing the medical care of an injured worker including
2843 determining other health care providers and health care
2844 facilities to which the injured employee will be referred for
2845 evaluation or treatment. A medical care coordinator shall be a
2846 physician licensed under chapter 458, ~~or~~ an osteopathic
2847 physician licensed under chapter 459, a chiropractic physician
2848 licensed under chapter 460, or a podiatric physician licensed
2849 under chapter 461.

2850 (2)(a) The self-insured employer or carrier may, subject
2851 to the terms and limitations specified elsewhere in this section
2852 and chapter, furnish to the employee solely through managed care
2853 arrangements such medically necessary remedial treatment, care,
2854 and attendance for such period as the nature of the injury or



2855 the process of recovery requires and which shall be in
2856 accordance with practice parameters and protocols established
2857 pursuant to this chapter. For any self-insured employer or
2858 carrier who elects to deliver the medical benefits required by
2859 this chapter through a method other than a workers' compensation
2860 managed care arrangement, the discontinuance of the use of the
2861 workers' compensation managed care arrangement shall be without
2862 regard to the date of the accident, notwithstanding any other
2863 provision of law or rule.

2864 (b) The agency shall authorize an insurer to offer or
2865 utilize a workers' compensation managed care arrangement after
2866 the insurer files a completed application along with the payment
2867 of a \$1,000 application fee, and upon the agency's being
2868 satisfied that the applicant has the ability to provide quality
2869 of care consistent with the prevailing professional standards of
2870 care and the insurer and its workers' compensation managed care
2871 arrangement otherwise meets the requirements of this section. No
2872 insurer may offer or utilize a managed care arrangement without
2873 such authorization. The authorization, unless sooner suspended
2874 or revoked, shall automatically expire 2 years after the date of
2875 issuance unless renewed by the insurer. The authorization shall
2876 be renewed upon application for renewal and payment of a renewal
2877 fee of \$1,000, provided that the insurer is in compliance with
2878 the requirements of this section and any rules adopted
2879 hereunder. An application for renewal of the authorization shall
2880 be made 90 days prior to expiration of the authorization, on
2881 forms provided by the agency. The renewal application shall not
2882 require the resubmission of any documents previously filed with



2883 the agency if such documents have remained valid and unchanged
2884 since their original filing.

2885 (6) The proposed managed care plan of operation must
2886 include:

2887 (a) A statement or map providing a clear description of
2888 the service area.

2889 (b) A description of the grievance procedure to be used.

2890 (c) A description of the quality assurance program which
2891 assures that the health care services provided to workers shall
2892 be rendered under reasonable standards of quality of care
2893 consistent with the prevailing standards of medical practice in
2894 the medical community. The program shall include, but not be
2895 limited to:

2896 1. A written statement of goals and objectives that
2897 stresses health and return-to-work outcomes as the principal
2898 criteria for the evaluation of the quality of care rendered to
2899 injured workers.

2900 2. A written statement describing how methodology has been
2901 incorporated into an ongoing system for monitoring of care that
2902 is individual case oriented and, when implemented, can provide
2903 interpretation and analysis of patterns of care rendered to
2904 individual patients by individual providers.

2905 3. Written procedures for taking appropriate remedial
2906 action whenever, as determined under the quality assurance
2907 program, inappropriate or substandard services have been
2908 provided or services that should have been furnished have not
2909 been provided.



2910 4. A written plan, which includes ongoing review, for
2911 providing review of physicians and other licensed medical
2912 providers.

2913 5. Appropriate financial incentives to reduce service
2914 costs and utilization without sacrificing the quality of
2915 service.

2916 6. Adequate methods of peer review and utilization review.
2917 The utilization review process shall include a health care
2918 facility's facilities precertification mechanism, including, but
2919 not limited to, all elective admissions and nonemergency
2920 surgeries and adherence to practice parameters and protocols
2921 established in accordance with this chapter.

2922 7. Provisions for resolution of disputes arising between a
2923 health care provider and an insurer regarding reimbursements and
2924 utilization review.

2925 8. Availability of a process for aggressive medical care
2926 coordination, as well as a program involving cooperative efforts
2927 by the workers, the employer, and the workers' compensation
2928 managed care arrangement to promote early return to work for
2929 injured workers.

2930 9. A written plan allowing for the independent medical
2931 examination provided for in s. 440.13(5). Notwithstanding any
2932 provision to the contrary, the costs for the independent medical
2933 examination shall be paid by the carrier if such examination is
2934 performed by a physician in the provider network. Otherwise,
2935 such costs shall be paid in accordance with s. 440.13(5). An
2936 independent medical examination requested by a claimant and paid
2937 for by the carrier shall constitute the claimant's one



2938 independent medical examination per accident under s. 440.13(5).

2939 ~~A process allowing employees to obtain one second medical~~
2940 ~~opinion in the same specialty and within the provider network~~
2941 ~~during the course of treatment for a work-related injury.~~

2942 10. A provision for the selection of a primary care
2943 provider by the employee from among primary providers in the
2944 provider network.

2945 11. The written information proposed to be used by the
2946 insurer to comply with subparagraph 8.

2947 (7) Written procedures to provide the insurer with timely
2948 medical records and information including, but not limited to,
2949 work status, work restrictions, date of maximum medical
2950 improvement, permanent impairment ratings, and other information
2951 as required, including information demonstrating compliance with
2952 the practice parameters and protocols of treatment established
2953 pursuant to this chapter.

2954 (8) Evidence that appropriate health care providers and
2955 administrative staff of the insurer's workers' compensation
2956 managed care arrangement have received training and education on
2957 the provisions of this chapter; ~~and~~ the administrative rules
2958 that govern the provision of remedial treatment, care, and
2959 attendance of injured workers; and the practice parameters and
2960 protocols of treatment established pursuant to this chapter.

2961 (9) Written procedures and methods to prevent
2962 inappropriate or excessive treatment that are in accordance with
2963 the practice parameters and protocols of treatment established
2964 pursuant to this chapter.



2965 (10) Written procedures and methods for the management of
2966 an injured worker's medical care by a medical care coordinator
2967 including:

2968 (a) The mechanism for assuring that covered employees
2969 receive all initial covered services from a primary care
2970 provider participating in the provider network, except for
2971 emergency care.

2972 (b) The mechanism for assuring that all continuing covered
2973 services be received from the same primary care provider
2974 participating in the provider network that provided the initial
2975 covered services, except when services from another provider are
2976 authorized by the medical care coordinator pursuant to paragraph
2977 (d).

2978 (c) The policies and procedures for allowing an employee
2979 one change to another provider within the ~~same specialty and~~
2980 provider network as the authorized treating physician during the
2981 course of treatment for a work-related injury, in accordance
2982 with the procedures provided in s. 440.13(2)(f), if a request is
2983 ~~made to the medical care coordinator by the employee; and~~
2984 ~~requiring that special provision be made for more than one such~~
2985 ~~referral through the arrangement's grievance procedures.~~

2986 (d) The process for assuring that all referrals authorized
2987 by a medical care coordinator, in accordance with the practice
2988 parameters and protocols of treatment established pursuant to
2989 this chapter, are made to the participating network providers,
2990 unless medically necessary treatment, care, and attendance are
2991 not available and accessible to the injured worker in the
2992 provider network.



2993 (e) Assignment of a medical care coordinator licensed
2994 under chapter 458 or chapter 459 to manage care by physicians
2995 licensed under chapter 458 or chapter 459, a medical care
2996 coordinator licensed under chapter 460 to manage care by
2997 physicians licensed under chapter 460, and a medical care
2998 coordinator licensed under chapter 461 to manage care by
2999 physicians licensed under chapter 461 upon request by an injured
3000 employee for care by a physician licensed under chapter 458,
3001 chapter 459, chapter 460, or chapter 461.

3002 (11) A description of the use of workers' compensation
3003 practice parameters and protocols of treatment for health care
3004 services ~~when adopted by the agency.~~

3005 (17) Notwithstanding any other provisions of this chapter,
3006 when a carrier provides medical care through a workers'
3007 compensation managed care arrangement, pursuant to this section,
3008 those workers who are subject to the arrangement must receive
3009 medical services for work-related injuries and diseases as
3010 prescribed in the contract, provided the employer and carrier
3011 have provided notice to the employees of the arrangement in a
3012 manner approved by the agency and the medical services are in
3013 accordance with the practice parameters and protocols
3014 established pursuant to this chapter. Treatment received outside
3015 the workers' compensation managed care arrangement is not
3016 compensable, regardless of the purpose of the treatment,
3017 including, but not limited to, evaluations, examinations, or
3018 diagnostic studies to determine causation between medical
3019 findings and a compensable accident, the existence or extent of
3020 impairments or disabilities, and whether the injured employee



3021 has reached maximum medical improvement, unless authorized by
 3022 the carrier prior to the treatment date.

3023 (25) The agency shall adopt rules that specify:

3024 (a) Procedures for authorization and examination of
 3025 workers' compensation managed care arrangements by the agency.

3026 (b) Requirements and procedures for authorization of
 3027 workers' compensation arrangement provider networks and
 3028 procedures for the agency to grant exceptions from accessibility
 3029 of services.

3030 (c) Requirements and procedures for case management,
 3031 utilization management, and peer review.

3032 (d) Requirements and procedures for quality assurance and
 3033 medical records.

3034 (e) Requirements and procedures for dispute resolution in
 3035 conformance with this chapter.

3036 (f) Requirements and procedures for employee and provider
 3037 education.

3038 (g) Requirements and procedures for reporting data
 3039 regarding grievances, return-to-work outcomes, and provider
 3040 networks.

3041 Section 17. Subsections (1) and (4)and paragraph (b) of
 3042 subsection (5) of section 440.14, Florida Statutes, are amended
 3043 to read:

3044 440.14 Determination of pay.--

3045 (1) Except as otherwise provided in this chapter, the
 3046 average weekly wages of the injured employee on the date of the
 3047 accident ~~at the time of the injury~~ shall be taken as the basis



3048 upon which to compute compensation and shall be determined,
3049 subject to the limitations of s. 440.12(2), as follows:

3050 (a) If the injured employee has worked in the employment
3051 in which she or he was working on the date of the accident ~~at~~
3052 ~~the time of the injury~~, whether for the same or another
3053 employer, during substantially the whole of 13 weeks immediately
3054 preceding the accident ~~injury~~, her or his average weekly wage
3055 shall be one-thirteenth of the total amount of wages earned in
3056 such employment during the 13 weeks. As used in this paragraph,
3057 the term "substantially the whole of 13 weeks" means the
3058 calendar ~~shall be deemed to mean and refer to a constructive~~
3059 period of 13 weeks as a whole, which shall be defined as the 13
3060 calendar weeks before the date of the accident, excluding the
3061 week during which the accident occurred. ~~a consecutive period of~~
3062 ~~91 days, and~~ The term "during substantially the whole of 13
3063 weeks" shall be deemed to mean during not less than 75 ~~90~~
3064 percent of the total customary ~~full-time~~ hours of employment
3065 within such period considered as a whole.

3066 (b) If the injured employee has not worked in such
3067 employment during substantially the whole of 13 weeks
3068 immediately preceding the accident ~~injury~~, the wages of a
3069 similar employee in the same employment who has worked
3070 substantially the whole of such 13 weeks shall be used in making
3071 the determination under the preceding paragraph.

3072 (c) If an employee is a seasonal worker and the foregoing
3073 method cannot be fairly applied in determining the average
3074 weekly wage, then the employee may use, instead of the 13 weeks
3075 immediately preceding the accident ~~injury~~, the calendar year or



3076 the 52 weeks immediately preceding the accident ~~injury~~. The
3077 employee will have the burden of proving that this method will
3078 be more reasonable and fairer than the method set forth in
3079 paragraphs (a) and (b) and, further, must document prior
3080 earnings with W-2 forms, written wage statements, or income tax
3081 returns. The employer shall have 30 days following the receipt
3082 of this written proof to adjust the compensation rate, including
3083 the making of any additional payment due for prior weekly
3084 payments, based on the lower rate compensation.

3085 (d) If any of the foregoing methods cannot reasonably and
3086 fairly be applied, the full-time weekly wages of the injured
3087 employee shall be used, except as otherwise provided in
3088 paragraph (e) or paragraph (f).

3089 (e) If it is established that the injured employee was
3090 under 22 years of age when the accident occurred ~~injured~~ and
3091 that under normal conditions her or his wages should be expected
3092 to increase during the period of disability, the fact may be
3093 considered in arriving at her or his average weekly wages.

3094 (f) If it is established that the injured employee was a
3095 part-time worker on the date of the accident ~~at the time of the~~
3096 ~~injury~~, that she or he had adopted part-time employment as a
3097 customary practice, and that under normal working conditions she
3098 or he probably would have remained a part-time worker during the
3099 period of disability, these factors shall be considered in
3100 arriving at her or his average weekly wages. For the purpose of
3101 this paragraph, the term "part-time worker" means an individual
3102 who customarily works less than the full-time hours or full-time
3103 workweek of a similar employee in the same employment.



3104 (g) If compensation is due for a fractional part of the
3105 week, the compensation for such fractional part shall be
3106 determined by dividing the weekly compensation rate by the
3107 number of days employed per week to compute the amount due for
3108 each day.

3109 (4) Upon termination of the employee or upon termination
3110 of the payment of fringe benefits of any employee who is
3111 collecting indemnity benefits pursuant to s. 440.15(2) or
3112 (3)~~(b)~~, the employer shall within 7 days of such termination
3113 file a corrected 13-week wage statement reflecting the wages
3114 paid and the fringe benefits that had been paid to the injured
3115 employee, as provided in s. 440.02(27).

3116 (5)

3117 (b) The employee waives any entitlement to interest,
3118 penalties, and attorney's fees during the period in which the
3119 employee has not provided information concerning the loss of
3120 earnings from concurrent employment. Carriers are not subject to
3121 penalties by the division under s. 440.20(8)(b) ~~and (e)~~ for
3122 unpaid compensation related to concurrent employment during the
3123 period in which the employee has not provided information
3124 concerning the loss of earnings from concurrent employment.

3125 Section 18. Section 440.15, Florida Statutes, is amended
3126 to read:

3127 440.15 Compensation for disability.--Compensation for
3128 disability shall be paid to the employee, subject to the limits
3129 provided in s. 440.12(2), as follows:

3130 (1) PERMANENT TOTAL DISABILITY.--



3131 (a) In case of total disability adjudged to be permanent,
3132 66 2/3 percent of the average weekly wages shall be paid to the
3133 employee disability during the continuance of such total
3134 disability. No compensation shall be payable under this section
3135 if the employee is engaged in, or is physically capable of
3136 engaging in, at least sedentary employment.

3137 (b) In the following cases, an injured employee is
3138 presumed to be permanently and totally disabled unless the
3139 employer or carrier establishes that the employee is physically
3140 capable of engaging in at least sedentary employment within a
3141 50-mile radius of the employee's residence:

3142 1. Spinal cord injury involving severe paralysis of an
3143 arm, a leg, or the trunk;

3144 2. Amputation of an arm, a hand, a foot, or a leg
3145 involving the effective loss of use of that appendage;

3146 3. Severe brain or closed-head injury as evidenced by:

3147 a. Severe sensory or motor disturbances;

3148 b. Severe communication disturbances;

3149 c. Severe complex integrated disturbances of cerebral
3150 function;

3151 d. Severe episodic neurological disorders; or

3152 e. Other severe brain and closed-head injury conditions at
3153 least as severe in nature as any condition provided in sub-
3154 subparagraphs a.-d.;

3155 4. Second-degree or third-degree burns of 25 percent or
3156 more of the total body surface or third-degree burns of 5
3157 percent or more to the face and hands; or

3158 5. Total or industrial blindness.



3159
3160 In all other cases, in order to obtain permanent total
3161 disability benefits, the employee must establish that he or she
3162 is not able to engage in at least sedentary employment, within a
3163 50-mile radius of the employee's residence, due to his or her
3164 physical limitation. Entitlement to such benefits shall cease
3165 when the employee reaches age 75, unless the employee is not
3166 eligible for social security benefits under 42 U.S.C. s. 402 or
3167 s. 423 because the employee's compensable injury has prevented
3168 the employee from working sufficient quarters to be eligible for
3169 such benefits, notwithstanding any age limits. If the accident
3170 occurred on or after the employee reaches age 70, benefits shall
3171 be payable during the continuance of permanent total disability,
3172 not to exceed 5 years following the determination of permanent
3173 total disability. Only a catastrophic injury as defined in s.
3174 440.02 shall, in the absence of conclusive proof of a
3175 substantial earning capacity, constitute permanent total
3176 disability. Only claimants with catastrophic injuries or
3177 claimants who are incapable of engaging in employment, as
3178 described in this paragraph, are eligible for permanent total
3179 benefits. In no other case may permanent total disability be
3180 awarded.

3181 (c) In cases of permanent total disability resulting from
3182 injuries that occurred prior to July 1, 1955, such payments
3183 shall not be made in excess of 700 weeks.

3184 (d) If an employee who is being paid compensation for
3185 permanent total disability becomes rehabilitated to the extent
3186 that she or he establishes an earning capacity, the employee



3187 shall be paid, instead of the compensation provided in paragraph
3188 (a), benefits pursuant to subsection (3). The department shall
3189 adopt rules to enable a permanently and totally disabled
3190 employee who may have reestablished an earning capacity to
3191 undertake a trial period of reemployment without prejudicing her
3192 or his return to permanent total status in the case that such
3193 employee is unable to sustain an earning capacity.

3194 (e)1. The employer's or carrier's right to conduct
3195 vocational evaluations or testing by the employer's or carrier's
3196 chosen rehabilitation advisor or provider ~~pursuant to s. 440.491~~
3197 continues even after the employee has been accepted or
3198 adjudicated as entitled to compensation under this chapter and
3199 costs for such evaluations and testing shall be borne by the
3200 employer or carrier, respectively. This right includes, but is
3201 not limited to, instances in which such evaluations or tests are
3202 recommended by a treating physician or independent medical-
3203 examination physician, instances warranted by a change in the
3204 employee's medical condition, or instances in which the employee
3205 appears to be making appropriate progress in recuperation. This
3206 right may not be exercised more than once every calendar year.

3207 2. The carrier must confirm the scheduling of the
3208 vocational evaluation or testing in writing, and must notify the
3209 employee and the employee's counsel, if any, at least 7 days
3210 before the date on which vocational evaluation or testing is
3211 scheduled to occur.

3212 3. ~~Pursuant to an order of the judge of compensation~~
3213 ~~claims,~~ The employer or carrier may withhold payment of benefits
3214 for permanent total disability or supplements for any period



3215 during which the employee willfully fails or refuses to appear
 3216 without good cause for the scheduled vocational evaluation or
 3217 testing.

3218 (f)1. If permanent total disability results from injuries
 3219 that occurred subsequent to June 30, 1955, and for which the
 3220 liability of the employer for compensation has not been
 3221 discharged under s. 440.20(11), the injured employee shall
 3222 receive additional weekly compensation benefits equal to 3 5
 3223 percent of her or his weekly compensation rate, as established
 3224 pursuant to the law in effect on the date of her or his injury,
 3225 multiplied by the number of calendar years since the date of
 3226 injury. The weekly compensation payable and the additional
 3227 benefits payable under this paragraph, when combined, may not
 3228 exceed the maximum weekly compensation rate in effect at the
 3229 time of payment as determined pursuant to s. 440.12(2).

