

By Senators Clary, Alexander and Atwater

4-2575B-03

See HB 25A, Engrossed 1

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

1 violations; providing sanctions for violation
2 of stop-work orders and presentation of certain
3 false or misleading statements as evidence;
4 amending s. 440.1051, F.S.; increasing criminal
5 penalty for false reports; amending s. 440.107,
6 F.S.; providing additional powers to the
7 Department of Financial Services relating to
8 compliance and enforcement; providing a
9 definition; providing penalties; amending s.
10 440.11, F.S.; providing exclusiveness of
11 liability; revising provisions relating to
12 employer and safety consultant immunity from
13 liability; amending s. 440.13, F.S.; providing
14 for practice parameters and treatment
15 protocols; revising provisions relating to
16 provider reimbursement; requiring revision of
17 specified reimbursement schedules; providing
18 for release of information; providing
19 additional criteria for independent medical
20 examinations; providing a definition; providing
21 standards for medical care under ch. 440, F.S.;
22 providing penalties; amending s. 440.134, F.S.;
23 revising provisions relating to managed care
24 arrangements; revising definitions; providing
25 for assignment of a medical care coordinator;
26 amending s. 440.14, F.S.; revising provisions
27 relating to calculation of average weekly wage
28 for injured employees; conforming
29 cross-references; amending s. 440.15, F.S.;
30 providing additional limitations on
31 compensation for permanent total disability;

1 providing a definition; specifying impairment
2 benefits and providing for partial reduction
3 under certain circumstances; deleting
4 provisions relating to supplemental benefits;
5 amending s. 440.151, F.S.; specifying
6 compensability of occupational disease;
7 providing a definition; amending s. 440.16,
8 F.S.; increasing the limits on the amount of
9 certain benefits paid as compensation for
10 death; amending s. 440.185, F.S.; specifying
11 duty of employer upon receipt of notice of
12 injury or death; increasing penalties for
13 noncompliance; amending s. 440.192, F.S.;
14 revising procedure for resolving benefit
15 disputes; requiring a petition for benefits to
16 include all claims which are ripe, due, and
17 owing; providing that the Chief Judge, rather
18 than the Deputy Chief Judge, shall refer
19 petitions for benefits; creating s. 440.1926,
20 F.S.; providing for alternative dispute
21 resolution and arbitration of claims; amending
22 s. 440.20, F.S.; revising provisions relating
23 to timely payment of compensation and medical
24 bills and penalties for late payment;
25 prohibiting the clerk of the circuit court from
26 assessing certain fees or costs; amending s.
27 440.25, F.S.; revising procedures for mediation
28 and hearings; amending s. 440.34, F.S.;
29 revising provisions relating to the award of
30 attorney's fees; amending s. 440.38, F.S.;
31 providing requirement for employers with

1 coverage provided by insurers from outside the
2 state; amending s. 440.381, F.S.; providing
3 criminal penalty for unlawful applications;
4 requiring on-site audits of employers under
5 certain circumstances; amending s. 440.42,
6 F.S.; revising provision relating to notice of
7 cancellation of coverage; amending s. 440.49,
8 F.S., to conform cross-references; amending s.
9 440.491, F.S.; providing training and education
10 requirements and benefits relating to
11 reemployment of injured workers; providing for
12 rules; amending s. 440.525, F.S.; providing for
13 the Office of Insurance Regulation of the
14 Financial Services Commission to conduct
15 examinations and investigations of
16 claims-handling entities; providing penalties;
17 providing for rules; amending s. 627.162, F.S.;
18 revising delinquency and collection fee for
19 late payment of premium installments; creating
20 s. 627.285, F.S.; providing for annual
21 actuarial peer review of rating organization
22 processes; requiring a report; amending s.
23 627.311, F.S.; revising membership of the board
24 of governors of the workers' compensation joint
25 underwriting plan; requiring participation in
26 safety programs; providing for an additional
27 subplan within the joint underwriting plan for
28 workers' compensation insurance; providing for
29 rates, surcharges, and assessments; limiting
30 assessment powers; amending s. 921.0022, F.S.;
31 revising the offense severity ranking chart to

1 reflect changes in penalties under the act;
2 requiring a report to the Legislature from the
3 Department of Financial Services regarding
4 provisions of law relating to enforcement;
5 amending ss. 946.523 and 985.315, F.S., to
6 conform cross-references; establishing a Joint
7 Select Committee on Workers' Compensation
8 Rating Reform and specifying duties thereof;
9 providing for termination of the committee;
10 requiring the board of governors of the
11 workers' compensation joint underwriting plan
12 to submit a report to the Legislature; amending
13 s. 443.1715, F.S.; revising provisions relating
14 to records and reports; providing for
15 disclosure of specified information; amending
16 s. 625.989, F.S.; providing that the Department
17 of Financial Services shall prepare an annual
18 report relating to workers' compensation fraud
19 and compliance; amending s. 626.9891, F.S.;
20 amending reporting requirements for insurers;
21 providing penalties for noncompliance;
22 providing for rules; repealing s. 440.1925,
23 F.S., relating to procedure for resolving
24 maximum medical improvement or permanent
25 impairment disputes; providing that amendments
26 to ss. 440.02 and 440.15, F.S., do not affect
27 certain disability, determination, and
28 benefits; providing for construction of the act
29 in pari materia with laws enacted during the
30 Regular Session of the Legislature; providing
31 effective dates.

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

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

6 440.02 Definitions.--When used in this chapter, unless
7 the context clearly requires otherwise, the following terms
8 shall have the following meanings:

9 (1) "Accident" means only an unexpected or unusual
10 event or result that happens suddenly. ~~A mental or nervous~~
11 ~~injury due to stress, fright, or excitement only, or~~
12 Disability or death due to the accidental acceleration or
13 aggravation of a venereal disease or of a disease due to the
14 habitual use of alcohol or controlled substances or narcotic
15 drugs, or a disease that manifests itself in the fear of or
16 dislike for an individual because of the individual's race,
17 color, religion, sex, national origin, age, or handicap is not
18 an injury by accident arising out of the employment. Subject
19 to s. 440.15(5), if a preexisting disease or anomaly is
20 accelerated or aggravated by an accident arising out of and in
21 the course of employment, only acceleration of death or
22 acceleration or aggravation of the preexisting condition
23 reasonably attributable to the accident is compensable, with
24 respect to any compensation otherwise payable under this
25 chapter ~~death or permanent impairment.~~ An injury or disease
26 caused by exposure to a toxic substance, including, but not
27 limited to, fungus or mold, is not an injury by accident
28 arising out of the employment unless there is clear and
29 convincing evidence establishing that exposure to the specific
30 substance involved, at the levels to which the employee was

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1 exposed, can cause the injury or disease sustained by the
2 employee.

3 (15)(a) "Employee" means any person engaged in any
4 employment under any appointment or contract of hire or
5 apprenticeship, express or implied, oral or written, whether
6 lawfully or unlawfully employed, and includes, but is not
7 limited to, aliens and minors.

8 (b) "Employee" includes any person who is an officer
9 of a corporation and who performs services for remuneration
10 for such corporation within this state, whether or not such
11 services are continuous.

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

15 2. As to officers of a corporation who are actively
16 engaged in the construction industry, no more than three
17 officers may elect to be exempt from this chapter by filing
18 written notice of the election with the department as provided
19 in s. 440.05. ~~However, any exemption obtained by a corporate~~
20 ~~officer of a corporation actively engaged in the construction~~
21 ~~industry is not applicable with respect to any commercial~~
22 ~~building project estimated to be valued at \$250,000 or~~
23 ~~greater.~~

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

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

1 (c) ~~1.~~ "Employee" includes a sole proprietor or a
2 partner who devotes full time to the proprietorship or
3 partnership and, except as provided in this paragraph, elects
4 to be included in the definition of employee by filing notice
5 thereof as provided in s. 440.05. Partners or sole proprietors
6 actively engaged in the construction industry are considered
7 employees unless they elect to be excluded from the definition
8 of employee by filing written notice of the election with the
9 department as provided in s. 440.05. However, no more than
10 three partners in a partnership that is actively engaged in
11 the construction industry may elect to be excluded. A sole
12 proprietor or partner who is actively engaged in the
13 construction industry and who elects to be exempt from this
14 chapter by filing a written notice of the election with the
15 department as provided in s. 440.05 is not an employee. For
16 purposes of this chapter, an independent contractor is an
17 employee unless he or she meets all of the conditions set
18 forth in subparagraph (d)1.

19 ~~2. Notwithstanding the provisions of subparagraph 1.,~~
20 ~~the term "employee" includes a sole proprietor or partner~~
21 ~~actively engaged in the construction industry with respect to~~
22 ~~any commercial building project estimated to be valued at~~
23 ~~\$250,000 or greater. Any exemption obtained is not applicable,~~
24 ~~with respect to work performed at such a commercial building~~
25 ~~project.~~

26 (d) "Employee" does not include:
27 1. An independent contractor, if:
28 a. The independent contractor maintains a separate
29 business with his or her own work facility, truck, equipment,
30 materials, or similar accommodations;

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1 b. The independent contractor holds or has applied for
2 a federal employer identification number, unless the
3 independent contractor is a sole proprietor who is not
4 required to obtain a federal employer identification number
5 under state or federal requirements;

6 c. The independent contractor performs or agrees to
7 perform specific services or work for specific amounts of
8 money and controls the means of performing the services or
9 work;

10 d. The independent contractor incurs the principal
11 expenses related to the service or work that he or she
12 performs or agrees to perform;

13 e. The independent contractor is responsible for the
14 satisfactory completion of work or services that he or she
15 performs or agrees to perform and is or could be held liable
16 for a failure to complete the work or services;

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

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

22 h. The independent contractor has continuing or
23 recurring business liabilities or obligations; and

24 i. The success or failure of the independent
25 contractor's business depends on the relationship of business
26 receipts to expenditures.

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28 However, the determination as to whether an individual
29 included in the Standard Industrial Classification Manual of
30 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,
31 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,

1 2448, or 2449, or a newspaper delivery person, is an
2 independent contractor is governed not by the criteria in this
3 paragraph but by common-law principles, giving due
4 consideration to the business activity of the individual.
5 ~~Notwithstanding the provisions of this paragraph or any other~~
6 ~~provision of this chapter, with respect to any commercial~~
7 ~~building project estimated to be valued at \$250,000 or~~
8 ~~greater, a person who is actively engaged in the construction~~
9 ~~industry is not an independent contractor and is either an~~
10 ~~employer or an employee who may not be exempt from the~~
11 ~~coverage requirements of this chapter.~~

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

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

20 4. An owner-operator of a motor vehicle who transports
21 property under a written contract with a motor carrier which
22 evidences a relationship by which the owner-operator assumes
23 the responsibility of an employer for the performance of the
24 contract, if the owner-operator is required to furnish the
25 necessary motor vehicle equipment and all costs incidental to
26 the performance of the contract, including, but not limited
27 to, fuel, taxes, licenses, repairs, and hired help; and the
28 owner-operator is paid a commission for transportation service
29 and is not paid by the hour or on some other time-measured
30 basis.

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1 5. A person whose employment is both casual and not in
2 the course of the trade, business, profession, or occupation
3 of the employer.

4 6. A volunteer, except a volunteer worker for the
5 state or a county, municipality, or other governmental entity.

6 A person who does not receive monetary remuneration for
7 services is presumed to be a volunteer unless there is
8 substantial evidence that a valuable consideration was
9 intended by both employer and employee. For purposes of this
10 chapter, the term "volunteer" includes, but is not limited to:

11 a. Persons who serve in private nonprofit agencies and
12 who receive no compensation other than expenses in an amount
13 less than or equivalent to the standard mileage and per-diem
14 expenses provided to salaried employees in the same agency or,
15 if such agency does not have salaried employees who receive
16 mileage and per diem, then such volunteers who receive no
17 compensation other than expenses in an amount less than or
18 equivalent to the customary mileage and per diem paid to
19 salaried workers in the community as determined by the
20 department; and

21 b. Volunteers participating in federal programs
22 established under Pub. L. No. 93-113.

23 7. Any officer of a corporation who elects to be
24 exempt from this chapter.

25 8. A sole proprietor or officer of a corporation who
26 actively engages in the construction industry, and a partner
27 in a partnership that is actively engaged in the construction
28 industry, who elects to be exempt from the provisions of this
29 chapter. Such sole proprietor, officer, or partner is not an
30 employee for any reason until the notice of revocation of
31 election filed pursuant to s. 440.05 is effective.

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

7 10. A taxicab, limousine, or other passenger
8 vehicle-for-hire driver who operates said vehicles pursuant to
9 a written agreement with a company which provides any
10 dispatch, marketing, insurance, communications, or other
11 services under which the driver and any fees or charges paid
12 by the driver to the company for such services are not
13 conditioned upon, or expressed as a proportion of, fare
14 revenues.

15 11. A person who performs services as a sports
16 official for an entity sponsoring an interscholastic sports
17 event or for a public entity or private, nonprofit
18 organization that sponsors an amateur sports event. For
19 purposes of this subparagraph, such a person is an independent
20 contractor. For purposes of this subparagraph, the term
21 "sports official" means any person who is a neutral
22 participant in a sports event, including, but not limited to,
23 umpires, referees, judges, linespersons, scorekeepers, or
24 timekeepers. This subparagraph does not apply to any person
25 employed by a district school board who serves as a sports
26 official as required by the employing school board or who
27 serves as a sports official as part of his or her
28 responsibilities during normal school hours.

29 (29) "Weekly compensation rate" means and refers to
30 the amount of compensation payable for a period of 7
31 consecutive calendar days, including any Saturdays, Sundays,

1 holidays, and other nonworking days which fall within such
2 period of 7 consecutive calendar days. When Saturdays,
3 Sundays, holidays, or other nonworking days immediately follow
4 the first 7 calendar days of disability or occur at the end of
5 a period of disability as the last day or days of such period,
6 such nonworking days constitute a part of the period of
7 disability with respect to which compensation is payable.