3230 ~~Entitlement to~~ These supplemental payments shall not be paid or
 3231 payable after the employee attains eease at age 62, regardless
 3232 of whether if the employee has applied for or is eligible to
 3233 apply is eligible for social security benefits under 42 U.S.C.
 3234 s. ~~ss.~~ 402 or s. ~~and~~ 423, unless the employee is not eligible
 3235 for social security benefits under 42 U.S.C. s. 402 or s. 423
 3236 because the employee's compensable injury has prevented the
 3237 employee from working sufficient quarters to be eligible for
 3238 such benefits ~~whether or not the employee has applied for such~~
 3239 ~~benefits~~. These supplemental benefits shall be paid by the
 3240 department out of the Workers' Compensation Administration Trust
 3241 Fund when the injury occurred subsequent to June 30, 1955, and
 3242 before July 1, 1984. These supplemental benefits shall be paid



3243 by the employer when the injury occurred on or after July 1,
3244 1984. Supplemental benefits are not payable for any period prior
3245 to October 1, 1974.

3246 2.a. The department shall provide by rule for the periodic
3247 reporting to the department of all earnings of any nature and
3248 social security income by the injured employee entitled to or
3249 claiming additional compensation under subparagraph 1. Neither
3250 the department nor the employer or carrier shall make any
3251 payment of those additional benefits provided by subparagraph 1.
3252 for any period during which the employee willfully fails or
3253 refuses to report upon request by the department in the manner
3254 prescribed by such rules.

3255 b. The department shall provide by rule for the periodic
3256 reporting to the employer or carrier of all earnings of any
3257 nature and social security income by the injured employee
3258 entitled to or claiming benefits for permanent total disability.
3259 The employer or carrier is not required to make any payment of
3260 benefits for permanent total disability for any period during
3261 which the employee willfully fails or refuses to report upon
3262 request by the employer or carrier in the manner prescribed by
3263 such rules or if any employee who is receiving permanent total
3264 disability benefits refuses to apply for or cooperate with the
3265 employer or carrier in applying for social security benefits.

3266 3. When an injured employee receives a full or partial
3267 lump-sum advance of the employee's permanent total disability
3268 compensation benefits, the employee's benefits under this
3269 paragraph shall be computed on the employee's weekly
3270 compensation rate as reduced by the lump-sum advance.



3271 (2) TEMPORARY TOTAL DISABILITY.--

3272 (a) Subject to subsection (7), in case of disability total
3273 in character but temporary in quality, 66 2/3 percent of the
3274 average weekly wages shall be paid to the employee during the
3275 continuance thereof, not to exceed 104 weeks except as provided
3276 in this subsection, s. 440.12(1), and s. 440.14(3). Once the
3277 employee reaches the maximum number of weeks allowed, or the
3278 employee reaches the date of maximum medical improvement,
3279 whichever occurs earlier, temporary disability benefits shall
3280 cease and the injured worker's permanent impairment shall be
3281 determined.

3282 (b) Notwithstanding the provisions of paragraph (a), an
3283 employee who has sustained the loss of an arm, leg, hand, or
3284 foot, has been rendered a paraplegic, paraparetic, quadriplegic,
3285 or quadriparetic, or has lost the sight of both eyes shall be
3286 paid temporary total disability of 80 percent of her or his
3287 average weekly wage. The increased temporary total disability
3288 compensation provided for in this paragraph must not extend
3289 beyond 6 months from the date of the accident; however, such
3290 benefits shall not be due or payable if the employee is eligible
3291 for, entitled to, or collecting permanent total disability
3292 benefits. The compensation provided by this paragraph is not
3293 subject to the limits provided in s. 440.12(2), but instead is
3294 subject to a maximum weekly compensation rate of \$700. If, at
3295 the conclusion of this period of increased temporary total
3296 disability compensation, the employee is still temporarily
3297 totally disabled, the employee shall continue to receive
3298 temporary total disability compensation as set forth in



3299 paragraphs (a) and (c). The period of time the employee has
3300 received this increased compensation will be counted as part of,
3301 and not in addition to, the maximum periods of time for which
3302 the employee is entitled to compensation under paragraph (a) but
3303 not paragraph (c).

3304 (c) Temporary total disability benefits paid pursuant to
3305 this subsection shall include such period as may be reasonably
3306 necessary for training in the use of artificial members and
3307 appliances, and shall include such period as the employee may be
3308 receiving training and education under a program pursuant to s.
3309 440.491. ~~Notwithstanding s. 440.02, the date of maximum medical~~
3310 ~~improvement for purposes of paragraph (3)(b) shall be no earlier~~
3311 ~~than the last day for which such temporary disability benefits~~
3312 ~~are paid.~~

3313 (d) The department shall, by rule, provide for the
3314 periodic reporting to the department, employer, or carrier of
3315 all earned income, including income from social security, by the
3316 injured employee who is entitled to or claiming benefits for
3317 temporary total disability. The employer or carrier is not
3318 required to make any payment of benefits for temporary total
3319 disability for any period during which the employee willfully
3320 fails or refuses to report upon request by the employer or
3321 carrier in the manner prescribed by the rules. The rule must
3322 require the claimant to personally sign the claim form and
3323 attest that she or he has reviewed, understands, and
3324 acknowledges the foregoing.

3325 (3) PERMANENT IMPAIRMENT AND ~~WAGE LOSS~~ BENEFITS.--

3326 (a) ~~Impairment benefits.~~



3327 ~~1-~~ Once the employee has reached the date of maximum
3328 medical improvement, impairment benefits are due and payable
3329 within 14 ~~20~~ days after the carrier has knowledge of the
3330 impairment.

3331 (b)2- The three-member panel, in cooperation with the
3332 department, shall establish and use a uniform permanent
3333 impairment rating schedule. This schedule must be based on
3334 medically or scientifically demonstrable findings as well as the
3335 systems and criteria set forth in the American Medical
3336 Association's Guides to the Evaluation of Permanent Impairment;
3337 the Snellen Charts, published by American Medical Association
3338 Committee for Eye Injuries; and the Minnesota Department of
3339 Labor and Industry Disability Schedules. The schedule must
3340 ~~should~~ be based upon objective findings. The schedule shall be
3341 more comprehensive than the AMA Guides to the Evaluation of
3342 Permanent Impairment and shall expand the areas already
3343 addressed and address additional areas not currently contained
3344 in the guides. On August 1, 1979, and pending the adoption, by
3345 rule, of a permanent schedule, Guides to the Evaluation of
3346 Permanent Impairment, copyright 1977, 1971, 1988, by the
3347 American Medical Association, shall be the temporary schedule
3348 and shall be used for the purposes hereof. For injuries after
3349 July 1, 1990, pending the adoption by rule of a uniform
3350 disability rating agency schedule, the Minnesota Department of
3351 Labor and Industry Disability Schedule shall be used unless that
3352 schedule does not address an injury. In such case, the Guides to
3353 the Evaluation of Permanent Impairment by the American Medical
3354 Association shall be used. Determination of permanent impairment



3355 | under this schedule must be made by a physician licensed under
3356 | chapter 458, a doctor of osteopathic medicine licensed under
3357 | chapters 458 and 459, a chiropractic physician licensed under
3358 | chapter 460, a podiatric physician licensed under chapter 461,
3359 | an optometrist licensed under chapter 463, or a dentist licensed
3360 | under chapter 466, as appropriate considering the nature of the
3361 | injury. No other persons are authorized to render opinions
3362 | regarding the existence of or the extent of permanent
3363 | impairment.

3364 | ~~(c)3-~~ All impairment income benefits shall be based on an
3365 | impairment rating using the impairment schedule referred to in
3366 | paragraph (b) subparagraph 2. Impairment income benefits are
3367 | paid biweekly ~~weekly~~ at the rate of 75 ~~50~~ percent of the
3368 | employee's average weekly temporary total disability benefit not
3369 | to exceed the maximum weekly benefit under s. 440.12; provided,
3370 | however, that such benefits shall be reduced by 50 percent for
3371 | each week in which the employee has earned income equal to or in
3372 | excess of the employee's average weekly wage. An employee's
3373 | entitlement to impairment income benefits begins the day after
3374 | the employee reaches maximum medical improvement or the
3375 | expiration of temporary benefits, whichever occurs earlier, and
3376 | continues until the earlier of:

3377 | ~~1.a-~~ The expiration of a period computed at the rate of 3
3378 | weeks for each percentage point of impairment; or

3379 | ~~2.b-~~ The death of the employee.

3380 |

3381 | Impairment income benefits as defined by this subsection are
3382 | payable only for impairment ratings for physical impairments. If



3383 objective medical findings can substantiate a permanent
3384 psychiatric impairment resulting from the accident, permanent
3385 impairment benefits are limited for the permanent psychiatric
3386 impairment to 1-percent permanent impairment.

3387 (d)4. After the employee has been certified by a doctor as
3388 having reached maximum medical improvement or 6 weeks before the
3389 expiration of temporary benefits, whichever occurs earlier, the
3390 certifying doctor shall evaluate the condition of the employee
3391 and assign an impairment rating, using the impairment schedule
3392 referred to in paragraph (b) subparagraph 2. ~~Compensation is not~~
3393 ~~payable for the mental, psychological, or emotional injury~~
3394 ~~arising out of depression from being out of work.~~ If the
3395 certification and evaluation are performed by a doctor other
3396 than the employee's treating doctor, the certification and
3397 evaluation must be submitted to the treating doctor, the
3398 employee, and the carrier within 10 days after the evaluation.
3399 ~~and~~ The treating doctor must indicate to the carrier agreement
3400 or disagreement with the other doctor's certification and
3401 evaluation.

3402 1. The certifying doctor shall issue a written report to
3403 ~~the department, the employee,~~ and the carrier certifying that
3404 maximum medical improvement has been reached, stating the
3405 impairment rating to the body as a whole, and providing any
3406 other information required by the department by rule. The
3407 carrier shall establish an overall maximum medical improvement
3408 date and permanent impairment rating, based upon all such
3409 reports.



3410 2. Within 14 days after the carrier's knowledge of each
3411 maximum medical improvement date and impairment rating to the
3412 body as a whole upon which the carrier is paying benefits, the
3413 carrier shall report such maximum medical improvement date and,
3414 when determined, the overall maximum medical improvement date
3415 and associated impairment rating to the department in a format
3416 as set forth in department rule. If the employee has not been
3417 certified as having reached maximum medical improvement before
3418 the expiration of 98 ~~102~~ weeks after the date temporary total
3419 disability benefits begin to accrue, the carrier shall notify
3420 the treating doctor of the requirements of this section.

3421 (e)~~5.~~ The carrier shall pay the employee impairment income
3422 benefits for a period based on the impairment rating.

3423 (f)~~6.~~ The department may by rule specify forms and
3424 procedures governing the method of payment of ~~wage loss and~~
3425 ~~impairment benefits under this section for dates of accidents~~
3426 ~~before January 1, 1994, and for dates of accidents on or after~~
3427 ~~January 1, 1994.~~

3428 ~~(b) Supplemental benefits.--~~

3429 ~~1. All supplemental benefits must be paid in accordance~~
3430 ~~with this subsection. An employee is entitled to supplemental~~
3431 ~~benefits as provided in this paragraph as of the expiration of~~
3432 ~~the impairment period, if:~~

3433 ~~a. The employee has an impairment rating from the~~
3434 ~~compensable injury of 20 percent or more as determined pursuant~~
3435 ~~to this chapter;~~



3436 ~~b. The employee has not returned to work or has returned~~
3437 ~~to work earning less than 80 percent of the employee's average~~
3438 ~~weekly wage as a direct result of the employee's impairment; and~~

3439 ~~e. The employee has in good faith attempted to obtain~~
3440 ~~employment commensurate with the employee's ability to work.~~

3441 ~~2. If an employee is not entitled to supplemental benefits~~
3442 ~~at the time of payment of the final weekly impairment income~~
3443 ~~benefit because the employee is earning at least 80 percent of~~
3444 ~~the employee's average weekly wage, the employee may become~~
3445 ~~entitled to supplemental benefits at any time within 1 year~~
3446 ~~after the impairment income benefit period ends if:~~

3447 ~~a. The employee earns wages that are less than 80 percent~~
3448 ~~of the employee's average weekly wage for a period of at least~~
3449 ~~90 days;~~

3450 ~~b. The employee meets the other requirements of~~
3451 ~~subparagraph 1.; and~~

3452 ~~e. The employee's decrease in earnings is a direct result~~
3453 ~~of the employee's impairment from the compensable injury.~~

3454 ~~3. If an employee earns wages that are at least 80 percent~~
3455 ~~of the employee's average weekly wage for a period of at least~~
3456 ~~90 days during which the employee is receiving supplemental~~
3457 ~~benefits, the employee ceases to be entitled to supplemental~~
3458 ~~benefits for the filing period. Supplemental benefits that have~~
3459 ~~been terminated shall be reinstated when the employee satisfies~~
3460 ~~the conditions enumerated in subparagraph 2. and files the~~
3461 ~~statement required under subparagraph 4. Notwithstanding any~~
3462 ~~other provision, if an employee is not entitled to supplemental~~
3463 ~~benefits for 12 consecutive months, the employee ceases to be~~



3464 ~~entitled to any additional income benefits for the compensable~~
3465 ~~injury. If the employee is discharged within 12 months after~~
3466 ~~losing entitlement under this subsection, benefits may be~~
3467 ~~reinstated if the employee was discharged at that time with the~~
3468 ~~intent to deprive the employee of supplemental benefits.~~

3469 ~~4. After the initial determination of supplemental~~
3470 ~~benefits, the employee must file a statement with the carrier~~
3471 ~~stating that the employee has earned less than 80 percent of the~~
3472 ~~employee's average weekly wage as a direct result of the~~
3473 ~~employee's impairment, stating the amount of wages the employee~~
3474 ~~earned in the filing period, and stating that the employee has~~
3475 ~~in good faith sought employment commensurate with the employee's~~
3476 ~~ability to work. The statement must be filed quarterly on a form~~
3477 ~~and in the manner prescribed by the department. The department~~
3478 ~~may modify the filing period as appropriate to an individual~~
3479 ~~ease. Failure to file a statement relieves the carrier of~~
3480 ~~liability for supplemental benefits for the period during which~~
3481 ~~a statement is not filed.~~

3482 ~~5. The carrier shall begin payment of supplemental~~
3483 ~~benefits not later than the seventh day after the expiration~~
3484 ~~date of the impairment income benefit period and shall continue~~
3485 ~~to timely pay those benefits. The carrier may request a~~
3486 ~~mediation conference for the purpose of contesting the~~
3487 ~~employee's entitlement to or the amount of supplemental income~~
3488 ~~benefits.~~

3489 ~~6. Supplemental benefits are calculated quarterly and paid~~
3490 ~~monthly. For purposes of calculating supplemental benefits, 80~~
3491 ~~percent of the employee's average weekly wage and the average~~



3492 ~~wages the employee has earned per week are compared quarterly.~~
3493 ~~For purposes of this paragraph, if the employee is offered a~~
3494 ~~bona fide position of employment that the employee is capable of~~
3495 ~~performing, given the physical condition of the employee and the~~
3496 ~~geographic accessibility of the position, the employee's weekly~~
3497 ~~wages are considered equivalent to the weekly wages for the~~
3498 ~~position offered to the employee.~~

3499 ~~7. Supplemental benefits are payable at the rate of 80~~
3500 ~~percent of the difference between 80 percent of the employee's~~
3501 ~~average weekly wage determined pursuant to s. 440.14 and the~~
3502 ~~weekly wages the employee has earned during the reporting~~
3503 ~~period, not to exceed the maximum weekly income benefit under s.~~
3504 ~~440.12.~~

3505 ~~8. The department may by rule define terms that are~~
3506 ~~necessary for the administration of this section and forms and~~
3507 ~~procedures governing the method of payment of supplemental~~
3508 ~~benefits for dates of accidents before January 1, 1994, and for~~
3509 ~~dates of accidents on or after January 1, 1994.~~

3510 ~~(c) Duration of temporary impairment and supplemental~~
3511 ~~income benefits. The employee's eligibility for temporary~~
3512 ~~benefits, impairment income benefits, and supplemental benefits~~
3513 ~~terminates on the expiration of 401 weeks after the date of~~
3514 ~~injury.~~

3515 (g) Notwithstanding paragraph (c), for accidents occurring
3516 on or after October 1, 2003, an employee's entitlement to
3517 impairment income benefits begins the day after the employee
3518 reaches maximum medical improvement or the expiration of



3519 temporary benefits, whichever occurs earlier, and continues for
3520 the following periods:

3521 1. Two weeks of benefits are to be paid to the employee
3522 for each percentage point of impairment from 1 percent up to and
3523 including 10 percent.

3524 2. For each percentage point of impairment from 11 percent
3525 up to and including 15 percent, 3 weeks of benefits are to be
3526 paid.

3527 3. For each percentage point of impairment from 16 percent
3528 up to and including 20 percent, 4 weeks of benefits are to be
3529 paid.

3530 4. For each percentage point of impairment from 21 percent
3531 and higher, 6 weeks of benefits are to be paid.

3532 (4) TEMPORARY PARTIAL DISABILITY.--

3533 (a) Subject to subsection (7), in case of temporary
3534 partial disability, compensation shall be equal to 80 percent of
3535 the difference between 80 percent of the employee's average
3536 weekly wage and the salary, wages, and other remuneration the
3537 employee is able to earn post injury, as compared weekly;
3538 however, ~~the~~ weekly temporary partial disability benefits may
3539 not exceed an amount equal to 66 2/3 percent of the employee's
3540 average weekly wage at the time of accident injury. In order to
3541 simplify the comparison of the preinjury average weekly wage
3542 with the salary, wages, and other remuneration the employee is
3543 able to earn post injury, the department may by rule provide for
3544 payment of the initial installment of temporary partial
3545 disability benefits to be paid as a partial week so that payment
3546 for remaining weeks of temporary partial disability can ~~the~~



3547 ~~modification of the weekly comparison so as to~~ coincide as
3548 closely as possible with the post injury employer's work week
3549 ~~injured worker's pay periods~~. The amount determined to be the
3550 salary, wages, and other remuneration the employee is able to
3551 earn shall in no case be less than the sum actually being earned
3552 by the employee, including earnings from sheltered employment.
3553 Benefits shall be payable under this subsection only if overall
3554 maximum medical improvement has not been reached and the medical
3555 conditions resulting from the accident create restrictions on
3556 the injured employee's ability to return to work.

3557 (b) Within 5 business days after the carrier's knowledge
3558 of the employee's release to restricted work, the carrier shall
3559 mail to the employee and employer an informational letter,
3560 adopted by department rule, explaining the employee's possible
3561 eligibility and responsibilities for temporary partial
3562 disability benefits.

3563 (c) When an employee returns to work with the restrictions
3564 resulting from the accident and is earning wages less than 80
3565 percent of the preinjury average weekly wage, the first
3566 installment of temporary partial disability benefits is due 7
3567 days after the last date of the post injury employer's first
3568 biweekly work week. Thereafter, payment for temporary partial
3569 benefits shall be paid biweekly no later than the 7th day
3570 following the last day of each biweekly work week.

3571 (d) If the employee is unable to return to work with the
3572 restrictions resulting from the accident and is not earning
3573 wages, salary, or other remuneration, temporary partial
3574 disability benefits shall be paid no later than the last day of



3575 each biweekly period. The employee shall notify the carrier
3576 within 5 business days after returning to work. Failure to
3577 notify the carrier of the establishment of an earning capacity
3578 in the required time shall result in a suspension or nonpayment
3579 of temporary partial disability benefits until the proper
3580 notification is provided.

3581 (e)~~(b)~~ Such benefits shall be paid during the continuance
3582 of such disability, not to exceed a period of 104 weeks, as
3583 provided by this subsection and subsection (2). Once the injured
3584 employee reaches the maximum number of weeks, temporary
3585 disability benefits cease and the injured worker's permanent
3586 impairment must be determined. If the employee is terminated
3587 from post injury employment based on the employee's misconduct,
3588 temporary partial disability benefits are not payable as
3589 provided for in this section. The department shall ~~may~~ by rule
3590 specify forms and procedures governing the method and time for
3591 ~~of~~ payment of temporary disability benefits for dates of
3592 accidents before January 1, 1994, and for dates of accidents on
3593 or after January 1, 1994.

3594 (5) SUBSEQUENT INJURY.--

3595 (a) The fact that an employee has suffered previous
3596 disability, impairment, anomaly, or disease, or received
3597 compensation therefor, shall not preclude her or him from
3598 benefits, as specified in paragraph (b), for a subsequent
3599 aggravation or acceleration of the preexisting condition or ~~not~~
3600 preclude benefits for death resulting therefrom, except that no
3601 benefits shall be payable if the employee, at the time of
3602 entering into the employment of the employer by whom the



3603 benefits would otherwise be payable, falsely represents herself
3604 or himself in writing as not having previously been disabled or
3605 compensated because of such previous disability, impairment,
3606 anomaly, or disease and the employer detrimentally relies on the
3607 misrepresentation. ~~Compensation for temporary disability,~~
3608 ~~medical benefits, and wage loss benefits shall not be subject to~~
3609 ~~apportionment.~~

3610 (b) If a compensable injury, disability, or need for
3611 medical care ~~permanent impairment~~, or any portion thereof, is a
3612 result of aggravation or acceleration of a preexisting
3613 condition, or is the result of merger with a preexisting
3614 condition, only the disabilities and medical treatment
3615 associated with such compensable injury shall be payable under
3616 this chapter, excluding the degree of disability or medical
3617 conditions existing at the time of the impairment rating or at
3618 the time of the accident, regardless of whether the preexisting
3619 condition was disabling at the time of the accident or at the
3620 time of the impairment rating and without considering whether
3621 the preexisting condition would be disabling without the
3622 compensable accident ~~impairment, an employee eligible to receive~~
3623 ~~impairment benefits under paragraph (3)(a) shall receive such~~
3624 ~~benefits for the total impairment found to result, excluding the~~
3625 ~~degree of impairment existing at the time of the subject~~
3626 ~~accident or injury or which would have existed by the time of~~
3627 ~~the impairment rating without the intervention of the~~
3628 ~~compensable accident or injury. The degree of permanent~~
3629 impairment or disability attributable to the accident or injury
3630 shall be compensated in accordance with this section,



3631 apportioning out the preexisting condition based on the
3632 anatomical impairment rating attributable to the preexisting
3633 condition. Medical benefits shall be paid apportioning out the
3634 percentage of the need for such care attributable to the
3635 preexisting condition ~~paragraph (3)(a)~~. As used in this
3636 paragraph, "merger" means the combining of a preexisting
3637 permanent impairment or disability with a subsequent compensable
3638 permanent impairment or disability which, when the effects of
3639 both are considered together, result in a permanent impairment
3640 or disability rating which is greater than the sum of the two
3641 permanent impairment or disability ratings when each impairment
3642 or disability is considered individually.

3643 ~~(6) OBLIGATION TO REHIRE.--If the employer has not in good~~
3644 ~~faith made available to the employee, within a 100-mile radius~~
3645 ~~of the employee's residence, work appropriate to the employee's~~
3646 ~~physical limitations within 30 days after the carrier notifies~~
3647 ~~the employer of maximum medical improvement and the employee's~~
3648 ~~physical limitations, the employer shall pay to the department~~
3649 ~~for deposit into the Workers' Compensation Administration Trust~~
3650 ~~Fund a fine of \$250 for every \$5,000 of the employer's workers'~~
3651 ~~compensation premium or payroll, not to exceed \$2,000 per~~
3652 ~~violation, as the department requires by rule. The employer is~~
3653 ~~not subject to this subsection if the employee is receiving~~
3654 ~~permanent total disability benefits or if the employer has 50 or~~
3655 ~~fewer employees.~~

3656 ~~(6)(7)~~ EMPLOYEE REFUSES EMPLOYMENT.--If an injured
3657 employee refuses employment suitable to the capacity thereof,
3658 offered to or procured therefor, such employee shall not be



3659 entitled to any compensation at any time during the continuance
3660 of such refusal unless at any time in the opinion of the judge
3661 of compensation claims such refusal is justifiable. Time periods
3662 for the payment of benefits in accordance with this section
3663 shall be counted in determining the limitation of benefits as
3664 provided for in paragraphs (2)(a), (3)(c), and (4)(b).

3665 (7)(8) EMPLOYEE LEAVES EMPLOYMENT.--If an injured
3666 employee, when receiving compensation for temporary partial
3667 disability, leaves the employment of the employer by whom she or
3668 he was employed at the time of the accident for which such
3669 compensation is being paid, the employee shall, upon securing
3670 employment elsewhere, give to such former employer an affidavit
3671 in writing containing the name of her or his new employer, the
3672 place of employment, and the amount of wages being received at
3673 such new employment; and, until she or he gives such affidavit,
3674 the compensation for temporary partial disability will cease.
3675 The employer by whom such employee was employed at the time of
3676 the accident for which such compensation is being paid may also
3677 at any time demand of such employee an additional affidavit in
3678 writing containing the name of her or his employer, the place of
3679 her or his employment, and the amount of wages she or he is
3680 receiving; and if the employee, upon such demand, fails or
3681 refuses to make and furnish such affidavit, her or his right to
3682 compensation for temporary partial disability shall cease until
3683 such affidavit is made and furnished. If the employee leaves her
3684 or his employment while receiving temporary partial benefits
3685 without just cause as determined by the judge of compensation
3686 claims, temporary partial benefits shall be payable based on the



3687 deemed earnings of the employee as if she or he had remained
3688 employed.

3689 (8)~~(9)~~ EMPLOYEE BECOMES INMATE OF INSTITUTION.--In case an
3690 employee becomes an inmate of a public institution, then no
3691 compensation shall be payable unless she or he has dependent
3692 upon her or him for support a person or persons defined as
3693 dependents elsewhere in this chapter, whose dependency shall be
3694 determined as if the employee were deceased and to whom
3695 compensation would be paid in case of death; and such
3696 compensation as is due such employee shall be paid such
3697 dependents during the time she or he remains such inmate.

3698 (9)~~(10)~~ EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
3699 AND FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE ACT.--

3700 (a) Weekly compensation benefits payable under this
3701 chapter for disability resulting from injuries to an employee
3702 who becomes eligible for benefits under 42 U.S.C. s. 423 shall
3703 be reduced to an amount whereby the sum of such compensation
3704 benefits payable under this chapter and such total benefits
3705 otherwise payable for such period to the employee and her or his
3706 dependents, had such employee not been entitled to benefits
3707 under this chapter, under 42 U.S.C. ss. 402 and 423, does not
3708 exceed 80 percent of the employee's average weekly wage.
3709 However, this provision shall not operate to reduce an injured
3710 worker's benefits under this chapter to a greater extent than
3711 such benefits would have otherwise been reduced under 42 U.S.C.
3712 s. 424(a). This reduction of compensation benefits is not
3713 applicable to any compensation benefits payable for any week



3714 subsequent to the week in which the injured worker reaches the
3715 age of 62 years.

3716 (b) If the provisions of 42 U.S.C. s. 424(a) are amended
3717 to provide for a reduction or increase of the percentage of
3718 average current earnings that the sum of compensation benefits
3719 payable under this chapter and the benefits payable under 42
3720 U.S.C. ss. 402 and 423 can equal, the amount of the reduction of
3721 benefits provided in this subsection shall be reduced or
3722 increased accordingly. The department may by rule specify forms
3723 and procedures governing the method for calculating and
3724 administering the offset of benefits payable under this chapter
3725 and benefits payable under 42 U.S.C. ss. 402 and 423. The
3726 department shall have first priority in taking any available
3727 social security offsets on dates of accidents occurring before
3728 July 1, 1984.

3729 (c) No disability compensation benefits payable for any
3730 week, including those benefits provided by paragraph (1)(f),
3731 shall be reduced pursuant to this subsection until the Social
3732 Security Administration determines the amount otherwise payable
3733 to the employee under 42 U.S.C. ss. 402 and 423 and the employee
3734 has begun receiving such social security benefit payments. The
3735 employee shall, upon demand by the department, the employer, or
3736 the carrier, authorize the Social Security Administration to
3737 release disability information relating to her or him and
3738 authorize the Division of Unemployment Compensation to release
3739 unemployment compensation information relating to her or him, in
3740 accordance with rules to be adopted by the department
3741 prescribing the procedure and manner for requesting the



3742 authorization and for compliance by the employee. Neither the
3743 department nor the employer or carrier shall make any payment of
3744 benefits for total disability or those additional benefits
3745 provided by paragraph (1)(f) for any period during which the
3746 employee willfully fails or refuses to authorize the release of
3747 information in the manner and within the time prescribed by such
3748 rules. The authority for release of disability information
3749 granted by an employee under this paragraph shall be effective
3750 for a period not to exceed 12 months, such authority to be
3751 renewable as the department may prescribe by rule.

3752 (d) If compensation benefits are reduced pursuant to this
3753 subsection, the minimum compensation provisions of s. 440.12(2)
3754 do not apply.

3755 (10)~~(11)~~ EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
3756 WHO HAS RECEIVED OR IS ENTITLED TO RECEIVE UNEMPLOYMENT
3757 COMPENSATION.--

3758 (a) No compensation benefits shall be payable for
3759 temporary total disability or permanent total disability under
3760 this chapter for any week in which the injured employee has
3761 received, or is receiving, unemployment compensation benefits.

3762 (b) If an employee is entitled to temporary partial
3763 benefits pursuant to subsection (4) and unemployment
3764 compensation benefits, such unemployment compensation benefits
3765 shall be primary and the temporary partial benefits shall be
3766 supplemental only, the sum of the two benefits not to exceed the
3767 amount of temporary partial benefits which would otherwise be
3768 payable.



3769 (11)~~(12)~~ FULL-PAY STATUS FOR CERTAIN LAW ENFORCEMENT
3770 OFFICERS.--Any law enforcement officer as defined in s.
3771 943.10(1), (2), or (3) who, while acting within the course of
3772 employment as provided by s. 440.091, is maliciously or
3773 intentionally injured and who thereby sustains a job-connected
3774 disability compensable under this chapter shall be carried in
3775 full-pay status rather than being required to use sick, annual,
3776 or other leave. Full-pay status shall be granted only after
3777 submission to the employing agency's head of a medical report
3778 which gives a current diagnosis of the employee's recovery and
3779 ability to return to work. In no case shall the employee's
3780 salary and workers' compensation benefits exceed the amount of
3781 the employee's regular salary requirements.

3782 (12)~~(13)~~ REPAYMENT.--If an employee has received a sum as
3783 an indemnity benefit under any classification or category of
3784 benefit under this chapter to which she or he is not entitled,
3785 the employee is liable to repay that sum to the employer or the
3786 carrier or to have that sum deducted from future benefits,
3787 regardless of the classification of benefits, payable to the
3788 employee under this chapter; however, a partial payment of the
3789 total repayment may not exceed 20 percent of the amount of the
3790 biweekly payment.

3791 Section 19. Subsections (1), (2), and (3) of section
3792 440.151, Florida Statutes, are amended to read:

3793 440.151 Occupational diseases.--

3794 (1)(a) Where the employer and employee are subject to the
3795 provisions of the Workers' Compensation Law, the disablement or
3796 death of an employee resulting from an occupational disease as



3797 hereinafter defined shall be treated as the happening of an
3798 injury by accident, notwithstanding any other provisions of this
3799 chapter, and the employee or, in case of death, the employee's
3800 dependents shall be entitled to compensation as provided by this
3801 chapter, except as hereinafter otherwise provided; and the
3802 practice and procedure prescribed by this chapter shall apply to
3803 all proceedings under this section, except as hereinafter
3804 otherwise provided. Provided, however, that in no case shall an
3805 employer be liable for compensation under the provisions of this
3806 section unless such disease has resulted from the nature of the
3807 employment in which the employee was engaged under such
3808 employer, ~~and~~ and was actually contracted while so engaged, and the
3809 nature of the employment was the major contributing cause of the
3810 disease. Major contributing cause must be shown by medical
3811 evidence only, as demonstrated by physical examination findings
3812 and diagnostic testing. meaning by "Nature of the employment "
3813 means that in to the occupation in which the employee was so
3814 engaged there is attached a particular hazard of such disease
3815 that distinguishes it from the usual run of occupations, or the
3816 incidence of such disease is substantially higher in the
3817 occupation in which the employee was so engaged than in the
3818 usual run of occupations. In claims for death under s. 440.16,
3819 death must occur ~~or, in case of death, unless death follows~~
3820 ~~continuous disability from such disease, commencing within the~~
3821 ~~period above limited, for which compensation has been paid or~~
3822 ~~awarded, or timely claim made as provided in this section, and~~
3823 ~~results~~ within 350 weeks after such last exposure. Both
3824 causation and sufficient exposure to a specific harmful



3825 substance shown to be present in the workplace to support
3826 causation shall be proven by clear and convincing evidence.

3827 (b) No compensation shall be payable for an occupational
3828 disease if the employee, at the time of entering into the
3829 employment of the employer by whom the compensation would
3830 otherwise be payable, falsely represents herself or himself in
3831 writing as not having previously been disabled, laid off or
3832 compensated in damages or otherwise, because of such disease.

3833 (c) Where an occupational disease is aggravated by any
3834 other disease or infirmity, not itself compensable, or where
3835 disability or death from any other cause, not itself
3836 compensable, is aggravated, prolonged, accelerated or in anywise
3837 contributed to by an occupational disease, the compensation
3838 shall be payable only if the occupational disease is the major
3839 contributing cause of the injury. Any compensation shall be
3840 reduced and limited to such proportion only of the compensation
3841 that would be payable if the occupational disease were the sole
3842 cause of the disability or death as such occupational disease,
3843 as a causative factor, bears to all the causes of such
3844 disability or death, such reduction in compensation to be
3845 effected by reducing the number of weekly or monthly payments or
3846 the amounts of such payments, as under the circumstances of the
3847 particular case may be for the best interest of the claimant or
3848 claimants. Major contributing cause must be demonstrated by
3849 medical evidence based on physical examination findings and
3850 diagnostic testing.

3851 (d) No compensation for death from an occupational disease
3852 shall be payable to any person whose relationship to the



3853 | deceased, which under the provisions of this Workers'
3854 | Compensation Law would give right to compensation, arose
3855 | subsequent to the beginning of the first compensable disability,
3856 | save only to afterborn children of a marriage existing at the
3857 | beginning of such disability.

3858 | (e) No compensation shall be payable for disability or
3859 | death resulting from tuberculosis arising out of and in the
3860 | course of employment by the Department of Health at a state
3861 | tuberculosis hospital, or aggravated by such employment, when
3862 | the employee had suffered from said disease at any time prior to
3863 | the commencement of such employment.

3864 | (2) Whenever used in this section the term "occupational
3865 | disease" shall be construed to mean only a disease which is due
3866 | to causes and conditions which are characteristic of and
3867 | peculiar to a particular trade, occupation, process, or
3868 | employment, and to exclude all ordinary diseases of life to
3869 | which the general public is exposed, unless the incidence of the
3870 | disease is substantially higher in the particular trade,
3871 | occupation, process, or employment than for the general public.
3872 | "Occupational disease" means only a disease for which there are
3873 | epidemiological studies showing that exposure to the specific
3874 | substance involved, at the levels to which the employee was
3875 | exposed, may cause the precise disease sustained by the
3876 | employee.

3877 | (3) Except as ~~hereinafter~~ otherwise provided in this
3878 | section, "disablement" means disability as described in s.
3879 | 440.02(13) ~~the event of an employee's becoming actually~~
3880 | ~~incapacitated, partially or totally, because of an occupational~~



3881 ~~disease, from performing her or his work in the last occupation~~
3882 ~~in which injuriously exposed to the hazards of such disease; and~~
3883 ~~"disability" means the state of being so incapacitated.~~

3884 Section 20. Subsections (1) and (7) of section 440.16,
3885 Florida Statutes, are amended to read:

3886 440.16 Compensation for death.--

3887 (1) If death results from the accident within 1 year
3888 thereafter or follows continuous disability and results from the
3889 accident within 5 years thereafter, the employer shall pay:

3890 (a) Within 14 days after receiving the bill, actual
3891 funeral expenses not to exceed \$7,500 ~~\$5,000~~.

3892 (b) Compensation, in addition to the above, in the
3893 following percentages of the average weekly wages to the
3894 following persons entitled thereto on account of dependency upon
3895 the deceased, and in the following order of preference, subject
3896 to the limitation provided in subparagraph 2., but such
3897 compensation shall be subject to the limits provided in s.
3898 440.12(2), shall not exceed \$150,000 ~~\$100,000~~, and may be less
3899 than, but shall not exceed, for all dependents or persons
3900 entitled to compensation, 66 2/3 percent of the average wage:

3901 1. To the spouse, if there is no child, 50 percent of the
3902 average weekly wage, such compensation to cease upon the
3903 spouse's death.

3904 2. To the spouse, if there is a child or children, the
3905 compensation payable under subparagraph 1. and, in addition, 16
3906 2/3 percent on account of the child or children. However, when
3907 the deceased is survived by a spouse and also a child or
3908 children, whether such child or children are the product of the



3909 union existing at the time of death or of a former marriage or
3910 marriages, the judge of compensation claims may provide for the
3911 payment of compensation in such manner as may appear to the
3912 judge of compensation claims just and proper and for the best
3913 interests of the respective parties and, in so doing, may
3914 provide for the entire compensation to be paid exclusively to
3915 the child or children; and, in the case of death of such spouse,
3916 33 1/3 percent for each child. However, upon the surviving
3917 spouse's remarriage, the spouse shall be entitled to a lump-sum
3918 payment equal to 26 weeks of compensation at the rate of 50
3919 percent of the average weekly wage as provided in s. 440.12(2),
3920 unless the \$150,000 ~~\$100,000~~ limit provided in this paragraph is
3921 exceeded, in which case the surviving spouse shall receive a
3922 lump-sum payment equal to the remaining available benefits in
3923 lieu of any further indemnity benefits. In no case shall a
3924 surviving spouse's acceptance of a lump-sum payment affect
3925 payment of death benefits to other dependents.

3926 3. To the child or children, if there is no spouse, 33 1/3
3927 percent for each child.

3928 4. To the parents, 25 percent to each, such compensation
3929 to be paid during the continuance of dependency.

3930 5. To the brothers, sisters, and grandchildren, 15 percent
3931 for each brother, sister, or grandchild.