8 (38) "Catastrophic injury" means a permanent
9 impairment constituted by the loss of both hands, both arms,
10 both feet, both legs, or both eyes, or any two thereof, or
11 paraplegia or quadriplegia.†

12 ~~(a) Spinal cord injury involving severe paralysis of~~
13 ~~an arm, a leg, or the trunk;†~~

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

16 ~~(c) Severe brain or closed-head injury as evidenced~~
17 ~~by:†~~

18 ~~1. Severe sensory or motor disturbances;†~~

19 ~~2. Severe communication disturbances;†~~

20 ~~3. Severe complex integrated disturbances of cerebral~~
21 ~~function;†~~

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

23 ~~5. Other severe brain and closed-head injury~~
24 ~~conditions at least as severe in nature as any condition~~
25 ~~provided in subparagraphs 1.-4.†~~

26 ~~(d) Second-degree or third-degree burns of 25 percent~~
27 ~~or more of the total body surface or third-degree burns of 5~~
28 ~~percent or more to the face and hands;†~~

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

30 ~~(f) Any other injury that would otherwise qualify under~~
31 ~~this chapter of a nature and severity that would qualify an~~

1 ~~employee to receive disability income benefits under Title II~~
2 ~~or supplemental security income benefits under Title XVI of~~
3 ~~the federal Social Security Act as the Social Security Act~~
4 ~~existed on July 1, 1992, without regard to any time~~
5 ~~limitations provided under that act.~~

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

13 (41) "Specificity" means information on the petition
14 for benefits sufficient to put the employer or carrier on
15 notice of the exact statutory classification and outstanding
16 time period of benefits being requested and includes a
17 detailed explanation of any benefits received that should be
18 increased, decreased, changed, or otherwise modified. If the
19 petition is for medical benefits, the information shall
20 include specific details as to why such benefits are being
21 requested, why such benefits are medically necessary, and why
22 current treatment, if any, is not sufficient. Any petition
23 requesting alternate or other medical care, including, but not
24 limited to, petitions requesting psychiatric or psychological
25 treatment, must specifically identify the physician, as
26 defined in s. 440.13(1), that is recommending such treatment.
27 A copy of a report from such physician making the
28 recommendation for alternate or other medical care shall also
29 be attached to the petition. A judge of compensation claims
30 shall not order such treatment if a physician is not
31 recommending such treatment. ~~"Commercial building" means any~~

1 ~~building or structure intended for commercial or industrial~~
2 ~~use, or any building or structure intended for multifamily use~~
3 ~~of more than four dwelling units, as well as any accessory use~~
4 ~~structures constructed in conjunction with the principal~~
5 ~~structure. The term, "commercial building," does not include~~
6 ~~the conversion of any existing residential building to a~~
7 ~~commercial building.~~

8 ~~(42) "Residential building" means any building or~~
9 ~~structure intended for residential use containing four or~~
10 ~~fewer dwelling units and any structures intended as an~~
11 ~~accessory use to the residential structure.~~

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

15 440.02 Definitions.--When used in this chapter, unless
16 the context clearly requires otherwise, the following terms
17 shall have the following meanings:

18 (8) "Construction industry" means for-profit
19 activities involving ~~the carrying out of~~ any building,
20 clearing, filling, excavation, or substantial improvement in
21 the size or use of any structure or the appearance of any
22 land. ~~When appropriate to the context, "construction" refers~~
23 ~~to the act of construction or the result of construction.~~
24 However, "construction" does ~~shall~~ not mean a homeowner's
25 ~~landowner's~~ act of construction or the result of a
26 construction upon his or her own premises, provided such
27 premises are not intended to be sold, or resold, or leased by
28 the owner within 1 year after the commencement of
29 construction. The division may, by rule, establish standard
30 industrial classification codes and definitions thereof which
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1 meet the criteria of the term "construction industry" as set
2 forth in this section.

3 (15)(a) "Employee" means any person who receives
4 remuneration from an employer for the performance of any work
5 or service while engaged in any employment under any
6 appointment or contract ~~for~~ of hire or apprenticeship, express
7 or implied, oral or written, whether lawfully or unlawfully
8 employed, and includes, but is not limited to, aliens and
9 minors.

10 (b) "Employee" includes any person who is an officer
11 of a corporation and who performs services for remuneration
12 for such corporation within this state, whether or not such
13 services are continuous.

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

17 2. As to officers of a corporation who are ~~actively~~
18 engaged in the construction industry, no more than three
19 officers of a corporation or of any group of affiliated
20 corporations may elect to be exempt from this chapter by
21 filing written notice of the election with the department as
22 provided in s. 440.05. Officers must be shareholders, each
23 owning at least 10 percent of the stock of such corporation
24 and listed as an officer of such corporation with the Division
25 of Corporations of the Department of State, in order to elect
26 exemptions under this chapter. For purposes of this
27 subparagraph, the term "affiliated" means and includes one or
28 more corporations or entities, any one of which is a
29 corporation engaged in the construction industry, under the
30 same or substantially the same control of a group of business
31 entities which are connected or associated so that one entity

1 controls or has the power to control each of the other
2 business entities. The term "affiliated" includes, but is not
3 limited to, the officers, directors, executives, shareholders
4 active in management, employees, and agents of the affiliated
5 corporation. The ownership by one business entity of a
6 controlling interest in another business entity or a pooling
7 of equipment or income among business entities shall be prima
8 facie evidence that one business is affiliated with the other.

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

13
14 Services are presumed to have been rendered to the corporation
15 if the officer is compensated by other than dividends upon
16 shares of stock of the corporation which the officer owns.

17 (c) "Employee" includes:

18 1. A sole proprietor or a partner who is not engaged
19 in the construction industry, devotes full time to the
20 proprietorship or partnership, and, ~~except as provided in this~~
21 paragraph, elects to be included in the definition of employee
22 by filing notice thereof as provided in s. 440.05. ~~Partners or~~
23 sole proprietors actively engaged in the construction industry
24 are considered employees unless they elect to be excluded from
25 the definition of employee by filing written notice of the
26 election with the department as provided in s. 440.05.