3932 (c) To the surviving spouse, payment of postsecondary
3933 student fees for instruction at any area technical center
3934 established under s. 1001.44 for up to 1,800 classroom hours or
3935 payment of student fees at any community college established
3936 under part III of chapter 1004 for up to 80 semester hours. The



3937 spouse of a deceased state employee shall be entitled to a full
3938 waiver of such fees as provided in ss. 1009.22 and 1009.23 in
3939 lieu of the payment of such fees. The benefits provided for in
3940 this paragraph shall be in addition to other benefits provided
3941 for in this section and shall terminate 7 years after the death
3942 of the deceased employee, or when the total payment in eligible
3943 compensation under paragraph (b) has been received. To qualify
3944 for the educational benefit under this paragraph, the spouse
3945 shall be required to meet and maintain the regular admission
3946 requirements of, and be registered at, such area technical
3947 center or community college, and make satisfactory academic
3948 progress as defined by the educational institution in which the
3949 student is enrolled.

3950 (7) Compensation under this chapter to aliens not
3951 residents (or about to become nonresidents) of the United States
3952 or Canada shall be the same in amount as provided for residents,
3953 except that dependents in any foreign country shall be limited
3954 to surviving spouse and child or children, or if there be no
3955 surviving spouse or child or children, to surviving father or
3956 mother whom the employee has supported, either wholly or in
3957 part, for the period of 1 year prior to the date of the injury,
3958 and except that the judge of compensation claims may, at the
3959 option of the judge of compensation claims, or upon the
3960 application of the insurance carrier, commute all future
3961 installments of compensation to be paid to such aliens by paying
3962 or causing to be paid to them one-half of the commuted amount of
3963 such future installments of compensation as determined by the
3964 judge of compensation claims, and provided further that



3965 compensation to dependents referred to in this subsection shall
3966 in no case exceed \$75,000 ~~\$50,000~~.

3967 Section 21. Subsection (9) of section 440.185, Florida
3968 Statutes, is amended, and subsection (12) is added to said
3969 section, to read:

3970 440.185 Notice of injury or death; reports; penalties for
3971 violations.--

3972 (9) Any employer or carrier who fails or refuses to timely
3973 send any form, report, or notice required by this section shall
3974 be subject to an administrative fine by the department ~~a civil~~
3975 ~~penalty~~ not to exceed \$1,000 ~~\$500~~ for each such failure or
3976 refusal. If, within 1 calendar year, an employer fails to timely
3977 submit to the carrier more than 10 percent of its notices of
3978 injury or death, the employer shall be subject to an
3979 administrative fine by the department not to exceed \$2,000 for
3980 each such failure or refusal. However, any employer who fails to
3981 notify the carrier of the injury on the prescribed form or by
3982 letter within the 7 days required in subsection (2) shall be
3983 liable for the administrative fine ~~civil penalty~~, which shall be
3984 paid by the employer and not the carrier. Failure by the
3985 employer to meet its obligations under subsection (2) shall not
3986 relieve the carrier from liability for the administrative fine
3987 ~~civil penalty~~ if it fails to comply with subsections (4) and
3988 (5).

3989 (12) Upon receiving notice of an injury from an employee
3990 under subsection (1), the employer or carrier shall provide the
3991 employee with a written notice, in the form and manner
3992 determined by the department by rule, of the availability of



3993 services from the Employee Assistance and Ombudsman Office. The
 3994 substance of the notice to the employee shall include:

3995 (a) A description of the scope of services provided by the
 3996 office.

3997 (b) A listing of the toll-free telephone number of, the
 3998 email address, and the postal address of the office.

3999 (c) A statement that the informational brochure referred
 4000 to in subsection (4) will be mailed to the employee within 3
 4001 days after the carrier receives notice of the injury.

4002 (d) Any other information regarding access to assistance
 4003 that the department finds is immediately necessary for an
 4004 injured employee.

4005 Section 22. Subsections (1) and (2) of section 440.192,
 4006 Florida Statutes, are amended, and subsection (9) is added to
 4007 said section, to read:

4008 440.192 Procedure for resolving benefit disputes.—

4009 (1) ~~Subject to s. 440.191, Any employee may, for any~~
 4010 ~~benefit that is ripe, due, and owing, who has not received a~~
 4011 ~~benefit to which the employee believes she or he is entitled~~
 4012 ~~under this chapter shall~~ file by certified mail, or by
 4013 electronic means approved by the Deputy Chief Judge, with the
 4014 Office of the Judges of Compensation Claims a petition for
 4015 benefits which meets the requirements of this section and the
 4016 definition of specificity in s. 440.02. The department shall
 4017 inform employees of the location of the Office of the Judges of
 4018 Compensation Claims for purposes of filing a petition for
 4019 benefits. The employee shall also serve copies of the petition
 4020 for benefits by certified mail, or by electronic means approved



4021 by the Deputy Chief Judge, upon the employer and the employer's
4022 carrier. The ~~Deputy~~ Chief Judge shall refer the petitions to the
4023 judges of compensation claims.

4024 (2) Upon receipt, the Office of the Judges of Compensation
4025 Claims shall review each petition and shall dismiss each
4026 petition or any portion of such a petition, ~~upon the judge's own~~
4027 ~~motion or upon the motion of any party,~~ that does not on its
4028 face specifically identify or itemize the following:

4029 (a) Name, address, telephone number, and social security
4030 number of the employee.

4031 (b) Name, address, and telephone number of the employer.

4032 (c) A detailed description of the injury and cause of the
4033 injury, including the location of the occurrence and the date or
4034 dates of the accident.

4035 (d) A detailed description of the employee's job, work
4036 responsibilities, and work the employee was performing when the
4037 injury occurred.

4038 (e) The time period for which compensation and the
4039 specific classification of compensation were not timely
4040 provided.

4041 (f) Date of maximum medical improvement, character of
4042 disability, and specific statement of all benefits or
4043 compensation that the employee is seeking.

4044 (g) All specific travel costs to which the employee
4045 believes she or he is entitled, including dates of travel and
4046 purpose of travel, means of transportation, and mileage and
4047 including the date the request for mileage was filed with the
4048 carrier and a copy of the request filed with the carrier.



4049 (h) Specific listing of all medical charges alleged
4050 unpaid, including the name and address of the medical provider,
4051 the amounts due, and the specific dates of treatment.

4052 (i) The type or nature of treatment care or attendance
4053 sought and the justification for such treatment. If the employee
4054 is under the care of a physician for an injury identified under
4055 paragraph (c), a copy of the physician's request, authorization,
4056 or recommendation for treatment, care, or attendance must
4057 accompany the petition.

4058 (j) Specific explanation of any other disputed issue that
4059 a judge of compensation claims will be called to rule upon.

4060
4061 The dismissal of any petition or portion of such a petition
4062 under this section is without prejudice and does not require a
4063 hearing.

4064 (9) A petition for benefits must contain claims for all
4065 benefits that are ripe, due, and owing on the date the petition
4066 is filed. Unless stipulated in writing by the parties, only
4067 claims which have been properly raised in a petition for
4068 benefits and have undergone mediation may be considered for
4069 adjudication by a judge of compensation claims.

4070 Section 23. Section 440.1926, Florida Statutes, is created
4071 to read:

4072 440.1926 Alternate dispute resolution; claim
4073 arbitration.--Notwithstanding any other provision of this
4074 chapter, the employer, carrier, and employee may mutually agree
4075 to seek consent from a judge of compensation claims to enter
4076 into binding claim arbitration in lieu of any other remedy



4077 provided for in this chapter to resolve all issues in dispute
4078 regarding an injury. Arbitrations agreed to pursuant to this
4079 section shall be governed by chapter 682, the Florida
4080 Arbitration Code, except that, notwithstanding any provision in
4081 chapter 682, the term "court" shall mean a judge of compensation
4082 claims. An arbitration award in accordance with this section
4083 shall be enforceable in the same manner and with the same powers
4084 as any final compensation order.

4085 Section 24. Subsections (2), (3), (4), (6), and (8) and
4086 paragraph (d) of subsection (11) of section 440.20, Florida
4087 Statutes, are amended to read:

4088 440.20 Time for payment of compensation and medical bills;
4089 penalties for late payment.--

4090 (2)(a) The carrier must pay the first installment of
4091 compensation for total disability or death benefits or deny
4092 compensability no later than the 14th calendar day after the
4093 employer receives notification ~~notice~~ of the injury or death,
4094 when disability is immediate and continuous for 8 calendar days
4095 or more after the injury. If the first 7 days after disability
4096 are nonconsecutive or delayed, the first installment of
4097 compensation is due on the 6th day after the first 8 calendar
4098 days of disability. The carrier shall thereafter pay
4099 compensation in biweekly installments or as otherwise provided
4100 in s. 440.15, unless the judge of compensation claims determines
4101 or the parties agree that an alternate installment schedule is
4102 in the best interests of the employee.

4103 (b) The carrier must pay, disallow, or deny all medical,
4104 dental, pharmacy, and hospital bills submitted to the carrier in



4105 accordance with department rule no later than 45 calendar days
4106 after the carrier's receipt of the bill.

4107 (3) Upon making initial payment of indemnity benefits, or
4108 upon suspension or cessation of payment for any reason, the
4109 carrier shall immediately notify the injured employee, the
4110 employer, and the department that it has commenced, suspended,
4111 or ceased payment of compensation. The department may require
4112 such notification to the injured employee, employer, and the
4113 department in a any format and manner it deems necessary to
4114 obtain accurate and timely notification ~~reporting~~.

4115 (4) If the carrier is uncertain of its obligation to
4116 provide all benefits or compensation, ~~it may initiate payment~~
4117 ~~without prejudice and without admitting liability.~~ the carrier
4118 shall immediately and in good faith commence investigation of
4119 the employee's entitlement to benefits under this chapter and
4120 shall admit or deny compensability within 120 days after the
4121 initial provision of compensation or benefits as required under
4122 subsection (2) or s. 440.192(8). Additionally, the carrier shall
4123 initiate payment and continue the provision of all benefits and
4124 compensation as if the claim had been accepted as compensable,
4125 without prejudice and without admitting liability. Upon
4126 commencement of payment as required under subsection (2) or s.
4127 440.192 (8), the carrier shall provide written notice to the
4128 employee that it has elected to pay ~~all or part of~~ the claim
4129 pending further investigation, and that it will advise the
4130 employee of claim acceptance or denial within 120 days. A
4131 carrier that fails to deny compensability within 120 days after
4132 the initial provision of benefits or payment of compensation as



4133 required under subsection (2) or s. 440.192(8) waives the right
4134 to deny compensability, unless the carrier can establish
4135 material facts relevant to the issue of compensability that it
4136 could not have discovered through reasonable investigation
4137 within the 120-day period. The initial provision of compensation
4138 or benefits, for purposes of this subsection, means the first
4139 installment of compensation or benefits to be paid by the
4140 carrier under subsection (2) or pursuant to a petition for
4141 benefits under s. 440.192(8).

4142 (6)(a) If any installment of compensation for death or
4143 dependency benefits, or compensation for disability benefits,
4144 ~~permanent impairment, or wage loss~~ payable without an award is
4145 not paid within 7 days after it becomes due, as provided in
4146 subsection (2), subsection (3), or subsection (4), there shall
4147 be added to such unpaid installment a ~~punitive~~ penalty of an
4148 amount equal to 20 percent of the unpaid installment ~~or \$5,~~
4149 which shall be paid at the same time as, but in addition to,
4150 such installment of compensation. This penalty shall not apply
4151 for late payments resulting ~~, unless notice is filed under~~
4152 ~~subsection (4) or unless such nonpayment results~~ from conditions
4153 over which the employer or carrier had no control. When any
4154 installment of compensation payable without an award has not
4155 been paid within 7 days after it became due and the claimant
4156 concludes the prosecution of the claim before a judge of
4157 compensation claims without having specifically claimed
4158 additional compensation in the nature of a penalty under this
4159 section, the claimant will be deemed to have acknowledged that,
4160 owing to conditions over which the employer or carrier had no



4161 control, such installment could not be paid within the period
4162 prescribed for payment and to have waived the right to claim
4163 such penalty. However, during the course of a hearing, the judge
4164 of compensation claims shall on her or his own motion raise the
4165 question of whether such penalty should be awarded or excused.
4166 The department may assess without a hearing the ~~punitive~~ penalty
4167 against either the employer or the ~~insurance~~ carrier, depending
4168 upon who was at fault in causing the delay. The insurance policy
4169 cannot provide that this sum will be paid by the carrier if the
4170 department or the judge of compensation claims determines that
4171 the ~~punitive~~ penalty should be paid ~~made~~ by the employer rather
4172 than the carrier. Any additional installment of compensation
4173 paid by the carrier pursuant to this section shall be paid
4174 directly to the employee by check or, if authorized by the
4175 employee, by direct deposit into the employee's account at a
4176 financial institution. ~~As used in this subsection, the term~~
4177 ~~"financial institution" means a financial institution as defined~~
4178 ~~in s. 655.005(1)(h).~~

4179 (b) For medical services provided on or after January 1,
4180 2004, the department shall require that all medical, hospital,
4181 pharmacy, or dental bills properly submitted by the provider,
4182 except for bills that are disallowed or denied by the carrier or
4183 its authorized vendor in accordance with department rule, are
4184 timely paid within 45 calendar days after the carrier's receipt
4185 of the bill. The department shall impose penalties for late
4186 payments or disallowances or denials of medical, hospital,
4187 pharmacy, or dental bills that are below a minimum 95 percent



4188 timely performance standard. The carrier shall pay to the
4189 Workers' Compensation Administration Trust Fund a penalty of:

4190 1. Twenty-five dollars for each bill below the 95 percent
4191 timely performance standard, but meeting a 90 percent timely
4192 standard.

4193 2. Fifty dollars for each bill below a 90 percent timely
4194 performance standard.

4195 (8)(a) In addition to any other penalties provided by this
4196 chapter for late payment, if any installment of compensation is
4197 not paid when it becomes due, the employer, carrier, or
4198 servicing agent shall pay interest thereon at the rate of 12
4199 percent per year from the date the installment becomes due until
4200 it is paid, whether such installment is payable without an order
4201 or under the terms of an order. The interest payment shall be
4202 the greater of the amount of interest due or \$5.

4203 ~~(a) Within 30 days after final payment of compensation has~~
4204 ~~been made, the employer, carrier, or servicing agent shall send~~
4205 ~~to the department a notice, in accordance with a format and~~
4206 ~~manner prescribed by the department, stating that such final~~
4207 ~~payment has been made and stating the total amount of~~
4208 ~~compensation paid, the name of the employee and of any other~~
4209 ~~person to whom compensation has been paid, the date of the~~
4210 ~~injury or death, and the date to which compensation has been~~
4211 ~~paid.~~

4212 ~~(b) If the employer, carrier, or servicing agent fails to~~
4213 ~~so notify the department within such time, the department shall~~
4214 ~~assess against such employer, carrier, or servicing agent a~~
4215 ~~civil penalty in an amount not over \$100.~~



4216 ~~(b)(e)~~ In order to ensure carrier compliance under this
4217 chapter ~~and provisions of the Florida Insurance Code~~, the office
4218 ~~department~~ shall monitor, audit, and investigate the performance
4219 of carriers ~~by conducting market conduct examinations, as~~
4220 ~~provided in s. 624.3161, and conducting investigations, as~~
4221 ~~provided in s. 624.317~~. The office ~~department~~ shall require
4222 ~~establish by rule minimum performance standards for carriers to~~
4223 ensure that a ~~minimum of 90 percent~~ of all compensation benefits
4224 are timely paid in accordance with this section. The office
4225 ~~department~~ shall impose penalties ~~fine a carrier as provided in~~
4226 ~~s. 440.13(11)(b) up to \$50 for each late payments~~ payment of
4227 compensation that are ~~is~~ below a ~~the~~ minimum 95 ~~90~~ percent
4228 timely payment performance standard. The carrier shall pay to
4229 the Workers' Compensation Administration Trust Fund a penalty
4230 of:

4231 1. Fifty dollars per number of installments of
4232 compensation below the 95 percent timely payment performance
4233 standard and equal to or greater than a 90 percent timely
4234 payment performance standard.

4235 2. One hundred dollars per number of installments of
4236 compensation below a 90 percent timely payment performance
4237 standard.

4238
4239 This section does not affect the imposition of any penalties or
4240 interest due to the claimant. If a carrier contracts with a
4241 servicing agent to fulfill its administrative responsibilities
4242 under this chapter, the payment practices of the servicing agent



4243 are deemed the payment practices of the carrier for the purpose
4244 of assessing penalties against the carrier.

4245 (11)

4246 (d)1. With respect to any lump-sum settlement under this
4247 subsection, a judge of compensation claims must consider at the
4248 time of the settlement, whether the settlement allocation
4249 provides for the appropriate recovery of child support
4250 arrearages. An employer or carrier does not have a duty to
4251 investigate or collect information regarding child support
4252 arrearrages.

4253 2. When reviewing any settlement of lump-sum payment
4254 pursuant to this subsection, judges of compensation claims shall
4255 consider the interests of the worker and the worker's family
4256 when approving the settlement, which must consider and provide
4257 for appropriate recovery of past due support.

4258 3. With respect to any lump-sum settlement under this
4259 subsection, any correspondence to a clerk of the circuit court
4260 of this state regarding child support documentation shall be
4261 exempt from any fees or costs ordinarily assessed by the clerk's
4262 office.

4263 Section 25. Section 440.25, Florida Statutes, is amended
4264 to read:

4265 440.25 Procedures for mediation and hearings.--

4266 (1) Forty days ~~Within 90 days~~ after a petition for
4267 benefits is filed under s. 440.192, ~~a mediation conference~~
4268 ~~concerning such petition shall be held. Within 40 days after~~
4269 ~~such petition is filed,~~ the judge of compensation claims shall
4270 notify the interested parties by order that a mediation



4271 conference concerning such petition has been scheduled ~~will be~~
4272 ~~held~~ unless the parties have notified the judge ~~Office of the~~
4273 ~~Judges~~ of compensation claims that a private mediation has been
4274 held or is scheduled to be held. A mediation, whether private or
4275 public, shall be held within 130 days after the filing of the
4276 petition. Such order must give the date ~~by which~~ the mediation
4277 conference is to ~~must~~ be held. Such order may be served
4278 personally upon the interested parties or may be sent to the
4279 interested parties by mail. If multiple petitions are pending,
4280 or if additional petitions are filed after the scheduling of a
4281 mediation, the judge of compensation claims shall consolidate
4282 all petitions into one mediation. The claimant or the adjuster
4283 of the employer or carrier may, at the mediator's discretion,
4284 attend the mediation conference by telephone or, if agreed to by
4285 the parties, other electronic means. A continuance may be
4286 granted upon the agreement of the parties or if the requesting
4287 party demonstrates to the judge of compensation claims that the
4288 reason for requesting the continuance arises from circumstances
4289 beyond the party's control. Any order granting a continuance
4290 must set forth the date of the rescheduled mediation conference.
4291 A mediation conference may not be used solely for the purpose of
4292 mediating attorney's fees.

4293 (2) Any party who participates in a mediation conference
4294 shall not be precluded from requesting a hearing following the
4295 mediation conference should both parties not agree to be bound
4296 by the results of the mediation conference. A mediation
4297 conference is required to be held unless this requirement is
4298 waived by the Deputy Chief Judge. ~~No later than 3 days prior to~~



4299 ~~the mediation conference, all parties must submit any applicable~~
4300 ~~motions, including, but not limited to, a motion to waive the~~
4301 ~~mediation conference, to the judge of compensation claims.~~

4302 (3)~~(a)~~ Such mediation conference shall be conducted
4303 informally and does not require the use of formal rules of
4304 evidence or procedure. Any information from the files, reports,
4305 case summaries, mediator's notes, or other communications or
4306 materials, oral or written, relating to a mediation conference
4307 under this section obtained by any person performing mediation
4308 duties is privileged and confidential and may not be disclosed
4309 without the written consent of all parties to the conference.
4310 Any research or evaluation effort directed at assessing the
4311 mediation program activities or performance must protect the
4312 confidentiality of such information. Each party to a mediation
4313 conference has a privilege during and after the conference to
4314 refuse to disclose and to prevent another from disclosing
4315 communications made during the conference whether or not the
4316 contested issues are successfully resolved. This subsection and
4317 paragraphs (4)(a) and (b) shall not be construed to prevent or
4318 inhibit the discovery or admissibility of any information that
4319 is otherwise subject to discovery or that is admissible under
4320 applicable law or rule of procedure, except that any conduct or
4321 statements made during a mediation conference or in negotiations
4322 concerning the conference are inadmissible in any proceeding
4323 under this chapter.

4324 (a)1- Unless the parties conduct a private mediation under
4325 paragraph (b) subparagraph 2-, mediation shall be conducted by a
4326 mediator selected by the Director of the Division of



4327 Administrative Hearings from among mediators employed on a full-
4328 time basis by the Office of the Judges of Compensation Claims. A
4329 mediator must be a member of The Florida Bar for at least 5
4330 years and must complete a mediation training program approved by
4331 the Deputy Chief Judge ~~Director of the Division of~~
4332 ~~Administrative Hearings~~. Adjunct mediators may be employed by
4333 the Office of the Judges of Compensation Claims on an as-needed
4334 basis and shall be selected from a list prepared by the Director
4335 of the Division of Administrative Hearings. An adjunct mediator
4336 must be independent of all parties participating in the
4337 mediation conference. An adjunct mediator must be a member of
4338 The Florida Bar for at least 5 years and must complete a
4339 mediation training program approved by the Office of the Judges
4340 of Compensation Claims ~~Director of the Division of~~
4341 ~~Administrative Hearings~~. An adjunct mediator shall have access
4342 to the office, equipment, and supplies of the judge of
4343 compensation claims in each district.

4344 (b)2. With respect to any private mediation ~~occurring on~~
4345 ~~or after January 1, 2003~~, if the parties agree or if mediators
4346 are not available under paragraph (a), pursuant to notice from
4347 the judge of compensation claims, subparagraph 1. to conduct the
4348 required mediation within the period specified in this section,
4349 the parties shall hold a mediation conference at the carrier's
4350 expense within the 130-day ~~90-day~~ period set for mediation. The
4351 mediation conference shall be conducted by a mediator certified
4352 under s. 44.106. If the parties do not agree upon a mediator
4353 within 10 days after the date of the order, the claimant shall
4354 notify the judge in writing and the judge shall appoint a



4355 mediator under this subparagraph within 7 days. In the event
4356 both parties agree, the results of the mediation conference
4357 shall be binding and neither party shall have a right to appeal
4358 the results. In the event either party refuses to agree to the
4359 results of the mediation conference, the results of the
4360 mediation conference as well as the testimony, witnesses, and
4361 evidence presented at the conference shall not be admissible at
4362 any subsequent proceeding on the claim. The mediator shall not
4363 be called in to testify or give deposition to resolve any claim
4364 for any hearing before the judge of compensation claims. The
4365 employer may be represented by an attorney at the mediation
4366 conference if the employee is also represented by an attorney at
4367 the mediation conference.

4368 ~~(b) The parties shall complete the pretrial stipulations~~
4369 ~~before the conclusion of the mediation conference if the claims,~~
4370 ~~except for attorney's fees and costs, have not been settled and~~
4371 ~~if any claims in any filed petition remain unresolved. The judge~~
4372 ~~of compensation claims may impose sanctions against a party or~~
4373 ~~both parties for failing to complete the pretrial stipulations~~
4374 ~~before the conclusion of the mediation conference.~~

4375 (4)(a) If the parties fail to agree to ~~upon~~ written
4376 submission of pretrial stipulations ~~at the mediation conference,~~
4377 the judge of compensation claims shall conduct a live ~~order a~~
4378 pretrial hearing ~~to occur within 14 days after the date of~~
4379 ~~mediation ordered by the judge of compensation claims.~~ The judge
4380 of compensation claims shall give the interested parties at
4381 least 14 ~~7~~ days' advance notice of the pretrial hearing by mail.
4382 ~~At the pretrial hearing, the judge of compensation claims shall,~~



4383 ~~subject to paragraph (b), set a date for the final hearing that~~
4384 ~~allows the parties at least 60 days to conduct discovery unless~~
4385 ~~the parties consent to an earlier hearing date.~~

4386 (b) The final hearing must be held and concluded within 90
4387 days after the mediation conference is held, allowing the
4388 parties sufficient time to complete discovery. Except as set
4389 forth in this section, continuances may be granted only if the
4390 requesting party demonstrates to the judge of compensation
4391 claims that the reason for requesting the continuance arises
4392 from circumstances beyond the party's control. The written
4393 consent of the claimant must be obtained before any request from
4394 a claimant's attorney is granted for an additional continuance
4395 after the initial continuance has been granted. Any order
4396 granting a continuance must set forth the date and time of the
4397 rescheduled hearing. A continuance may be granted only if the
4398 requesting party demonstrates to the judge of compensation
4399 claims that the reason for requesting the continuance arises
4400 from circumstances beyond the control of the parties. The judge
4401 of compensation claims shall report any grant of two or more
4402 continuances to the Deputy Chief Judge.

4403 (c) The judge of compensation claims shall give the
4404 interested parties at least 14 7 days' advance notice of the
4405 final hearing, served upon the interested parties by mail.

4406 (d) The final hearing shall be held within 210 days after
4407 receipt of the petition for benefits in the county where the
4408 injury occurred, if the injury occurred in this state, unless
4409 otherwise agreed to between the parties and authorized by the
4410 judge of compensation claims in the county where the injury



4411 | occurred. However, the claimant may waive the timeframes within
4412 | this section for good cause shown. If the injury occurred
4413 | outside the state and is one for which compensation is payable
4414 | under this chapter, then the final hearing may be held in the
4415 | county of the employer's residence or place of business, or in
4416 | any other county of the state that will, in the discretion of
4417 | the Deputy Chief Judge, be the most convenient for a hearing.
4418 | The final hearing shall be conducted by a judge of compensation
4419 | claims, who shall, within 30 days after final hearing or closure
4420 | of the hearing record, unless otherwise agreed by the parties,
4421 | enter a final order on the merits of the disputed issues. The
4422 | judge of compensation claims may enter an abbreviated final
4423 | order in cases in which compensability is not disputed. Either
4424 | party may request separate findings of fact and conclusions of
4425 | law. At the final hearing, the claimant and employer may each
4426 | present evidence with respect to the claims presented by the
4427 | petition for benefits and may be represented by any attorney
4428 | authorized in writing for such purpose. When there is a conflict
4429 | in the medical evidence submitted at the hearing, the provisions
4430 | of s. 440.13 shall apply. The report or testimony of the expert
4431 | medical advisor shall be admitted into evidence in a ~~made a part~~
4432 | ~~of the record of the proceeding and shall be given the same~~
4433 | ~~consideration by the judge of compensation claims as is accorded~~
4434 | ~~other medical evidence submitted in the proceeding;~~ and all
4435 | costs incurred in connection with such examination and testimony
4436 | may be assessed as costs in the proceeding, subject to the
4437 | provisions of s. 440.13. No judge of compensation claims may
4438 | make a finding of a degree of permanent impairment that is



4439 greater than the greatest permanent impairment rating given the
4440 claimant by any examining or treating physician, except upon
4441 stipulation of the parties. Any benefit due but not raised at
4442 the final hearing which was ripe, due, or owing at the time of
4443 the final hearing is waived.

4444 (e) The order making an award or rejecting the claim,
4445 referred to in this chapter as a "compensation order," shall set
4446 forth the findings of ultimate facts and the mandate; and the
4447 order need not include any other reason or justification for
4448 such mandate. The compensation order shall be filed in the
4449 Office of the Judges of Compensation Claims at Tallahassee. A
4450 copy of such compensation order shall be sent by mail to the
4451 parties and attorneys of record at the last known address of
4452 each, with the date of mailing noted thereon.

4453 ~~(f) Each judge of compensation claims is required to~~
4454 ~~submit a special report to the Deputy Chief Judge in each~~
4455 ~~contested workers' compensation case in which the case is not~~
4456 ~~determined within 30 days of final hearing or closure of the~~
4457 ~~hearing record. Said form shall be provided by the director of~~
4458 ~~the Division of Administrative Hearings and shall contain the~~
4459 ~~names of the judge of compensation claims and of the attorneys~~
4460 ~~involved and a brief explanation by the judge of compensation~~
4461 ~~claims as to the reason for such a delay in issuing a final~~
4462 ~~order.~~

4463 (f)~~(g)~~ Notwithstanding any other provision of this
4464 section, the judge of compensation claims may require the
4465 appearance of the parties and counsel before her or him without
4466 written notice for an emergency conference where there is a bona



4467 fide emergency involving the health, safety, or welfare of an
4468 employee. An emergency conference under this section may result
4469 in the entry of an order or the rendering of an adjudication by
4470 the judge of compensation claims.

4471 (g)~~(h)~~ To expedite dispute resolution and to enhance the
4472 self-executing features of the Workers' Compensation Law, the
4473 Deputy Chief Judge shall make provision by rule or order for the
4474 resolution of appropriate motions by judges of compensation
4475 claims without oral hearing upon submission of brief written
4476 statements in support and opposition, and for expedited
4477 discovery and docketing. Unless the judge of compensation
4478 claims, for good cause, orders a hearing under paragraph (h)~~(i)~~,
4479 each claim in a petition relating to the determination of the
4480 average weekly wage ~~pay~~ under s. 440.14 shall be resolved under
4481 this paragraph without oral hearing.

4482 (h)~~(i)~~ To further expedite dispute resolution and to
4483 enhance the self-executing features of the system, those
4484 petitions filed in accordance with s. 440.192 that involve a
4485 claim for benefits of \$5,000 or less shall, in the absence of
4486 compelling evidence to the contrary, be presumed to be
4487 appropriate for expedited resolution under this paragraph; and
4488 any other claim filed in accordance with s. 440.192, upon the
4489 written agreement of both parties and application by either
4490 party, may similarly be resolved under this paragraph. A claim
4491 in a petition or \$5,000 or less for medical benefits only or a
4492 petition for reimbursement for mileage for medical purposes
4493 shall, in the absence of compelling evidence to the contrary, be
4494 resolved through the expedited dispute resolution process



4495 provided in this paragraph. For purposes of expedited resolution
4496 pursuant to this paragraph, the Deputy Chief Judge shall make
4497 provision by rule or order for expedited and limited discovery
4498 and expedited docketing in such cases. At least 15 days prior to
4499 hearing, the parties shall exchange and file with the judge of
4500 compensation claims a pretrial outline of all issues, defenses,
4501 and witnesses on a form adopted by the Deputy Chief Judge;
4502 provided, in no event shall such hearing be held without 15
4503 days' written notice to all parties. No pretrial hearing shall
4504 be held and no mediation scheduled unless requested by a party.
4505 The judge of compensation claims shall limit all argument and
4506 presentation of evidence at the hearing to a maximum of 30
4507 minutes, and such hearings shall not exceed 30 minutes in
4508 length. Neither party shall be required to be represented by
4509 counsel. The employer or carrier may be represented by an
4510 adjuster or other qualified representative. The employer or
4511 carrier and any witness may appear at such hearing by telephone.
4512 The rules of evidence shall be liberally construed in favor of
4513 allowing introduction of evidence.

4514 (i)~~(j)~~ A judge of compensation claims may, upon the motion
4515 of a party or the judge's own motion, dismiss a petition for
4516 lack of prosecution if a petition, response, motion, order,
4517 request for hearing, or notice of deposition has not been filed
4518 during the previous 12 months unless good cause is shown. A
4519 dismissal for lack of prosecution is without prejudice and does
4520 not require a hearing.

4521 (j)~~(k)~~ A judge of compensation claims may not award
4522 interest on unpaid medical bills and the amount of such bills



4523 may not be used to calculate the amount of interest awarded.
4524 Regardless of the date benefits were initially requested,
4525 attorney's fees do not attach under this subsection until 30
4526 days after the date the carrier or self-insured employer
4527 receives the petition.

4528 (5)(a) Procedures with respect to appeals from orders of
4529 judges of compensation claims shall be governed by rules adopted
4530 by the Supreme Court. Such an order shall become final 30 days
4531 after mailing of copies of such order to the parties, unless
4532 appealed pursuant to such rules.

4533 (b) An appellant may be relieved of any necessary filing
4534 fee by filing a verified petition of indigency for approval as
4535 provided in s. 57.081(1) and may be relieved in whole or in part
4536 from the costs for preparation of the record on appeal if,
4537 within 15 days after the date notice of the estimated costs for
4538 the preparation is served, the appellant files with the judge of
4539 compensation claims a copy of the designation of the record on
4540 appeal, and a verified petition to be relieved of costs. A
4541 verified petition filed prior to the date of service of the
4542 notice of the estimated costs shall be deemed not timely filed.
4543 The verified petition relating to record costs shall contain a
4544 sworn statement that the appellant is insolvent and a complete,
4545 detailed, and sworn financial affidavit showing all the
4546 appellant's assets, liabilities, and income. Failure to state in
4547 the affidavit all assets and income, including marital assets
4548 and income, shall be grounds for denying the petition with
4549 prejudice. The Office of the Judges of Compensation Claims shall
4550 adopt rules as may be required pursuant to this subsection,



4551 including forms for use in all petitions brought under this
4552 subsection. The appellant's attorney, or the appellant if she or
4553 he is not represented by an attorney, shall include as a part of
4554 the verified petition relating to record costs an affidavit or
4555 affirmation that, in her or his opinion, the notice of appeal
4556 was filed in good faith and that there is a probable basis for
4557 the District Court of Appeal, First District, to find reversible
4558 error, and shall state with particularity the specific legal and
4559 factual grounds for the opinion. Failure to so affirm shall be
4560 grounds for denying the petition. A copy of the verified
4561 petition relating to record costs shall be served upon all
4562 interested parties. The judge of compensation claims shall
4563 promptly conduct a hearing on the verified petition relating to
4564 record costs, giving at least 15 days' notice to the appellant,
4565 the department, and all other interested parties, all of whom
4566 shall be parties to the proceedings. The judge of compensation
4567 claims may enter an order without such hearing if no objection
4568 is filed by an interested party within 20 days from the service
4569 date of the verified petition relating to record costs. Such
4570 proceedings shall be conducted in accordance with the provisions
4571 of this section and with the workers' compensation rules of
4572 procedure, to the extent applicable. In the event an insolvency
4573 petition is granted, the judge of compensation claims shall
4574 direct the department to pay record costs and filing fees from
4575 the Workers' Compensation Administration Trust Fund pending
4576 final disposition of the costs of appeal. The department may
4577 transcribe or arrange for the transcription of the record in any



4578 proceeding for which it is ordered to pay the cost of the
4579 record.

4580 (c) As a condition of filing a notice of appeal to the
4581 District Court of Appeal, First District, an employer who has
4582 not secured the payment of compensation under this chapter in
4583 compliance with s. 440.38 shall file with the notice of appeal a
4584 good and sufficient bond, as provided in s. 59.13, conditioned
4585 to pay the amount of the demand and any interest and costs
4586 payable under the terms of the order if the appeal is dismissed,
4587 or if the District Court of Appeal, First District, affirms the
4588 award in any amount. Upon the failure of such employer to file
4589 such bond with ~~the judge of compensation claims or~~ the District
4590 Court of Appeal, First District, along with the notice of
4591 appeal, the District Court of Appeal, First District, shall
4592 dismiss the notice of appeal.

4593 (6) An award of compensation for disability may be made
4594 after the death of an injured employee.

4595 ~~(7) An injured employee claiming or entitled to~~
4596 ~~compensation shall submit to such physical examination by a~~
4597 ~~certified expert medical advisor approved by the agency or the~~
4598 ~~judge of compensation claims as the agency or the judge of~~
4599 ~~compensation claims may require. The place or places shall be~~
4600 ~~reasonably convenient for the employee. Such physician or~~
4601 ~~physicians as the employee, employer, or carrier may select and~~
4602 ~~pay for may participate in an examination if the employee,~~
4603 ~~employer, or carrier so requests. Proceedings shall be suspended~~
4604 ~~and no compensation shall be payable for any period during which~~
4605 ~~the employee may refuse to submit to examination. Any interested~~



4606 party shall have the right in any case of death to require an
4607 autopsy, the cost thereof to be borne by the party requesting
4608 it; and the judge of compensation claims shall have authority to
4609 order and require an autopsy and may, in her or his discretion,
4610 withhold her or his findings and award until an autopsy is held.

4611 Section 26. Subsections (1), (2), and (3) of section
4612 440.34, Florida Statutes, are amended, and subsection (7) is
4613 added to said section, to read:

4614 440.34 Attorney's fees; costs.--

4615 (1) A fee, gratuity, or other consideration may not be
4616 paid for ~~services rendered for~~ a claimant in connection with any
4617 proceedings arising under this chapter, unless approved as
4618 reasonable by the judge of compensation claims or court having
4619 jurisdiction over such proceedings. ~~Except as provided by this~~
4620 ~~subsection,~~ Any attorney's fee approved by a judge of
4621 compensation claims for benefits secured on behalf of services
4622 ~~rendered to~~ a claimant must equal to 20 percent of the first
4623 \$5,000 of the amount of the benefits secured, 15 percent of the
4624 next \$5,000 of the amount of the benefits secured, 10 percent of
4625 the remaining amount of the benefits secured to be provided
4626 during the first 10 years after the date the claim is filed, and
4627 5 percent of the benefits secured after 10 years. The judge of
4628 compensation claims shall not approve a compensation order, a
4629 joint stipulation for lump-sum settlement, a stipulation or
4630 agreement between a claimant and his or her attorney, or any
4631 other agreement related to benefits under this chapter that
4632 provides for an attorney's fee in excess of the amount permitted
4633 by this section. The judge of compensation claims is not



4634 required to approve any retainer agreement between the claimant
4635 and his or her attorney. The retainer agreement as to fees and
4636 costs may not be for compensation in excess of the amount
4637 allowed under this section. ~~However, The judge of compensation~~
4638 ~~claims shall consider the following factors in each case and may~~
4639 ~~increase or decrease the attorney's fee if, in her or his~~
4640 ~~judgment, the circumstances of the particular case warrant such~~
4641 ~~action:~~

4642 ~~(a) The time and labor required, the novelty and~~
4643 ~~difficulty of the questions involved, and the skill requisite to~~
4644 ~~perform the legal service properly.~~

4645 ~~(b) The fee customarily charged in the locality for~~
4646 ~~similar legal services.~~

4647 ~~(c) The amount involved in the controversy and the~~
4648 ~~benefits resulting to the claimant.~~

4649 ~~(d) The time limitation imposed by the claimant or the~~
4650 ~~circumstances.~~

4651 ~~(e) The experience, reputation, and ability of the lawyer~~
4652 ~~or lawyers performing services.~~

4653 ~~(f) The contingency or certainty of a fee.~~

4654 (2) In awarding a reasonable claimant's attorney's fee,
4655 the judge of compensation claims shall consider only those
4656 benefits secured by to the claimant that the attorney is
4657 responsible for securing. An attorney is not entitled to
4658 attorney's fees for representation in any issue that was ripe,
4659 due, and owing and that reasonably could have been addressed,
4660 but was not addressed, during the pendency of other issues for
4661 the same injury. The amount, statutory basis, and type of



4662 benefits obtained through legal representation shall be listed
4663 on all attorney's fees awarded by the judge of compensation
4664 claims. For purposes of this section, the term "benefits
4665 secured" ~~means benefits obtained as a result of the claimant's~~
4666 ~~attorney's legal services rendered in connection with the claim~~
4667 ~~for benefits. However, such term~~ does not include future
4668 medical benefits to be provided on any date more than 5 years
4669 after the date the claim is filed. In the event an offer to
4670 settle an issue pending before a judge of compensation claims,
4671 including attorney's fees as provided for in this section, is
4672 communicated in writing to the claimant or the claimant's
4673 attorney at least 30 days prior to the trial date on such issue,
4674 for purposes of calculating the amount of attorney's fees to be
4675 taxed against the employer or carrier, the term "benefits
4676 secured" shall be deemed to include only that amount awarded to
4677 the claimant above the amount specified in the offer to settle.
4678 If multiple issues are pending before the judge of compensation
4679 claims, said offer of settlement shall address each issue
4680 pending and shall state explicitly whether or not the offer on
4681 each issue is severable. The written offer shall also
4682 unequivocally state whether or not it includes medical witness
4683 fees and expenses and all other costs associated with the claim.