27 ~~However, no more than three partners in a partnership that is~~
28 ~~actively engaged in the construction industry may elect to be~~
29 ~~excluded. A sole proprietor or partner who is actively engaged~~
30 ~~in the construction industry and who elects to be exempt from~~
31 ~~this chapter by filing a written notice of the election with~~

1 ~~the department as provided in s. 440.05 is not an employee.~~
2 ~~For purposes of this chapter, an independent contractor is an~~
3 ~~employee unless he or she meets all of the conditions set~~
4 ~~forth in subparagraph (d)1.~~
5 2. All persons who are being paid by a construction
6 contractor as a subcontractor, unless the subcontractor has
7 validly elected an exemption as permitted by this chapter, or
8 has otherwise secured the payment of compensation coverage as
9 a subcontractor, consistent with s. 440.10, for work performed
10 by or as a subcontractor.
11 3. An independent contractor working or performing
12 services in the construction industry.
13 4. A sole proprietor who engages in the construction
14 industry and a partner or partnership that is engaged in the
15 construction industry.
16 (d) "Employee" does not include:
17 1. An independent contractor who is not engaged in the
18 construction industry., if:
19 a. In order to meet the definition of independent
20 contractor, at least four of the following criteria must be
21 met:
22 (I) The independent contractor maintains a separate
23 business with his or her own work facility, truck, equipment,
24 materials, or similar accommodations;
25 (II) The independent contractor holds or has applied
26 for a federal employer identification number, unless the
27 independent contractor is a sole proprietor who is not
28 required to obtain a federal employer identification number
29 under state or federal regulations;
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1 (III) The independent contractor receives compensation
2 for services rendered or work performed and such compensation
3 is paid to a business rather than to an individual;

4 (IV) The independent contractor holds one or more bank
5 accounts in the name of the business entity for purposes of
6 paying business expenses or other expenses related to services
7 rendered or work performed for compensation;

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

12 (VI) The independent contractor receives compensation
13 for work or services rendered on a competitive-bid basis or
14 completion of a task or a set of tasks as defined by a
15 contractual agreement, unless such contractual agreement
16 expressly states that an employment relationship exists. The
17 independent contractor maintains a separate business with his
18 or her own work facility, truck, equipment, materials, or
19 similar accommodations;

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

25 (I) The independent contractor performs or agrees to
26 perform specific services or work for a specific amount of
27 money and controls the means of performing the services or
28 work.

29 (II) The independent contractor incurs the principal
30 expenses related to the service or work that he or she
31 performs or agrees to perform.

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

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

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

9 (VI) The independent contractor has continuing or
10 recurring business liabilities or obligations.

11 (VII) The success or failure of the independent
12 contractor's business depends on the relationship of business
13 receipts to expenditures.~~The independent contractor holds or~~
14 ~~has applied for a federal employer identification number,~~
15 ~~unless the independent contractor is a sole proprietor who is~~
16 ~~not required to obtain a federal employer identification~~
17 ~~number under state or federal requirements.~~

18 c. Notwithstanding anything to the contrary in this
19 subparagraph, an individual claiming to be an independent
20 contractor has the burden of proving that he or she is an
21 independent contractor for purposes of this chapter. ~~The~~
22 ~~independent contractor performs or agrees to perform specific~~
23 ~~services or work for specific amounts of money and controls~~
24 ~~the means of performing the services or work.~~

25 d. ~~The independent contractor incurs the principal~~
26 ~~expenses related to the service or work that he or she~~
27 ~~performs or agrees to perform.~~

28 e. ~~The independent contractor is responsible for the~~
29 ~~satisfactory completion of work or services that he or she~~
30 ~~performs or agrees to perform and is or could be held liable~~
31 ~~for a failure to complete the work or services.~~

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

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

6 ~~h. The independent contractor has continuing or~~
7 ~~recurring business liabilities or obligations; and~~

8 ~~i. The success or failure of the independent~~
9 ~~contractor's business depends on the relationship of business~~
10 ~~receipts to expenditures.~~

11
12 ~~However, the determination as to whether an individual~~
13 ~~included in the Standard Industrial Classification Manual of~~
14 ~~1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,~~
15 ~~0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,~~
16 ~~2448, or 2449, or a newspaper delivery person, is an~~
17 ~~independent contractor is governed not by the criteria in this~~
18 ~~paragraph but by common-law principles, giving due~~
19 ~~consideration to the business activity of the individual.~~

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

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

28 4. An owner-operator of a motor vehicle who transports
29 property under a written contract with a motor carrier which
30 evidences a relationship by which the owner-operator assumes
31 the responsibility of an employer for the performance of the

1 contract, if the owner-operator is required to furnish the
2 necessary motor vehicle equipment and all costs incidental to
3 the performance of the contract, including, but not limited
4 to, fuel, taxes, licenses, repairs, and hired help; and the
5 owner-operator is paid a commission for transportation service
6 and is not paid by the hour or on some other time-measured
7 basis.

8 5. A person whose employment is both casual and not in
9 the course of the trade, business, profession, or occupation
10 of the employer.

11 6. A volunteer, except a volunteer worker for the
12 state or a county, municipality, or other governmental entity.
13 A person who does not receive monetary remuneration for
14 services is presumed to be a volunteer unless there is
15 substantial evidence that a valuable consideration was
16 intended by both employer and employee. For purposes of this
17 chapter, the term "volunteer" includes, but is not limited to:

18 a. Persons who serve in private nonprofit agencies and
19 who receive no compensation other than expenses in an amount
20 less than or equivalent to the standard mileage and per diem
21 expenses provided to salaried employees in the same agency or,
22 if such agency does not have salaried employees who receive
23 mileage and per diem, then such volunteers who receive no
24 compensation other than expenses in an amount less than or
25 equivalent to the customary mileage and per diem paid to
26 salaried workers in the community as determined by the
27 department; and

28 b. Volunteers participating in federal programs
29 established under Pub. L. No. 93-113.

30 7. Unless otherwise prohibited by this chapter, any
31 officer of a corporation who elects to be exempt from this

1 chapter. Such officer is not an employee for any reason under
2 this chapter until the notice of revocation of election filed
3 pursuant to s. 440.05 is effective.

4 8. ~~An a sole proprietor or officer of a corporation~~
5 ~~who actively engages in the construction industry, and a~~
6 ~~partner in a partnership that is actively engaged in the~~
7 ~~construction industry, who elects to be exempt from the~~
8 ~~provisions of this chapter, as otherwise permitted by this~~
9 ~~chapter.~~ Such sole proprietor, officer, or partner is not an
10 employee for any reason until the notice of revocation of
11 election filed pursuant to s. 440.05 is effective.

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

18 10. A taxicab, limousine, or other passenger
19 vehicle-for-hire driver who operates said vehicles pursuant to
20 a written agreement with a company which provides any
21 dispatch, marketing, insurance, communications, or other
22 services under which the driver and any fees or charges paid
23 by the driver to the company for such services are not
24 conditioned upon, or expressed as a proportion of, fare
25 revenues.

26 11. A person who performs services as a sports
27 official for an entity sponsoring an interscholastic sports
28 event or for a public entity or private, nonprofit
29 organization that sponsors an amateur sports event. For
30 purposes of this subparagraph, such a person is an independent
31 contractor. For purposes of this subparagraph, the term

1 "sports official" means any person who is a neutral
2 participant in a sports event, including, but not limited to,
3 umpires, referees, judges, linespersons, scorekeepers, or
4 timekeepers. This subparagraph does not apply to any person
5 employed by a district school board who serves as a sports
6 official as required by the employing school board or who
7 serves as a sports official as part of his or her
8 responsibilities during normal school hours.

9 12. Medicaid-enrolled clients under chapter 393 who
10 are excluded from the definition of employment under s.
11 443.036(21)(d)5. and served by Adult Day Training Services
12 under the Home and Community-Based Medicaid Waiver program in
13 a sheltered workshop setting licensed by the United States
14 Department of Labor for the purpose of training and earning
15 less than the federal hourly minimum wage.

16 (16)(a) "Employer" means the state and all political
17 subdivisions thereof, all public and quasi-public corporations
18 therein, every person carrying on any employment, and the
19 legal representative of a deceased person or the receiver or
20 trustees of any person. "Employer" also includes employment
21 agencies, employee leasing companies, and similar agents who
22 provide employees to other persons. If the employer is a
23 corporation, parties in actual control of the corporation,
24 including, but not limited to, the president, officers who
25 exercise broad corporate powers, directors, and all
26 shareholders who directly or indirectly own a controlling
27 interest in the corporation, are considered the employer for
28 the purposes of ss. 440.105, and 440.106, and 440.107.

29 (b) A homeowner shall not be considered the employer
30 of persons hired by the homeowner to carry out construction on
31

1 the homeowner's own premises if those premises are not
2 intended for immediate lease, sale, or resale.

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

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

14 440.05 Election of exemption; revocation of election;
15 notice; certification.--

16 (3) Each ~~sole proprietor, partner, or~~ officer of a
17 corporation who is actively engaged in the construction
18 industry and who elects an exemption from this chapter or who,
19 after electing such exemption, revokes that exemption, must
20 mail a written notice to such effect to the department on a
21 form prescribed by the department. The notice of election to
22 be exempt from the provisions of this chapter must be
23 notarized and under oath. The notice of election to be exempt
24 which is submitted to the department by the ~~sole proprietor,~~
25 ~~partner, or~~ officer of a corporation who is allowed to claim
26 an exemption as provided by this chapter must list the name,
27 federal tax identification number, social security number, all
28 certified or registered licenses issued pursuant to chapter
29 489 held by the person seeking the exemption, a copy of
30 relevant documentation as to employment status filed with the
31 Internal Revenue Service as specified by the department, a

1 copy of the relevant occupational license in the primary
2 jurisdiction of the business, and, ~~for corporate officers and~~
3 ~~partners,~~ the registration number of the corporation ~~or~~
4 ~~partnership~~ filed with the Division of Corporations of the
5 Department of State along with a copy of the stock certificate
6 evidencing the required ownership under this chapter. The
7 notice of election to be exempt must identify each ~~sole~~
8 ~~proprietorship, partnership, or~~ corporation that employs the
9 person electing the exemption and must list the social
10 security number or federal tax identification number of each
11 such employer and the additional documentation required by
12 this section. In addition, the notice of election to be exempt
13 must provide that the ~~sole proprietor, partner, or officer~~
14 electing an exemption is not entitled to benefits under this
15 chapter, must provide that the election does not exceed
16 exemption limits for officers ~~and partnerships~~ provided in s.
17 440.02, and must certify that any employees of the corporation
18 whose ~~sole proprietor, partner, or officer~~ elects ~~electing~~ an
19 exemption are covered by workers' compensation insurance. Upon
20 receipt of the notice of the election to be exempt, receipt of
21 all application fees, and a determination by the department
22 that the notice meets the requirements of this subsection, the
23 department shall issue a certification of the election to the
24 ~~sole proprietor, partner, or officer,~~ unless the department
25 determines that the information contained in the notice is
26 invalid. The department shall revoke a certificate of election
27 to be exempt from coverage upon a determination by the
28 department that the person does not meet the requirements for
29 exemption or that the information contained in the notice of
30 election to be exempt is invalid. The certificate of election
31 must list the name ~~names~~ of the ~~sole proprietorship,~~

1 ~~partnership, or~~ corporation listed in the request for
2 exemption. A new certificate of election must be obtained each
3 time the person is employed by a new ~~sole proprietorship,~~
4 ~~partnership,~~ or different corporation that is not listed on
5 the certificate of election. A copy of the certificate of
6 election must be sent to each workers' compensation carrier
7 identified in the request for exemption. Upon filing a notice
8 of revocation of election, an ~~a sole proprietor, partner, or~~
9 officer who is a subcontractor or an officer of a corporate
10 subcontractor must notify her or his contractor. Upon
11 revocation of a certificate of election of exemption by the
12 department, the department shall notify the workers'
13 compensation carriers identified in the request for exemption.

14 (4) The notice of election to be exempt from the
15 provisions of this chapter must contain a notice that clearly
16 states in substance the following: "Any person who, knowingly
17 and with intent to injure, defraud, or deceive the department
18 or any employer or employee, insurance company, or any other
19 person ~~purposes program~~, files a notice of election to be
20 exempt containing any false or misleading information is
21 guilty of a felony of the third degree." Each person filing a
22 notice of election to be exempt shall personally sign the
23 notice and attest that he or she has reviewed, understands,
24 and acknowledges the foregoing notice.

25 (6) A construction industry certificate of election to
26 be exempt which is issued in accordance with this section
27 shall be valid for 2 years after the effective date stated
28 thereon. Both the effective date and the expiration date must
29 be listed on the face of the certificate by the department.
30 The construction industry certificate must expire at midnight,
31 2 years from its issue date, as noted on the face of the

1 exemption certificate. Any person who has received from the
2 division a construction industry certificate of election to be
3 exempt which is in effect on December 31, 1998, shall file a
4 new notice of election to be exempt by the last day in his or
5 her birth month following December 1, 1998. A construction
6 industry certificate of election to be exempt may be revoked
7 before its expiration by the ~~sole proprietor, partner, or~~
8 officer for whom it was issued or by the department for the
9 reasons stated in this section. At least 60 days prior to the
10 expiration date of a construction industry certificate of
11 exemption issued after December 1, 1998, the department shall
12 send notice of the expiration date and an application for
13 renewal to the certificateholder at the address on the
14 certificate.

15 (10) Each ~~sole proprietor, partner, or~~ officer of a
16 corporation who is actively engaged in the construction
17 industry and who elects an exemption from this chapter shall
18 maintain business records as specified by the division by
19 rule, which rules must include the provision that any
20 corporation with exempt officers ~~and any partnership~~ actively
21 engaged in the construction industry ~~with exempt partners~~ must
22 maintain written statements of those exempted persons
23 affirmatively acknowledging each such individual's exempt
24 status.