4684 (3) If any party ~~the claimant~~ should prevail in any
4685 proceedings before a judge of compensation claims or court,
4686 there shall be taxed against the nonprevailing party ~~employer~~
4687 the reasonable costs of such proceedings, not to include ~~the~~
4688 attorney's fees ~~of the claimant~~. A claimant shall be
4689 responsible for the payment of her or his own attorney's fees,



4690 except that a claimant shall be entitled to recover a reasonable
4691 attorney's fee from a carrier or employer:

4692 (a) Against whom she or he successfully asserts a petition
4693 for medical benefits only, if the claimant has not filed or is
4694 not entitled to file at such time a claim for disability,
4695 permanent impairment, wage-loss, or death benefits, arising out
4696 of the same accident;

4697 (b) In any case in which the employer or carrier files a
4698 response to petition denying benefits with the Office of the
4699 Judges of Compensation Claims and the injured person has
4700 employed an attorney in the successful prosecution of the
4701 petition;

4702 (c) In a proceeding in which a carrier or employer denies
4703 that an accident occurred for which compensation benefits are
4704 payable, and the claimant prevails on the issue of
4705 compensability; or

4706 (d) In cases where the claimant successfully prevails in
4707 proceedings filed under s. 440.24 or s. 440.28.

4708

4709 Regardless of the date benefits were initially requested,
4710 attorney's fees shall not attach under this subsection until 30
4711 days after the date the carrier or employer, if self-insured,
4712 receives the petition. ~~In applying the factors set forth in~~
4713 ~~subsection (1) to cases arising under paragraphs (a), (b), (c),~~
4714 ~~and (d), the judge of compensation claims must only consider~~
4715 ~~only such benefits and the time reasonably spent in obtaining~~
4716 ~~them as were secured for the claimant within the scope of~~
4717 ~~paragraphs (a), (b), (c), and (d).~~



4718 (7) If an attorney's fee is owed under paragraph (3)(a),
4719 the judge of compensation claims may approve an alternative
4720 attorney's fee not to exceed \$1,500 only once per accident,
4721 based on a maximum hourly rate of \$150 per hour, if the judge of
4722 compensation claims expressly finds that the attorney's fee
4723 amount provided for in subsection (1), based on benefits
4724 secured, fails to fairly compensate the attorney for disputed
4725 medical-only claims as provided in paragraph (3)(a) and the
4726 circumstances of the particular case warrant such action.

4727 Section 27. Subsection (7) is added to section 440.38,
4728 Florida Statutes, to read:

4729 440.38 Security for compensation; insurance carriers and
4730 self-insurers.--

4731 (7) Any employer who meets the requirements of subsection
4732 (1) through a policy of insurance issued outside of this state
4733 must at all times, with respect to all employees working in this
4734 state, maintain the required coverage under a Florida
4735 endorsement using Florida rates and rules pursuant to payroll
4736 reporting that accurately reflects the work performed in this
4737 state by such employees.

4738 Section 28. Subsections (2) and (6) of section 440.381,
4739 Florida Statutes, are amended to read:

4740 440.381 Application for coverage; reporting payroll;
4741 payroll audit procedures; penalties.--

4742 (2) Submission of an application that contains false,
4743 misleading, or incomplete information provided with the purpose
4744 of avoiding or reducing the amount of premiums for workers'
4745 compensation coverage is a felony of the second degree,



4746 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4747 The application must contain a statement that the filing of an
4748 application containing false, misleading, or incomplete
4749 information provided with the purpose of avoiding or reducing
4750 the amount of premiums for workers' compensation coverage is a
4751 felony of the third degree, punishable as provided in s.
4752 775.082, s. 775.083, or s. 775.084. The application must contain
4753 a sworn statement by the employer attesting to the accuracy of
4754 the information submitted and acknowledging the provisions of
4755 former s. 440.37(4). The application must contain a sworn
4756 statement by the agent attesting that the agent explained to the
4757 employer or officer the classification codes that are used for
4758 premium calculations.

4759 (6)(a) If an employer understates or conceals payroll, or
4760 misrepresents or conceals employee duties so as to avoid proper
4761 classification for premium calculations, or misrepresents or
4762 conceals information pertinent to the computation and
4763 application of an experience rating modification factor, the
4764 employer, or the employer's agent or attorney, shall pay to the
4765 insurance carrier a penalty of 10 times the amount of the
4766 difference in premium paid and the amount the employer should
4767 have paid and reasonable attorney's fees. The penalty may be
4768 enforced in the circuit courts of this state.

4769 (b) If the department determines that an employer has
4770 materially understated or concealed payroll, has materially
4771 misrepresented or concealed employee duties so as to avoid
4772 proper classification for premium calculations, or has
4773 materially misrepresented or concealed information pertinent to



4774 the computation and application of an experience rating
4775 modification factor, the department shall immediately notify the
4776 employer's carrier of such determination. The carrier shall
4777 commence a physical onsite audit of the employer within 30 days
4778 after receiving notification from the department. If the carrier
4779 fails to commence the audit as required by this section, the
4780 department shall contract with auditing professionals to conduct
4781 the audit at the carrier's expense. A copy of the carrier's
4782 audit of the employer shall be provided to the department upon
4783 completion. The carrier is not required to conduct the physical
4784 onsite audit of the employer as set forth in this paragraph if
4785 the carrier gives written notice of cancellation to the employer
4786 within 30 days after receiving notification from the department
4787 of the material misrepresentation, understatement, or
4788 concealment and an audit is conducted in conjunction with the
4789 cancellation.

4790 Section 29. Subsection (3) of section 440.42, Florida
4791 Statutes, is amended to read:

4792 440.42 Insurance policies; liability.--

4793 (3) No contract or policy of insurance issued by a carrier
4794 under this chapter shall expire or be canceled until at least 30
4795 days have elapsed after a notice of cancellation has been sent
4796 to the department and to the employer in accordance with the
4797 provisions of s. 440.185(7). For cancellation due to nonpayment
4798 of premium, the insurer shall mail notification to the employer
4799 at least 10 days prior to the effective date of the
4800 cancellation. However, when duplicate or dual coverage exists by
4801 reason of two different carriers having issued policies of



4802 insurance to the same employer securing the same liability, it
4803 shall be presumed that only that policy with the later effective
4804 date shall be in force and that the earlier policy terminated
4805 upon the effective date of the latter. In the event that both
4806 policies carry the same effective date, one of the policies may
4807 be canceled instanter upon filing a notice of cancellation with
4808 the department and serving a copy thereof upon the employer in
4809 such manner as the department prescribes by rule. The department
4810 may by rule prescribe the content of the notice of retroactive
4811 cancellation and specify the time, place, and manner in which
4812 the notice of cancellation is to be served.

4813 Section 30. Paragraph (a) of subsection (4) of section
4814 440.49, Florida Statutes, is amended to read:

4815 440.49 Limitation of liability for subsequent injury
4816 through Special Disability Trust Fund.--

4817 (4) PERMANENT IMPAIRMENT OR PERMANENT TOTAL DISABILITY,
4818 TEMPORARY BENEFITS, MEDICAL BENEFITS, OR ATTENDANT CARE AFTER
4819 OTHER PHYSICAL IMPAIRMENT.--

4820 (a) *Permanent impairment*.--If an employee who has a
4821 preexisting permanent physical impairment incurs a subsequent
4822 permanent impairment from injury or occupational disease arising
4823 out of, and in the course of, her or his employment which merges
4824 with the preexisting permanent physical impairment to cause a
4825 permanent impairment, the employer shall, in the first instance,
4826 pay all benefits provided by this chapter; but, subject to the
4827 limitations specified in subsection (6), such employer shall be
4828 reimbursed from the Special Disability Trust Fund created by
4829 subsection (9) for 50 percent of all impairment benefits which



4830 the employer has been required to provide pursuant to s.
4831 440.15(3)~~(a)~~ as a result of the subsequent accident or
4832 occupational disease.

4833 Section 31. Subsection (6) of section 440.491, Florida
4834 Statutes, is amended to read:

4835 440.491 Reemployment of injured workers; rehabilitation.--

4836 (6) TRAINING AND EDUCATION.--

4837 (a) Upon referral of an injured employee by the carrier,
4838 or upon the request of an injured employee, the department shall
4839 conduct a training and education screening to determine whether
4840 it should refer the employee for a vocational evaluation and, if
4841 appropriate, approve training and education or other vocational
4842 services for the employee. The department may not approve formal
4843 training and education programs unless it determines, after
4844 consideration of the reemployment assessment, pertinent
4845 reemployment status reviews or reports, and such other relevant
4846 factors as it prescribes by rule, that the reemployment plan is
4847 likely to result in return to suitable gainful employment. The
4848 department is authorized to expend moneys from the Workers'
4849 Compensation Administration Trust Fund, established by s.
4850 440.50, to secure appropriate training and education at a
4851 community college established under part III of chapter 240 or
4852 at a vocational-technical school established under s. 230.63, or
4853 to secure other vocational services when necessary to satisfy
4854 the recommendation of a vocational evaluator. As used in this
4855 paragraph, "appropriate training and education" includes
4856 securing a general education diploma (GED), if necessary. The
4857 department shall establish training and education standards



4858 | pertaining to employee eligibility, course curricula and
4859 | duration, and associated costs.

4860 | (b) When ~~it appears that~~ an employee who has attained
4861 | maximum medical improvement is unable to earn at least 80
4862 | percent of the compensation rate and requires training and
4863 | education to obtain suitable gainful employment, the employer or
4864 | carrier shall pay the employee additional training and education
4865 | temporary total compensation benefits while the employee
4866 | receives such training and education for a period not to exceed
4867 | 26 weeks, which period may be extended for an additional 26
4868 | weeks or less, if such extended period is determined to be
4869 | necessary and proper by a judge of compensation claims. The
4870 | benefits provided under this paragraph shall not be in addition
4871 | to the 104 weeks as specified in s. 440.15(2). However, a
4872 | carrier or employer is not precluded from voluntarily paying
4873 | additional temporary total disability compensation beyond that
4874 | period. If an employee requires temporary residence at or near a
4875 | facility or an institution providing training and education
4876 | which is located more than 50 miles away from the employee's
4877 | customary residence, the reasonable cost of board, lodging, or
4878 | travel must be borne by the department from the Workers'
4879 | Compensation Administration Trust Fund established by s. 440.50.
4880 | An employee who refuses to accept training and education that is
4881 | recommended by the vocational evaluator and considered necessary
4882 | by the department will forfeit any additional training and
4883 | education benefits and any additional payment for lost wages
4884 | under this chapter. The department shall adopt rules to
4885 | implement this section, which shall include requirements placed



4886 upon the carrier to notify the injured employee of the
4887 availability of training and education benefits as specified in
4888 this chapter. The department shall also include information
4889 regarding the eligibility for training and education benefits in
4890 informational materials specified in ss. 440.207 and 440.40 ~~is~~
4891 ~~subject to a 50 percent reduction in weekly compensation~~
4892 ~~benefits, including wage loss benefits, as determined under s.~~
4893 ~~440.15(3)(b).~~

4894 Section 32. Section 440.525, Florida Statutes, is amended
4895 to read:

4896 440.525 Examination and investigation of carriers and
4897 claims-handling entities.--

4898 (1) The department may examine, or investigate any each
4899 carrier, third-party administrator, servicing agent, or other
4900 claims-handling entity as often as is warranted to ensure that
4901 it is carriers are fulfilling its their obligations under this
4902 chapter the law. The examination may cover any period of the
4903 carrier's operations since the last previous examination.

4904 (2) An examination may cover any period of the carrier's,
4905 third-party administrator's, servicing agent's, or other claims-
4906 handling entity's operations since the last previous
4907 examination. An investigation based upon a reasonable belief by
4908 the department that a material violation of this chapter has
4909 occurred may cover any time period, but may not predate the last
4910 examination by more than 5 years. The department may by rule
4911 establish procedures, standards, and protocols for examinations
4912 and investigations. If the department finds any violation of
4913 this chapter, it may impose administrative penalties pursuant to



4914 this chapter. If the department finds any self-insurer in
4915 violation of this chapter, it may take action pursuant s.
4916 440.38(3). Examinations or investigations by the department may
4917 address, but are not limited to addressing, patterns or
4918 practices of unreasonable delay in claims handling; timeliness
4919 and accuracy of payments and reports under ss. 440.13, 440.16,
4920 and 440.185; or patterns or practices of harassment, coercion,
4921 or intimidation of claimants. The department may also specify by
4922 rule the documentation to be maintained for each claim file.

4923 (3) As to any examination or investigation conducted under
4924 this chapter, the department shall have the power to conduct
4925 onsite inspections of claims records and documentation of a
4926 carrier, third-party administrator, servicing agent, or other
4927 claims-handling entity, and conduct interviews, both sworn and
4928 unsworn, of claims-handling personnel. Carriers, third-party
4929 administrators, servicing agents, and other claims-handling
4930 entities shall make all claims records, documentation,
4931 communication, and correspondence available to department
4932 personnel during regular business hours. If any person fails to
4933 comply with a request for production of records or documents or
4934 fails to produce an employee for interview, the department may
4935 compel production or attendance by subpoena. The results of an
4936 examination or investigation shall be provided to the carrier,
4937 third-party administrator, servicing agent, or other claims-
4938 handling entity in a written report setting forth the basis for
4939 any violations that are asserted. Such report is agency action
4940 for purposes of chapter 120, and the aggrieved party may request



4941 a proceeding under s. 120.57 with regard to the findings and
4942 conclusion of the report.

4943 (4) If the department finds that violations of this
4944 chapter have occurred, the department may impose an
4945 administrative penalty upon the offending entity or entities.
4946 For each offending entity, such penalties shall not exceed
4947 \$2,500 for each pattern or practice constituting nonwillful
4948 violation and shall not exceed an aggregate amount of \$10,000
4949 for all nonwillful violations arising out of the same action. If
4950 the department finds a pattern of practice that constitutes a
4951 willful violation, the department may impose an administrative
4952 penalty upon each offending entity not to exceed \$20,000 for
4953 each willful pattern or practice. Such fines shall not exceed
4954 \$100,000 for all willful violations arising out of the same
4955 action. No penalty assessed under this section may be recouped
4956 by any carrier in the rate base, the premium, or any rate
4957 filing. Any administrative penalty imposed under this section
4958 for a nonwillful violation shall not duplicate an administrative
4959 penalty imposed under another provision of this chapter or the
4960 Insurance Code. The department may adopt rules to implement this
4961 section. The department shall adopt penalty guidelines by rule
4962 to set penalties under this chapter.

4963 Section 33. Subsection (2) of section 627.162, Florida
4964 Statutes, is amended to read:

4965 627.162 Requirements for premium installments;
4966 delinquency, collection, and check return charges; attorney's
4967 fees.--



4968 (2) Insurers providing workers' compensation coverage
4969 under chapter 440 may charge the insured a delinquency and
4970 collection fee on each installment in default for a period of
4971 not less than 5 days in an amount not to exceed \$25 ~~\$10~~ or 5
4972 percent of the delinquent installment, whichever is greater.
4973 Only one such delinquency and collection fee may be collected on
4974 any such installment regardless of the period during which it
4975 remains in default.

4976 Section 34. Section 627.285, Florida Statutes, is created
4977 to read:

4978 627.285 Independent actuarial peer review of workers'
4979 compensation rating organization.--The Financial Services
4980 Commission shall at least once every other year contract for an
4981 independent actuarial peer review and analysis of the ratemaking
4982 processes of any licensed rating organization that makes rate
4983 filings for workers' compensation insurance and the rating
4984 organization shall fully cooperate in the peer review. The
4985 contract shall require submission of a final report to the
4986 commission, the President of the Senate, and the Speaker of the
4987 House of Representatives by February 1. The first report shall
4988 be submitted by February 1, 2004. The costs of the independent
4989 actuarial peer review shall be paid from the Workers'
4990 Compensation Administration Trust Fund.

4991 Section 35. Effective July, 1, 2003, paragraphs (b), (c),
4992 and (d) of subsection (4) of section 627.311, Florida Statutes,
4993 are amended to read

4994 627.311 Joint underwriters and joint reinsurers.--
4995 (4)



4996 (b) The operation of the plan is subject to the
4997 supervision of a 9-member ~~13-member~~ board of governors. The
4998 board of governors shall be comprised of:

4999 1. Three members appointed by the Financial Services
5000 Commission. Each member appointed by the commission shall serve
5001 at the pleasure of the commission;

5002 ~~2.1. Two~~ Five of the 20 domestic insurers, as defined in
5003 s. 624.06(1), having the largest voluntary direct premiums
5004 written in this state for workers' compensation and employer's
5005 liability insurance, which shall be elected by those 20 domestic
5006 insurers;

5007 ~~3.2. Two~~ Five of the 20 foreign insurers as defined in s.
5008 624.06(2) having the largest voluntary direct premiums written
5009 in this state for workers' compensation and employer's liability
5010 insurance, which shall be elected by those 20 foreign insurers;

5011 ~~3. One person, who shall serve as the chair, appointed by~~
5012 ~~the Insurance Commissioner;~~

5013 4. One person appointed by the largest property and
5014 casualty insurance agents' association in this state; and

5015 5. The consumer advocate appointed under s. 627.0613 or
5016 the consumer advocate's designee.

5017
5018 Each board member shall serve a 4-year term and may serve
5019 consecutive terms. A vacancy on the board shall be filled in the
5020 same manner as the original appointment for the unexpired
5021 portion of the term. The Financial Services Commission shall
5022 designate a member of the board to serve as chair. No board
5023 member shall be an insurer which provides service to the plan or



5024 which has an affiliate which provides services to the plan or
5025 which is serviced by a service company or third-party
5026 administrator which provides services to the plan or which has
5027 an affiliate which provides services to the plan. The minutes,
5028 audits, and procedures of the board of governors are subject to
5029 chapter 119.

5030 (c) The operation of the plan shall be governed by a plan
5031 of operation that is prepared at the direction of the board of
5032 governors. The plan of operation may be changed at any time by
5033 the board of governors or upon request of the department. The
5034 plan of operation and all changes thereto are subject to the
5035 approval of the department. The plan of operation shall:

5036 1. Authorize the board to engage in the activities
5037 necessary to implement this subsection, including, but not
5038 limited to, borrowing money.

5039 2. Develop criteria for eligibility for coverage by the
5040 plan, including, but not limited to, documented rejection by at
5041 least two insurers which reasonably assures that insureds
5042 covered under the plan are unable to acquire coverage in the
5043 voluntary market. Any insured may voluntarily elect to accept
5044 coverage from an insurer for a premium equal to or greater than
5045 the plan premium if the insurer writing the coverage adheres to
5046 the provisions of s. 627.171.

5047 3. Require notice from the agent to the insured at the
5048 time of the application for coverage that the application is for
5049 coverage with the plan and that coverage may be available
5050 through an insurer, group self-insurers' fund, commercial self-



5051 insurance fund, or assessable mutual insurer through another
5052 agent at a lower cost.

5053 4. Establish programs to encourage insurers to provide
5054 coverage to applicants of the plan in the voluntary market and
5055 to insureds of the plan, including, but not limited to:

5056 a. Establishing procedures for an insurer to use in
5057 notifying the plan of the insurer's desire to provide coverage
5058 to applicants to the plan or existing insureds of the plan and
5059 in describing the types of risks in which the insurer is
5060 interested. The description of the desired risks must be on a
5061 form developed by the plan.

5062 b. Developing forms and procedures that provide an insurer
5063 with the information necessary to determine whether the insurer
5064 wants to write particular applicants to the plan or insureds of
5065 the plan.

5066 c. Developing procedures for notice to the plan and the
5067 applicant to the plan or insured of the plan that an insurer
5068 will insure the applicant or the insured of the plan, and notice
5069 of the cost of the coverage offered; and developing procedures
5070 for the selection of an insuring entity by the applicant or
5071 insured of the plan.

5072 d. Provide for a market-assistance plan to assist in the
5073 placement of employers. All applications for coverage in the
5074 plan received 45 days before the effective date for coverage
5075 shall be processed through the market-assistance plan. A market-
5076 assistance plan specifically designed to serve the needs of
5077 small good policyholders as defined by the board must be
5078 finalized by January 1, 1994.



5079 5. Provide for policy and claims services to the insureds
5080 of the plan of the nature and quality provided for insureds in
5081 the voluntary market.

5082 6. Provide for the review of applications for coverage
5083 with the plan for reasonableness and accuracy, using any
5084 available historic information regarding the insured.

5085 7. Provide for procedures for auditing insureds of the
5086 plan which are based on reasonable business judgment and are
5087 designed to maximize the likelihood that the plan will collect
5088 the appropriate premiums.

5089 8. Authorize the plan to terminate the coverage of and
5090 refuse future coverage for any insured that submits a fraudulent
5091 application to the plan or provides fraudulent or grossly
5092 erroneous records to the plan or to any service provider of the
5093 plan in conjunction with the activities of the plan.

5094 9. Establish service standards for agents who submit
5095 business to the plan.

5096 10. Establish criteria and procedures to prohibit any
5097 agent who does not adhere to the established service standards
5098 from placing business with the plan or receiving, directly or
5099 indirectly, any commissions for business placed with the plan.

5100 11. Provide for the establishment of reasonable safety
5101 programs for all insureds in the plan. All insureds of the plan
5102 must participate in the safety program.

5103 12. Authorize the plan to terminate the coverage of and
5104 refuse future coverage to any insured who fails to pay premiums
5105 or surcharges when due; who, at the time of application, is
5106 delinquent in payments of workers' compensation or employer's



5107 liability insurance premiums or surcharges owed to an insurer,
5108 group self-insurers' fund, commercial self-insurance fund, or
5109 assessable mutual insurer licensed to write such coverage in
5110 this state; or who refuses to substantially comply with any
5111 safety programs recommended by the plan.

5112 13. Authorize the board of governors to provide the
5113 services required by the plan through staff employed by the
5114 plan, through reasonably compensated service providers who
5115 contract with the plan to provide services as specified by the
5116 board of governors, or through a combination of employees and
5117 service providers.

5118 14. Provide for service standards for service providers,
5119 methods of determining adherence to those service standards,
5120 incentives and disincentives for service, and procedures for
5121 terminating contracts for service providers that fail to adhere
5122 to service standards.

5123 15. Provide procedures for selecting service providers and
5124 standards for qualification as a service provider that
5125 reasonably assure that any service provider selected will
5126 continue to operate as an ongoing concern and is capable of
5127 providing the specified services in the manner required.

5128 16. Provide for reasonable accounting and data-reporting
5129 practices.

5130 17. Provide for annual review of costs associated with the
5131 administration and servicing of the policies issued by the plan
5132 to determine alternatives by which costs can be reduced.

5133 18. Authorize the acquisition of such excess insurance or
5134 reinsurance as is consistent with the purposes of the plan.



5135 19. Provide for an annual report to the department on a
5136 date specified by the department and containing such information
5137 as the department reasonably requires.

5138 20. Establish multiple rating plans for various
5139 classifications of risk which reflect risk of loss, hazard
5140 grade, actual losses, size of premium, and compliance with loss
5141 control. At least one of such plans must be a preferred-rating
5142 plan to accommodate small-premium policyholders with good
5143 experience as defined in sub-subparagraph 22.a.

5144 21. Establish agent commission schedules.

5145 22. Establish four ~~three~~ subplans as follows:

5146 a. Subplan "A" must include those insureds whose annual
5147 premium does not exceed \$2,500 and who have neither incurred any
5148 lost-time claims nor incurred medical-only claims exceeding 50
5149 percent of their premium for the immediate 2 years.

5150 b. Subplan "B" must include insureds that are employers
5151 identified by the board of governors as high-risk employers due
5152 solely to the nature of the operations being performed by those
5153 insureds and for whom no market exists in the voluntary market,
5154 and whose experience modifications are less than 1.00.

5155 c. Subplan "C" must include all ~~other~~ insureds within the
5156 plan that are not eligible for subplan "A," subplan "B," or
5157 subplan "D."

5158 d. Subplan "D" must include any employer, regardless of
5159 the length of time for which it has conducted business
5160 operations, which has an experience modification factor of 1.10
5161 or less and either employs 15 or fewer employees or is an
5162 organization that is exempt from federal income tax pursuant to



5163 s. 501(c)(3) of the Internal Revenue Code and receives more than
5164 50 percent of its funding from gifts, grants, endowments, or
5165 federal or state contracts. The rate plan for subplan "D" shall
5166 be the same rate plan as the plan approved under ss. 627.091-
5167 627.151 and each participant in subplan "D" shall pay the
5168 premium determined under such rate plan, plus a surcharge
5169 determined by the board to be sufficient to ensure that the plan
5170 does not compete with the voluntary market rate for any
5171 participant, but not to exceed 25 percent. However, the
5172 surcharge shall not exceed 10 percent for an organization that
5173 is exempt from federal income tax pursuant to s. 501(c)(3) of
5174 the Internal Revenue Code.

5175 23. Provide for a depopulation program to reduce the
5176 number of insureds in subplan "D." If an employer insured
5177 through subplan "D" is offered coverage from a voluntary market
5178 carrier:

5179 a. During the first 30 days of coverage under the subplan;
5180 b. Before a policy is issued under the subplan;
5181 c. By issuance of a policy upon expiration or cancellation
5182 of the policy under the subplan; or
5183 d. By assumption of the subplan's obligation with respect
5184 to an in-force policy,

5185
5186 that employer is no longer eligible for coverage through the
5187 plan. The premium for risks assumed by the voluntary market
5188 carrier must be the same premium plus, for the first 2 years,
5189 the surcharge as determined in sub-subparagraph 22.d. A premium



5190 under this subparagraph, including surcharge, is deemed approved
5191 and is not an excess premium for purposes of s. 627.171.

5192 24. Require that policies issued under subplan "D" and
5193 applications for such policies must include a notice that the
5194 policy issued under subplan "D" could be replaced by a policy
5195 issued from a voluntary market carrier and that, if an offer of
5196 coverage is obtained from a voluntary market carrier, the
5197 policyholder is no longer eligible for coverage through subplan
5198 "D." The notice must also specify that acceptance of coverage
5199 under subplan "D" creates a conclusive presumption that the
5200 applicant or policyholder is aware of this potential.

5201 (d)1. The plan must be funded through actuarially sound
5202 premiums charged to insureds of the plan.

5203 2. The plan may issue assessable policies only to those
5204 insureds in subplan "C-" and subplan "D." Subject to
5205 verification by the department, the board may levy assessments
5206 against insureds in subplan "C" or subplan "D," on a pro rata
5207 earned premium basis, to fund any deficits that exist in those
5208 subplans. Assessments levied against subplan "C" participants
5209 shall cover only the deficits attributable to subplan "C," and
5210 assessments levied against subplan "D" participants shall cover
5211 only the deficits attributable to subplan "D." In no event may
5212 the plan levy assessments against any person or entity, except
5213 as authorized by this paragraph. Those assessable policies must
5214 be clearly identified as assessable by containing, in
5215 contrasting color and in not less than 10-point type, the
5216 following statements: "This is an assessable policy. If the plan
5217 is unable to pay its obligations, policyholders will be required



5218 to contribute on a pro rata earned premium basis the money
 5219 necessary to meet any assessment levied."

5220 3. The plan may issue assessable policies with differing
 5221 terms and conditions to different groups within subplans "C" and
 5222 "D" ~~the plan~~ when a reasonable basis exists for the
 5223 differentiation.

5224 4. The plan may offer rating, dividend plans, and other
 5225 plans to encourage loss prevention programs.

5226 Section 36. Paragraphs (c) and (e) of subsection (3) of
 5227 section 921.0022, Florida Statutes, are amended to read:

5228 921.0022 Criminal Punishment Code; offense severity
 5229 ranking chart.--

5230 (3) OFFENSE SEVERITY RANKING CHART

| Florida Statute | Felony Degree | Description |
|--------------------|------------------|---|
| | | (c) LEVEL 3 |
| 316.193(2)(b) | 3rd | Felony DUI, 3rd conviction. |
| 316.1935(2) | 3rd | Fleeing or attempting to elude law enforcement officer in marked patrol vehicle with siren and lights activated. |
| 319.30(4) | 3rd | Possession by junkyard of motor vehicle with identification number plate removed. |

5235



| | | | |
|------|----------------------|------------|---|
| 5236 | 319.33(1)(a) | 3rd | Alter or forge any certificate of title to a motor vehicle or mobile home. |
| 5237 | 319.33(1)(c) | 3rd | Procure or pass title on stolen vehicle. |
| 5238 | 319.33(4) | 3rd | With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration. |
| 5239 | 327.35(2)(b) | 3rd | Felony BUI. |
| 5240 | 328.05(2) | 3rd | Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels. |
| 5241 | 328.07(4) | 3rd | Manufacture, exchange, or possess vessel with counterfeit or wrong ID number. |
| 5242 | 376.302(5) | 3rd | Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund. |
| 5243 | <u>440.105(3)(b)</u> | <u>3rd</u> | <u>Receipt of fee or consideration without approval by judge of compensation claims.</u> |
| | <u>440.1051(3)</u> | <u>3rd</u> | <u>False report of workers' compensation fraud or retaliation for making such a</u> |



report.

5244

501.001(2)(b) 2nd Tampers with a consumer product or the container using materially false/misleading information.

5245

697.08 3rd Equity skimming.

5246

790.15(3) 3rd Person directs another to discharge firearm from a vehicle.

5247

796.05(1) 3rd Live on earnings of a prostitute.

5248

806.10(1) 3rd Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.

5249

806.10(2) 3rd Interferes with or assaults firefighter in performance of duty.

5250

810.09(2)(c) 3rd Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.

5251

812.014(2)(c)2. 3rd Grand theft; \$5,000 or more but less than \$10,000.

5252

812.0145(2)(c) 3rd Theft from person 65 years of age or older; \$300 or more but less than \$10,000.

5253



| | | | |
|------|-----------------|-----|--|
| 5254 | 815.04(4)(b) | 2nd | Computer offense devised to defraud or obtain property. |
| 5255 | 817.034(4)(a)3. | 3rd | Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000. |
| 5256 | 817.233 | 3rd | Burning to defraud insurer. |
| 5257 | 817.234(8)&(9) | 3rd | Unlawful solicitation of persons involved in motor vehicle accidents. |
| 5258 | 817.234(11)(a) | 3rd | Insurance fraud; property value less than \$20,000. |
| 5259 | 817.505(4) | 3rd | Patient brokering. |
| 5260 | 828.12(2) | 3rd | Tortures any animal with intent to inflict intense pain, serious physical injury, or death. |
| 5261 | 831.28(2)(a) | 3rd | Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument. |
| 5262 | 831.29 | 2nd | Possession of instruments for counterfeiting drivers' licenses or identification cards. |
| | 838.021(3)(b) | 3rd | Threatens unlawful harm to public servant. |



| | | | |
|------|----------------|-----|--|
| 5263 | 843.19 | 3rd | Injure, disable, or kill police dog or horse. |
| 5264 | 870.01(2) | 3rd | Riot; inciting or encouraging. |
| 5265 | 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). |
| 5266 | 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. |
| 5267 | 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. |
| 5268 | 893.13(6)(a) | 3rd | Possession of any controlled substance other than felony possession of cannabis. |
| 5269 | | | |



- 5270
893.13(7)(a)8.
3rd
Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
- 5271
893.13(7)(a)9.
3rd
Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.
- 5272
893.13(7)(a)10.
3rd
Affix false or forged label to package of controlled substance.
- 5273
893.13(7)(a)11.
3rd
Furnish false or fraudulent material information on any document or record required by chapter 893.
- 5274
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.
- 5275
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.
- 5275
893.13(8)(a)3.
3rd
Knowingly write a prescription for a



controlled substance for a fictitious person.

5276

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.

5277

918.13(1)(a) 3rd Alter, destroy, or conceal investigation evidence.

5278

944.47(1)(a)1.- 3rd Introduce contraband to correctional facility.
2.

5279

944.47(1)(c) 2nd Possess contraband while upon the grounds of a correctional institution.

5280

985.3141 3rd Escapes from a juvenile facility (secure detention or residential commitment facility).

5281

(e) LEVEL 5

5282

316.027(1)(a) 3rd Accidents involving personal injuries, failure to stop; leaving scene.

5283

316.1935(4) 2nd Aggravated fleeing or eluding.

5284

322.34(6) 3rd Careless operation of motor vehicle with suspended license, resulting in



death or serious bodily injury.

5285

327.30(5) 3rd Vessel accidents involving personal injury; leaving scene.

5286

381.0041(11)(b) 3rd Donate blood, plasma, or organs knowing HIV positive.

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5288

440.10(1)(g) 2nd Failure to obtain workers' compensation coverage.

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440.105(5) 2nd Unlawful solicitation for the purpose of making workers' compensation claims.

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440.381(2) 2nd Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.

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790.01(2) 3rd Carrying a concealed firearm.

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790.162 2nd Threat to throw or discharge destructive device.

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790.163(1) 2nd False report of deadly explosive or weapon of mass destruction.

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790.221(1) 2nd Possession of short-barreled shotgun or machine gun.



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|------|-----------------|-----|--|
| 5295 | 790.23 | 2nd | Felons in possession of firearms or electronic weapons or devices. |
| 5296 | 800.04(6)(c) | 3rd | Lewd or lascivious conduct; offender less than 18 years. |
| 5297 | 800.04(7)(c) | 2nd | Lewd or lascivious exhibition; offender 18 years or older. |
| 5298 | 806.111(1) | 3rd | Possess, manufacture, or dispense fire bomb with intent to damage any structure or property. |
| 5299 | 812.0145(2)(b) | 2nd | Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000. |
| 5300 | 812.015(8) | 3rd | Retail theft; property stolen is valued at \$300 or more and one or more specified acts. |
| 5301 | 812.019(1) | 2nd | Stolen property; dealing in or trafficking in. |
| 5302 | 812.131(2)(b) | 3rd | Robbery by sudden snatching. |
| 5303 | 812.16(2) | 3rd | Owning, operating, or conducting a chop shop. |
| 5304 | 817.034(4)(a)2. | 2nd | Communications fraud, value \$20,000 to |



| | | | |
|------|----------------|-----|--|
| | | | \$50,000. |
| 5305 | 817.234(11)(b) | 2nd | Insurance fraud; property value \$20,000 or more but less than \$100,000. |
| 5306 | 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. |
| 5307 | 817.625(2)(b) | 2nd | Second or subsequent fraudulent use of scanning device or reencoder. |
| 5308 | 825.1025(4) | 3rd | Lewd or lascivious exhibition in the presence of an elderly person or disabled adult. |
| 5309 | 827.071(4) | 2nd | Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child. |
| 5310 | 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. |
| 5311 | 843.01 | 3rd | Resist officer with violence to person; resist arrest with violence. |
| 5312 | | | |



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|------|----------------|-----|---|
| | 874.05(2) | 2nd | Encouraging or recruiting another to join a criminal street gang; second or subsequent offense. |
| 5313 | 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). |
| 5314 | 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. |
| 5315 | 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. |
| 5316 | 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.

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893.13(1)(f)1. 1st Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 200 feet of public housing facility.

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

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Section 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 jurisdiction over insurance issues, containing the following information:

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

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



5335 (3) Any other impediment to enforcement of chapter 440,
5336 Florida Statutes, resulting from the transfer of activities from
5337 the former Department of Labor and Employment Security to the
5338 department or the reorganization of the former Department of
5339 Insurance into the department.

5340 Section 38. Subsection (2) of section 946.523, Florida
5341 Statutes, is amended to read:

5342 946.523 Prison industry enhancement (PIE) programs.--

5343 (2) Notwithstanding any other law to the contrary,
5344 including s. 440.15(8)~~(9)~~, private sector employers shall
5345 provide workers' compensation coverage to inmates who
5346 participate in prison industry enhancement (PIE) programs under
5347 subsection (1). However, inmates are not entitled to
5348 unemployment compensation.

5349 Section 39. Paragraph (c) of subsection (5) of section
5350 985.315, Florida Statutes, is amended to read:

5351 985.315 Educational/technical and vocational work-related
5352 programs.--

5353 (5)

5354 (c) Notwithstanding any other law to the contrary,
5355 including s. 440.15(8)~~(9)~~, private sector employers shall
5356 provide juveniles participating in juvenile work programs under
5357 paragraph (b) with workers' compensation coverage, and juveniles
5358 shall be entitled to the benefits of such coverage. Nothing in
5359 this subsection shall be construed to allow juveniles to
5360 participate in unemployment compensation benefits.

5361 Section 40. (1) There is established a Joint Select
5362 Committee on Workers' Compensation Rating Reform. The committee



5363 shall study the merits of requiring each workers' compensation
5364 insurer to individually file its expense and profit portion of a
5365 rate filing, while permitting each insurer to use a lost cost
5366 filing made by a licensed rating organization. The committee
5367 shall also study options for the current prior approval system
5368 for workers' compensation rate filings, including, but not
5369 limited to, rate filing procedures that would promote greater
5370 competition and would encourage insurers to write workers'
5371 compensation coverage in the state while protecting employers
5372 from rates that are excessive, inadequate, or unfairly
5373 discriminatory.

5374 (2) The committee shall be composed of three Senators
5375 appointed by the President of the Senate and three
5376 Representatives appointed by the Speaker of the House of
5377 Representatives. The appointed members of the committee shall
5378 elect a chair and vice chair. The Department of Financial
5379 Services shall provide information and assistance as requested
5380 by the committee.