25 ~~(11) Any sole proprietor or partner actively engaged~~
26 ~~in the construction industry claiming an exemption under this~~
27 ~~section shall maintain a copy of his or her federal income tax~~
28 ~~records for each of the immediately previous 3 years in which~~
29 ~~he or she claims an exemption. Such federal income tax records~~
30 ~~must include a complete copy of the following for each year in~~
31 ~~which an exemption is claimed:~~

1 ~~(a) For sole proprietors, a copy of Federal Income Tax~~
2 ~~Form 1040 and its accompanying Schedule C.~~

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

6
7 ~~A sole proprietor or partner shall produce, upon request by~~
8 ~~the division, a copy of those documents together with a~~
9 ~~statement by the sole proprietor or partner that the tax~~
10 ~~records provided are true and accurate copies of what the sole~~
11 ~~proprietor or partner has filed with the federal Internal~~
12 ~~Revenue Service. The statement must be signed under oath by~~
13 ~~the sole proprietor or partner and must be notarized. The~~
14 ~~division shall issue a stop-work order under s. 440.107(5) to~~
15 ~~any sole proprietor or partner who fails or refuses to produce~~
16 ~~a copy of the tax records and affidavit required under this~~
17 ~~paragraph to the division within 3 business days after the~~
18 ~~request is made.~~

19 ~~(12) For those sole proprietors or partners that have~~
20 ~~not been in business long enough to provide the information~~
21 ~~required of an established business, the division shall~~
22 ~~require such sole proprietor or partner to provide copies of~~
23 ~~the most recently filed Federal Income Tax Form 1040. The~~
24 ~~division shall establish by rule such other criteria to show~~
25 ~~that the sole proprietor or partner intends to engage in a~~
26 ~~legitimate enterprise within the construction industry and is~~
27 ~~not otherwise attempting to evade the requirements of this~~
28 ~~section. The division shall establish by rule the form and~~
29 ~~format of financial information required to be submitted by~~
30 ~~such employers.~~

31

1 ~~(11)(13)~~ Any corporate officer permitted by this
2 chapter to claim ~~claiming~~ an exemption ~~under this section~~ must
3 be listed on the records of this state's Secretary of State,
4 Division of Corporations, as a corporate officer. ~~if the~~
5 ~~person who claims an exemption as a corporate officer is not~~
6 ~~so listed on the records of the Secretary of State, the~~
7 ~~individual must provide to the division, upon request by the~~
8 ~~division, a notarized affidavit stating that the individual is~~
9 ~~a bona fide officer of the corporation and stating the date~~
10 ~~his or her appointment or election as a corporate officer~~
11 ~~became or will become effective. The statement must be signed~~
12 ~~under oath by both the officer and the president or chief~~
13 ~~operating officer of the corporation and must be notarized.~~
14 The division shall issue a stop-work order under s. 440.107(1)
15 to any corporation who employs a person who claims to be
16 exempt as a corporate officer but who fails or refuses to
17 produce the documents required under this subsection to the
18 division within 3 business days after the request is made.
19 (12) Certificates of election to be exempt issued
20 under subsection (3) shall apply only to the corporate officer
21 named on the notice of election to be exempt and apply only
22 within the scope of the business or trade listed on the notice
23 of election to be exempt.
24 (13) Notices of election to be exempt and certificates
25 of election to be exempt shall be subject to revocation if, at
26 any time after the filing of the notice or the issuance of the
27 certificate, the person named on the notice or certificate no
28 longer meets the requirements of this section for issuance of
29 a certificate. The department shall revoke a certificate at
30 any time for failure of the person named on the certificate to
31 meet the requirements of this section.

1 (14) An officer of a corporation who elects exemption
2 from this chapter by filing a certificate of election under
3 this section may not recover benefits or compensation under
4 this chapter. For purposes of determining the appropriate
5 premium for workers' compensation coverage, carriers may not
6 consider any officer of a corporation who validly meets the
7 requirements of this section to be an employee.

8 (15) Any corporate officer who is an affiliated person
9 of a person who is delinquent in paying a stop-work order and
10 penalty assessment order issued pursuant to s. 440.107, or
11 owed pursuant to a court order, is ineligible for an election
12 of exemption. The stop-work order and penalty assessment shall
13 be in effect against any such affiliated person. As used in
14 this subsection, the term "affiliated person" means:

15 (a) The spouse of such other person;

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

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

23 (d) Any person or group of persons who directly or
24 indirectly control, are controlled by, or are under common
25 control with such other person;

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

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

31 or

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

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

5 440.06 Failure to secure compensation; effect.--Every
6 employer who fails to secure the payment of compensation, as
7 provided in s. 440.10, by failing to meet the requirements of
8 ~~under this chapter as provided in s. 440.38~~ may not, in any
9 suit brought against him or her by an employee subject to this
10 chapter to recover damages for injury or death, defend such a
11 suit on the grounds that the injury was caused by the
12 negligence of a fellow servant, that the employee assumed the
13 risk of his or her employment, or that the injury was due to
14 the comparative negligence of the employee.

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

17 440.077 When a corporate ~~sole proprietor, partner, or~~
18 ~~officer~~ rejects chapter, effect.--~~An A sole proprietor,~~
19 ~~partner, or officer of a corporation who is permitted to elect~~
20 an exemption under this chapter ~~actively engaged in the~~
21 ~~construction industry~~ and who elects to be exempt from the
22 provisions of this chapter may not recover benefits under this
23 chapter.

24 Section 6. Subsections (1) and (4) of section 440.09,
25 Florida Statutes, are amended and paragraph (e) is added to
26 subsection (7) of that section, to read:

27 440.09 Coverage.--

28 (1) The employer must ~~shall~~ pay compensation or
29 furnish benefits required by this chapter if the employee
30 suffers an accidental compensable injury or death arising out
31 of work performed in the course and the scope of employment.

1 The injury, its occupational cause, and any resulting
2 manifestations or disability must ~~shall~~ be established to a
3 reasonable degree of medical certainty, based on and by
4 objective relevant medical findings, and the accidental
5 compensable injury must be the major contributing cause of any
6 resulting injuries. For purposes of this section, "major
7 contributing cause" means the cause which is more than 50
8 percent responsible for the injury as compared to all other
9 causes combined for which treatment or benefits are sought. In
10 cases involving occupational disease or repetitive exposure,
11 both causation and sufficient exposure to support causation
12 must be proven by clear and convincing evidence. Pain or other
13 subjective complaints alone, in the absence of objective
14 relevant medical findings, are not compensable. For purposes
15 of this section, "objective relevant medical findings" are
16 those objective findings that correlate to the subjective
17 complaints of the injured employee and are confirmed by
18 physical examination findings or diagnostic testing.
19 Establishment of the causal relationship between a compensable
20 accident and injuries for conditions that are not readily
21 observable must be by medical evidence only, as demonstrated
22 by physical examination findings or diagnostic testing. Major
23 contributing cause must be demonstrated by medical evidence
24 only. Mental or nervous injuries occurring as a manifestation
25 of an injury compensable under this section shall be
26 demonstrated by clear and convincing evidence.

27 (a) This chapter does not require any compensation or
28 benefits for any subsequent injury the employee suffers as a
29 result of an original injury arising out of and in the course
30 of employment unless the original injury is the major
31 contributing cause of the subsequent injury. Major

1 contributing cause must be demonstrated by medical evidence
2 only.

3 (b) If an injury arising out of and in the course of
4 employment combines with a preexisting disease or condition to
5 cause or prolong disability or need for treatment, the
6 employer must pay compensation or benefits required by this
7 chapter only to the extent that the injury arising out of and
8 in the course of employment is and remains more than 50
9 percent responsible for the injury as compared to all other
10 causes combined and thereafter remains the major contributing
11 cause of the disability or need for treatment. Major
12 contributing cause must be demonstrated by medical evidence
13 only.