5381 (3) The committee shall issue its final report and
5382 recommendations to the President of the Senate and the Speaker
5383 of the House of Representatives by December 1, 2003. The
5384 committee shall terminate on December 1, 2003.

5385 Section 41. The board of governors of the joint
5386 underwriting plan for workers' compensation insurance created by
5387 s. 627.311(4), Florida Statutes, shall, by January 1, 2005,
5388 submit a report to the President of the Senate, the Speaker of
5389 the House of Representatives, the minority party leaders of the
5390 Senate and the House of Representatives, and the chairs of the



5391 standing committees of the Senate and the House of
5392 Representatives having jurisdiction over matters relating to
5393 workers' compensation. The report shall include the board's
5394 findings and recommendations on the following issues:

5395 (1) The number of policies and the aggregate premium of
5396 the workers' compensation joint underwriting plan, before and
5397 after enactment of this act, and projections for future policy
5398 and premium growth.

5399 (2) Increases or decreases in availability of workers'
5400 compensation coverage in the voluntary market and the
5401 effectiveness of this act in improving the availability of
5402 workers' compensation coverage in the state.

5403 (3) The board's efforts to depopulate the plan and the
5404 willingness of insurers in the voluntary market to avail
5405 themselves of depopulation incentives.

5406 (4) Further actions that could be taken by the Legislature
5407 to improve availability of workers' compensation coverage in the
5408 voluntary and residual markets.

5409 (5) Actions that the board has taken to restructure the
5410 joint underwriting plan and recommendations for legislative
5411 action to restructure the plan.

5412 (6) Projected surpluses or deficits and possible means of
5413 providing funding to ensure the continued solvency of the plan.

5414 (7) An independent actuarial review of all rates under the
5415 plan. The costs of the independent actuarial review shall be
5416 paid from the Workers' Compensation Administration Trust Fund,
5417 pursuant to a budget amendment approved by the Legislative



5418 Budget Commission. The board shall submit a plan for such review
5419 to the Legislative Budget Commission by October 1, 2003.

5420 (8) Such other issues as the board determines are worthy
5421 of the Legislature's consideration.

5422 Section 42. Subsections (1) and (2) of section 443.1715,
5423 Florida Statutes, are amended to read:

5424 443.1715 Disclosure of information; confidentiality.--

5425 (1) RECORDS AND REPORTS.--Information revealing the
5426 employing unit's or individual's identity obtained from the
5427 employing unit or from any individual pursuant to the
5428 administration of this chapter, and any determination revealing
5429 such information, except to the extent necessary for the proper
5430 presentation of a claim or upon written authorization of the
5431 claimant who has a workers' compensation claim pending or is
5432 receiving compensation benefits, must be held confidential and
5433 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I
5434 of the State Constitution. Such information may be made
5435 available only to public employees in the performance of their
5436 public duties, including employees of the Department of
5437 Education in obtaining information for the Florida Education and
5438 Training Placement Information Program and the Office of
5439 Tourism, Trade, and Economic Development in its administration
5440 of the qualified defense contractor tax refund program
5441 authorized by s. 288.1045 and the qualified target industry tax
5442 refund program authorized by s. 288.106. Except as otherwise
5443 provided by law, public employees receiving such information
5444 must retain the confidentiality of such information. Any
5445 claimant, or the claimant's legal representative, at a hearing



5446 before an appeals referee or the commission shall be supplied
5447 with information from such records to the extent necessary for
5448 the proper presentation of her or his claim. Any employee or
5449 member of the commission or any employee of the division, or any
5450 other person receiving confidential information, who violates
5451 any provision of this subsection commits a misdemeanor of the
5452 second degree, punishable as provided in s. 775.082 or s.
5453 775.083. However, the division may furnish to any employer
5454 copies of any report previously submitted by such employer, upon
5455 the request of such employer, and may furnish to any claimant
5456 copies of any report previously submitted by such claimant, upon
5457 the request of such claimant, and the division is authorized to
5458 charge therefor such reasonable fee as the division may by rule
5459 prescribe not to exceed the actual reasonable cost of the
5460 preparation of such copies. Fees received by the division for
5461 copies as provided in this subsection must be deposited to the
5462 credit of the Employment Security Administration Trust Fund.

5463 (2) DISCLOSURE OF INFORMATION.—

5464 (a) Subject to such restrictions as the division
5465 prescribes by rule, information declared confidential under this
5466 section may be made available to any agency of this or any other
5467 state, or any federal agency, charged with the administration of
5468 any unemployment compensation law or the maintenance of a system
5469 of public employment offices, or the Bureau of Internal Revenue
5470 of the United States Department of the Treasury, or the Florida
5471 Department of Revenue and information obtained in connection
5472 with the administration of the employment service may be made
5473 available to persons or agencies for purposes appropriate to the



5474 operation of a public employment service or a job-preparatory or
5475 career education or training program. The division shall on a
5476 quarterly basis, furnish the National Directory of New Hires
5477 with information concerning the wages and unemployment
5478 compensation paid to individuals, by such dates, in such format
5479 and containing such information as the Secretary of Health and
5480 Human Services shall specify in regulations. Upon request
5481 therefor, the division shall furnish any agency of the United
5482 States charged with the administration of public works or
5483 assistance through public employment, and may furnish to any
5484 state agency similarly charged, the name, address, ordinary
5485 occupation, and employment status of each recipient of benefits
5486 and such recipient's rights to further benefits under this
5487 chapter. Except as otherwise provided by law, the receiving
5488 agency must retain the confidentiality of such information as
5489 provided in this section. The division may request the
5490 Comptroller of the Currency of the United States to cause an
5491 examination of the correctness of any return or report of any
5492 national banking association rendered pursuant to the provisions
5493 of this chapter and may in connection with such request transmit
5494 any such report or return to the Comptroller of the Currency of
5495 the United States as provided in s. 3305(c) of the federal
5496 Internal Revenue Code.

5497 (b)1. The employer or the employer's workers' compensation
5498 carrier against whom a claim for benefits under chapter 440 has
5499 been made, or a representative of either, may request from the
5500 division records of wages of the employee reported to the
5501 division by any employer for the quarter that includes the date



5502 of the accident that is the subject of such claim and for
5503 subsequent quarters. The request must be made with the
5504 authorization or consent of the employee or any employer who
5505 paid wages to the employee subsequent to the date of the
5506 accident.

5507 2. The employer or carrier shall make the request on a
5508 form prescribed by rule for such purpose by the division. Such
5509 form shall contain a certification by the requesting party that
5510 it is a party entitled to the information requested as
5511 authorized by this paragraph.

5512 3. The division shall provide the most current information
5513 readily available within 15 days after receiving the request.

5514 Section 43. Subsection (9) of section 626.989, Florida
5515 Statutes, is amended to read:

5516 626.989 Investigation by department or Division of
5517 Insurance Fraud; compliance; immunity; confidential information;
5518 reports to division; division investigator's power of arrest.--

5519 (9) In recognition of the complementary roles of
5520 investigating instances of workers' compensation fraud and
5521 enforcing compliance with the workers' compensation coverage
5522 requirements under chapter 440, the Department of Financial
5523 Services shall ~~Insurance is directed to~~ prepare and submit a
5524 joint performance report to the President of the Senate and the
5525 Speaker of the House of Representatives by November 1, 2003, and
5526 then by January 1 of each year ~~November 1 every 3 years~~
5527 ~~thereafter, describing the results obtained in achieving~~
5528 ~~compliance with the workers' compensation coverage requirements~~



5529 ~~and reducing the incidence of workers' compensation fraud. The~~
5530 annual report must include, but need not be limited to:

5531 (a) The total number of initial referrals received, cases
5532 opened, cases presented for prosecution, cases closed, and
5533 convictions resulting from cases presented for prosecution by
5534 the Bureau of Workers' Compensation Insurance Fraud by type of
5535 workers' compensation fraud and circuit.

5536 (b) The number of referrals received from insurers and the
5537 Division of Workers' Compensation and the outcome of those
5538 referrals.

5539 (c) The number of investigations undertaken by the office
5540 which were not the result of a referral from an insurer or the
5541 Division of Workers' Compensation.

5542 (d) The number of investigations that resulted in a
5543 referral to a regulatory agency and the disposition of those
5544 referrals.

5545 (e) The number and reasons provided by local prosecutors
5546 or the statewide prosecutor for declining prosecution of a case
5547 presented by the office by circuit.

5548 (f) The total number of employees assigned to the office
5549 and the Division of Workers' Compliance unit delineated by
5550 location of staff assigned and the number and location of
5551 employees assigned to the office who were assigned to work other
5552 types of fraud cases.

5553 (g) The average caseload and turnaround time by type of
5554 case for each investigator and division compliance employee.



5555 (h) The training provided during the year to workers'
5556 compensation fraud investigators and the division's compliance
5557 employees.

5558 Section 44. Section 626.9891, Florida Statutes, is amended
5559 to read:

5560 626.9891 Insurer anti-fraud investigative units; reporting
5561 requirements; penalties for noncompliance.--

5562 (1) Every insurer admitted to do business in this state
5563 who in the previous calendar year, at any time during that year,
5564 had \$10 million or more in direct premiums written shall:

5565 (a) Establish and maintain a unit or division within the
5566 company to investigate possible fraudulent claims by insureds or
5567 by persons making claims for services or repairs against
5568 policies held by insureds; or

5569 (b) Contract with others to investigate possible
5570 fraudulent claims for services or repairs against policies held
5571 by insureds.

5572

5573 An insurer subject to this subsection shall file with the
5574 Division of Insurance Fraud of the department on or before July
5575 1, 1996, a detailed description of the unit or division
5576 established pursuant to paragraph (a) or a copy of the contract
5577 and related documents required by paragraph (b).

5578 (2) Every insurer admitted to do business in this state,
5579 which in the previous calendar year had less than \$10 million in
5580 direct premiums written, must adopt an anti-fraud plan and file
5581 it with the Division of Insurance Fraud of the department on or
5582 before July 1, 1996. An insurer may, in lieu of adopting and



5583 filing an anti-fraud plan, comply with the provisions of
5584 subsection (1).

5585 (3) Each insurers anti-fraud plans shall include:

5586 (a) A description of the insurer's procedures for
5587 detecting and investigating possible fraudulent insurance acts;

5588 (b) A description of the insurer's procedures for the
5589 mandatory reporting of possible fraudulent insurance acts to the
5590 Division of Insurance Fraud of the department;

5591 (c) A description of the insurer's plan for anti-fraud
5592 education and training of its claims adjusters or other
5593 personnel; and

5594 (d) A written description or chart outlining the
5595 organizational arrangement of the insurer's anti-fraud personnel
5596 who are responsible for the investigation and reporting of
5597 possible fraudulent insurance acts.

5598 (4) Any insurer who obtains a certificate of authority
5599 after July 1, 1995, shall have 18 months in which to comply with
5600 the requirements of this section.

5601 (5) For purposes of this section, the term "unit or
5602 division" includes the assignment of fraud investigation to
5603 employees whose principal responsibilities are the investigation
5604 and disposition of claims. If an insurer creates a distinct unit
5605 or division, hires additional employees, or contracts with
5606 another entity to fulfill the requirements of this section, the
5607 additional cost incurred must be included as an administrative
5608 expense for ratemaking purposes.

5609 (6) Each insurer writing workers' compensation insurance
5610 shall report to the department, on or before August 1 of each



5611 year, on its experience in implementing and maintaining an anti-
5612 fraud investigative unit or an anti-fraud plan. The report must
5613 include, at a minimum:

5614 (a) The dollar amount of recoveries and losses
5615 attributable to workers' compensation fraud delineated by the
5616 type of fraud: claimant, employer, provider, agent, or other.

5617 (b) The number of referrals to the Bureau of Workers'
5618 Compensation Fraud for the prior year.

5619 (c) A description of the organization of the anti-fraud
5620 investigative unit, if applicable, including the position titles
5621 and descriptions of staffing.

5622 (d) The rationale for the level of staffing and resources
5623 being provided for the anti-fraud investigative unit, which may
5624 include objective criteria such as number of policies written,
5625 number of claims received on an annual basis, volume of
5626 suspected fraudulent claims currently being detected, other
5627 factors, and an assessment of optimal caseload that can be
5628 handled by an investigator on an annual basis.

5629 (e) The in-service education and training provided to
5630 underwriting and claims personnel to assist in identifying and
5631 evaluating instances of suspected fraudulent activity in
5632 underwriting or claims activities.

5633 (f) A description of a public awareness program focused on
5634 the costs and frequency of insurance fraud and methods by which
5635 the public can prevent it.

5636 (7) If an insurer fails to submit a final anti-fraud plan
5637 or otherwise fails to submit a plan, fails to implement the
5638 provisions of a plan or an anti-fraud investigative unit, or



5639 otherwise refuses to comply with the provisions of this section,
5640 the department may:

5641 (a) Impose an administrative fine of not more than \$2,000
5642 per day for such failure by an insurer, until the department
5643 deems the insurer to be in compliance;

5644 (b) Impose upon the insurer a fraud detection and
5645 prevention plan that is deemed to be appropriate by the
5646 department and that must be implemented by the insurer; or

5647 (c) Impose the provisions of both paragraphs (a) and (b).

5648 (8) The department may adopt rules to administer this
5649 section.

5650 Section 45. Section 440.1925, Florida Statutes, is
5651 repealed.

5652 Section 46. Paragraph (h) of subsection (2) of section
5653 112.19, Florida Statutes, is amended to read:

5654 112.19 Law enforcement, correctional, and correctional
5655 probation officers; death benefits.--

5656 (2)

5657 (h)1. Any employer who employs a full-time law
5658 enforcement, correctional, or correctional probation officer
5659 who, on or after January 1, 1995, suffers a catastrophic injury,
5660 as defined in s. 440.02, Florida Statutes 2002, in the line of
5661 duty shall pay the entire premium of the employer's health
5662 insurance plan for the injured employee, the injured employee's
5663 spouse, and for each dependent child of the injured employee
5664 until the child reaches the age of majority or until the end of
5665 the calendar year in which the child reaches the age of 25 if
5666 the child continues to be dependent for support, or the child is



5667 a full-time or part-time student and is dependent for support.
5668 The term "health insurance plan" does not include supplemental
5669 benefits that are not part of the basic group health insurance
5670 plan. If the injured employee subsequently dies, the employer
5671 shall continue to pay the entire health insurance premium for
5672 the surviving spouse until remarried, and for the dependent
5673 children, under the conditions outlined in this paragraph.

5674 However:

5675 a. Health insurance benefits payable from any other source
5676 shall reduce benefits payable under this section.

5677 b. It is unlawful for a person to willfully and knowingly
5678 make, or cause to be made, or to assist, conspire with, or urge
5679 another to make, or cause to be made, any false, fraudulent, or
5680 misleading oral or written statement to obtain health insurance
5681 coverage as provided under this paragraph. A person who violates
5682 this sub-subparagraph commits a misdemeanor of the first degree,
5683 punishable as provided in s. 775.082 or s. 775.083.

5684 c. In addition to any applicable criminal penalty, upon
5685 conviction for a violation as described in sub-subparagraph b.,
5686 a law enforcement, correctional, or correctional probation
5687 officer or other beneficiary who receives or seeks to receive
5688 health insurance benefits under this paragraph shall forfeit the
5689 right to receive such health insurance benefits, and shall
5690 reimburse the employer for all benefits paid due to the fraud or
5691 other prohibited activity. For purposes of this sub-
5692 subparagraph, "conviction" means a determination of guilt that
5693 is the result of a plea or trial, regardless of whether
5694 adjudication is withheld.



5695 2. In order for the officer, spouse, and dependent
5696 children to be eligible for such insurance coverage, the injury
5697 must have occurred as the result of the officer's response to
5698 fresh pursuit, the officer's response to what is reasonably
5699 believed to be an emergency, or an unlawful act perpetrated by
5700 another. Except as otherwise provided herein, nothing in this
5701 paragraph shall be construed to limit health insurance coverage
5702 for which the officer, spouse, or dependent children may
5703 otherwise be eligible, except that a person who qualifies under
5704 this section shall not be eligible for the health insurance
5705 subsidy provided under chapter 121, chapter 175, or chapter 185.

5706 Section 47. Paragraph (g) of subsection (2) of section
5707 112.191, Florida Statutes, is amended to read:

5708 112.191 Firefighters; death benefits.--

5709 (2)

5710 (g)1. Any employer who employs a full-time firefighter
5711 who, on or after January 1, 1995, suffers a catastrophic injury,
5712 as defined in s. 440.02, Florida Statutes 2002, in the line of
5713 duty shall pay the entire premium of the employer's health
5714 insurance plan for the injured employee, the injured employee's
5715 spouse, and for each dependent child of the injured employee
5716 until the child reaches the age of majority or until the end of
5717 the calendar year in which the child reaches the age of 25 if
5718 the child continues to be dependent for support, or the child is
5719 a full-time or part-time student and is dependent for support.
5720 The term "health insurance plan" does not include supplemental
5721 benefits that are not part of the basic group health insurance
5722 plan. If the injured employee subsequently dies, the employer



5723 shall continue to pay the entire health insurance premium for
5724 the surviving spouse until remarried, and for the dependent
5725 children, under the conditions outlined in this paragraph.

5726 However:

5727 a. Health insurance benefits payable from any other source
5728 shall reduce benefits payable under this section.

5729 b. It is unlawful for a person to willfully and knowingly
5730 make, or cause to be made, or to assist, conspire with, or urge
5731 another to make, or cause to be made, any false, fraudulent, or
5732 misleading oral or written statement to obtain health insurance
5733 coverage as provided under this paragraph. A person who violates
5734 this sub-subparagraph commits a misdemeanor of the first degree,
5735 punishable as provided in s. 775.082 or s. 775.083.

5736 c. In addition to any applicable criminal penalty, upon
5737 conviction for a violation as described in sub-subparagraph b.,
5738 a firefighter or other beneficiary who receives or seeks to
5739 receive health insurance benefits under this paragraph shall
5740 forfeit the right to receive such health insurance benefits, and
5741 shall reimburse the employer for all benefits paid due to the
5742 fraud or other prohibited activity. For purposes of this sub-
5743 subparagraph, "conviction" means a determination of guilt that
5744 is the result of a plea or trial, regardless of whether
5745 adjudication is withheld.

5746 2. In order for the firefighter, spouse, and dependent
5747 children to be eligible for such insurance coverage, the injury
5748 must have occurred as the result of the firefighter's response
5749 to what is reasonably believed to be an emergency involving the
5750 protection of life or property, or an unlawful act perpetrated



5751 | by another. Except as otherwise provided herein, nothing in this
5752 | paragraph shall be construed to limit health insurance coverage
5753 | for which the firefighter, spouse, or dependent children may
5754 | otherwise be eligible, except that a person who qualifies for
5755 | benefits under this section shall not be eligible for the health
5756 | insurance subsidy provided under chapter 121, chapter 175, or
5757 | chapter 185.

5758 | Section 48. The amendments to ss. 440.02 and 440.15,
5759 | Florida Statutes, which are made by this act shall not be
5760 | construed to affect any determination of disability under s.
5761 | 112.18, s. 112.181, or s. 112.19, Florida Statutes.

5762 | Section 49. If any law amended by this act was also
5763 | amended by a law enacted at the 2003 Regular Session of the
5764 | Legislature, such laws shall be construed as if they had been
5765 | enacted at the same session of the Legislature, and full effect
5766 | shall be given to each if possible.

5767 | Section 50. Except as otherwise provided herein, this act
5768 | shall take effect October 1, 2003.