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

19 (d) If an accident happens while the employee is
20 employed elsewhere than in this state, which would entitle the
21 employee or his or her dependents to compensation if it had
22 happened in this state, the employee or his or her dependents
23 are entitled to compensation if the contract of employment was
24 made in this state, or the employment was principally
25 localized in this state. However, if an employee receives
26 compensation or damages under the laws of any other state, the
27 total compensation for the injury may not be greater than is
28 provided in this chapter.

29 (4)(a) An employee shall not be entitled to
30 compensation or benefits under this chapter if any judge of
31 compensation claims, administrative law judge, court, or jury

1 convened in this state determines that the employee has
2 knowingly or intentionally engaged in any of the acts
3 described in s. 440.105 or any criminal act for the purpose of
4 securing workers' compensation benefits. For purposes of this
5 section, the term "intentional" shall include, but is not
6 limited to, pleas of guilty or nolo contendere in criminal
7 matters. This section shall apply to accidents, regardless of
8 the date of the accident. For injuries occurring prior to
9 January 1, 1994, this section shall pertain to the acts of the
10 employee described in s. 440.105 or criminal activities
11 occurring subsequent to January 1, 1994.

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

16 (c) Upon the denial of benefits in accordance with
17 this section, a judge of compensation claims shall have the
18 jurisdiction to order any benefits payable to the employee to
19 be paid into the court registry or an escrow account during
20 the pendency of an appeal or until such time as the time in
21 which to file an appeal has expired.

22 (7)

23 (e) As a part of rebutting any presumptions under
24 paragraph (b), the injured worker must prove the actual
25 quantitative amounts of the drug or its metabolites as
26 measured on the initial and confirmation post-accident drug
27 tests of the injured worker's urine sample and provide
28 additional evidence regarding the absence of drug influence
29 other than the worker's denial of being under the influence of
30 a drug. No drug test conducted on a urine sample shall be
31 rejected as to its results or the presumption imposed under

1 paragraph (b) on the basis of the urine being bodily fluid
2 tested.

3 Section 7. Section 440.093, Florida Statutes, is
4 created to read:

5 440.093 Mental and nervous injuries.--

6 (1) A mental or nervous injury due to stress, fright,
7 or excitement only is not an injury by accident arising out of
8 the employment. Nothing in this section shall be construed to
9 allow for the payment of benefits under this chapter for
10 mental or nervous injuries without an accompanying physical
11 injury requiring medical treatment. A physical injury
12 resulting from mental or nervous injuries unaccompanied by
13 physical trauma requiring medical treatment shall not be
14 compensable under this chapter.

15 (2) Mental or nervous injuries occurring as a
16 manifestation of an injury compensable under this chapter
17 shall be demonstrated by clear and convincing medical evidence
18 by a licensed psychiatrist meeting criteria established in the
19 most recent edition of the diagnostic and statistical manual
20 of mental disorders published by the American Psychiatric
21 Association. The compensable physical injury must be and
22 remain the major contributing cause of the mental or nervous
23 condition and the compensable physical injury as determined by
24 reasonable medical certainty must be at least 50 percent
25 responsible for the mental or nervous condition as compared to
26 all other contributing causes combined. Compensation is not
27 payable for the mental, psychological, or emotional injury
28 arising out of depression from being out of work or losing
29 employment opportunities, resulting from a preexisting mental,
30 psychological, or emotional condition or due to pain or other

31

1 subjective complaints that cannot be substantiated by
2 objective, relevant medical findings.

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

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

13 440.10 Liability for compensation.--

14 (1)(a) Every employer coming within the provisions of
15 this chapter, ~~including any brought within the chapter by~~
16 ~~waiver of exclusion or of exemption,~~ shall be liable for, and
17 shall secure, the payment to his or her employees, or any
18 physician, surgeon, or pharmacist providing services under the
19 provisions of s. 440.13, of the compensation payable under ss.
20 440.13, 440.15, and 440.16. Any contractor or subcontractor
21 who engages in any public or private construction in the state
22 shall secure and maintain compensation for his or her
23 employees under this chapter as provided in s. 440.38.

24 (b) In case a contractor sublets any part or parts of
25 his or her contract work to a subcontractor or subcontractors,
26 all of the employees of such contractor and subcontractor or
27 subcontractors engaged on such contract work shall be deemed
28 to be employed in one and the same business or establishment, ~~+~~
29 and the contractor shall be liable for, and shall secure, the
30 payment of compensation to all such employees, except to
31 employees of a subcontractor who has secured such payment.

1 (c) A contractor shall ~~may~~ require a subcontractor to
2 provide evidence of workers' compensation insurance ~~or a copy~~
3 ~~of his or her certificate of election~~. A subcontractor who is
4 a corporation and has an officer who elects ~~electing~~ to be
5 exempt as permitted under this chapter ~~a sole proprietor,~~
6 ~~partner, or officer of a corporation~~ shall provide a copy of
7 his or her certificate of exemption ~~election~~ to the
8 contractor.

9 (d)1. If a contractor becomes liable for the payment
10 of compensation to the employees of a subcontractor who has
11 failed to secure such payment in violation of s. 440.38, the
12 contractor or other third-party payor shall be entitled to
13 recover from the subcontractor all benefits paid or payable
14 plus interest unless the contractor and subcontractor have
15 agreed in writing that the contractor will provide coverage.

16 2. If a contractor or third-party payor becomes liable
17 for the payment of compensation to the corporate officer
18 ~~employee~~ of a subcontractor who is ~~actively~~ engaged in the
19 construction industry and has elected to be exempt from the
20 provisions of this chapter, but whose election is invalid, the
21 contractor or third-party payor may recover from the claimant,
22 ~~partnership,~~ or corporation all benefits paid or payable plus
23 interest, unless the contractor and the subcontractor have
24 agreed in writing that the contractor will provide coverage.

25 (e) A subcontractor providing services in conjunction
26 with a contractor on the same project or contract work is not
27 liable for the payment of compensation to the employees of
28 another subcontractor or the contractor on such contract work
29 and is ~~not~~ protected by the exclusiveness-of-liability
30 provisions of s. 440.11 from any action at law or in admiralty
31

1 on account of injury to an ~~of such~~ employee of another
2 subcontractor, or of the contractor, provided that:

3 1. The subcontractor has secured workers' compensation
4 insurance for its employees or the contractor has secured such
5 insurance on behalf of the subcontractor and its employees in
6 accordance with paragraph (b); and

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

9 (f) If an employer fails to secure compensation as
10 required by this chapter, the department shall ~~may~~ assess
11 against the employer a penalty not to exceed \$5,000 for each
12 employee of that employer who is classified by the employer as
13 an independent contractor but who is found by the department
14 to not meet the criteria for an independent contractor that
15 are set forth in s. 440.02. The division shall adopt rules to
16 administer the provisions of this paragraph.

17 (g) Subject to s. 440.38, any employer who has
18 employees engaged in work in this state shall obtain a Florida
19 policy or endorsement for such employees which utilizes
20 Florida class codes, rates, rules, and manuals that are in
21 compliance with and approved under the provisions of this
22 chapter and the Florida Insurance Code. Failure to comply with
23 this paragraph is a felony of the second degree, punishable as
24 provided in s. 775.082, s. 775.083, or s. 775.084. The
25 department shall adopt rules for construction industry and
26 nonconstruction-industry employers with regard to the
27 activities that define what constitutes being "engaged in
28 work" in this state, using the following standards:

29 1. For employees of nonconstruction-industry employers
30 who have their headquarters outside of Florida and also
31 operate in Florida and who are routinely crossing state lines,

1 but usually return to their homes each night, the employee
2 shall be assigned to the headquarters' state. However, the
3 construction industry employees performing new construction or
4 alterations in Florida shall be assigned to Florida even if
5 the employees return to their home state each night.

6 2. The payroll of executive supervisors who may visit
7 a Florida location but who are not in direct charge of a
8 Florida location shall be assigned to the state in which the
9 headquarters is located.

10 3. For construction contractors who maintain a
11 permanent staff of employees and superintendents, if any of
12 these employees or superintendents are assigned to a job that
13 is located in Florida, either for the duration of the job or
14 any portion thereof, their payroll shall be assigned to
15 Florida rather than headquarters' state.

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

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

23 ~~2. The independent contractor provides the general~~
24 ~~contractor with a valid certificate of workers' compensation~~
25 ~~insurance or a valid certificate of exemption issued by the~~
26 ~~department.~~

27
28 ~~A sole proprietor, partner, or officer of a corporation who~~
29 ~~elects exemption from this chapter by filing a certificate of~~
30 ~~election under s. 440.05 may not recover benefits or~~
31 ~~compensation under this chapter. An independent contractor who~~

1 ~~provides the general contractor with both an affidavit stating~~
2 ~~that he or she meets the requirements of s. 440.02 and a~~
3 ~~certificate of exemption is not an employee under s. 440.02~~
4 ~~and may not recover benefits under this chapter. For purposes~~
5 ~~of determining the appropriate premium for workers'~~
6 ~~compensation coverage, carriers may not consider any person~~
7 ~~who meets the requirements of this paragraph to be an~~
8 ~~employee.~~

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

11 440.1025 ~~Consideration of public~~ Employer workplace
12 safety program in rate-setting; program requirements;
13 rulemaking.--

14 (1) For a public or private employer to be eligible
15 for receipt of specific identifiable consideration under s.
16 627.0915 for a workplace safety program in the setting of
17 rates, the ~~public~~ employer must have a workplace safety
18 program. At a minimum, the program must include a written
19 safety policy and safety rules, and make provision for safety
20 inspections, preventative maintenance, safety training,
21 first-aid, accident investigation, and necessary
22 recordkeeping. ~~For purposes of this section, "public employer"~~
23 ~~means any agency within state, county, or municipal government~~
24 ~~employing individuals for salary, wages, or other~~
25 ~~remuneration.~~The division may adopt ~~promulgate~~ rules for
26 insurers to utilize in determining ~~public~~ employer compliance
27 with the requirements of this section.

28 (2) The division shall publicize on the Internet, and
29 shall encourage insurers to publicize, the availability of
30 free safety consultation services and safety program
31 resources.

1 Section 10. Section 440.103, Florida Statutes, is
2 amended to read:

3 440.103 Building permits; identification of minimum
4 premium policy.--~~Except as otherwise provided in this chapter,~~
5 Every employer shall, as a condition to applying for and
6 receiving a building permit, show proof and certify to the
7 permit issuer that it has secured compensation for its
8 employees under this chapter as provided in ss. 440.10 and
9 440.38. Such proof of compensation must be evidenced by a
10 certificate of coverage issued by the carrier, a valid
11 exemption certificate approved by the department ~~or the former~~
12 ~~Division of Workers' Compensation of the Department of Labor~~
13 ~~and Employment Security~~, or a copy of the employer's authority
14 to self-insure and shall be presented each time the employer
15 applies for a building permit. As provided in s. 627.413(5),
16 each certificate of coverage must show, on its face, whether
17 or not coverage is secured under the minimum premium
18 provisions of rules adopted by rating organizations licensed
19 by the department. The words "minimum premium policy" or
20 equivalent language shall be typed, printed, stamped, or
21 legibly handwritten.

22 Section 11. Section 440.105, Florida Statutes, is
23 amended to read:

24 440.105 Prohibited activities; reports; penalties;
25 limitations.--

26 (1)(a) Any insurance carrier, any individual
27 self-insured, any commercial or group self-insurance fund, any
28 professional practitioner licensed or regulated by the
29 Department of Health ~~Business and Professional Regulation~~,
30 except as otherwise provided by law, any medical review
31 committee as defined in s. 766.101, any private medical review

1 committee, and any insurer, agent, or other person licensed
2 under the insurance code, or any employee thereof, having
3 knowledge or who believes that a fraudulent act or any other
4 act or practice which, upon conviction, constitutes a felony
5 or misdemeanor under this chapter is being or has been
6 committed shall send to the Division of Insurance Fraud,
7 Bureau of Workers' Compensation Fraud, a report or information
8 pertinent to such knowledge or belief and such additional
9 information relative thereto as the bureau may require. The
10 bureau shall review such information or reports and select
11 such information or reports as, in its judgment, may require
12 further investigation. It shall then cause an independent
13 examination of the facts surrounding such information or
14 report to be made to determine the extent, if any, to which a
15 fraudulent act or any other act or practice which, upon
16 conviction, constitutes a felony or a misdemeanor under this
17 chapter is being committed. The bureau shall report any
18 alleged violations of law which its investigations disclose to
19 the appropriate licensing agency and state attorney or other
20 prosecuting agency having jurisdiction with respect to any
21 such violations of this chapter. If prosecution by the state
22 attorney or other prosecuting agency having jurisdiction with
23 respect to such violation is not begun within 60 days of the
24 bureau's report, the state attorney or other prosecuting
25 agency having jurisdiction with respect to such violation
26 shall inform the bureau of the reasons for the lack of
27 prosecution.

28 (b) In the absence of fraud or bad faith, a person is
29 not subject to civil liability for libel, slander, or any
30 other relevant tort by virtue of filing reports, without
31 malice, or furnishing other information, without malice,

1 required by this section or required by the bureau, and no
2 civil cause of action of any nature shall arise against such
3 person:

4 1. For any information relating to suspected
5 fraudulent acts furnished to or received from law enforcement
6 officials, their agents, or employees;

7 2. For any information relating to suspected
8 fraudulent acts furnished to or received from other persons
9 subject to the provisions of this chapter; or

10 3. For any such information relating to suspected
11 fraudulent acts furnished in reports to the bureau, or the
12 National Association of Insurance Commissioners.

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

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

18 1. Coerce or attempt to coerce, as a precondition to
19 employment or otherwise, an employee to obtain a certificate
20 of election of exemption pursuant to s. 440.05.

21 2. Discharge or refuse to hire an employee or job
22 applicant because the employee or applicant has filed a claim
23 for benefits under this chapter.

24 3. Discharge, discipline, or take any other adverse
25 personnel action against any employee for disclosing
26 information to the department or any law enforcement agency
27 relating to any violation or suspected violation of any of the
28 provisions of this chapter or rules promulgated hereunder.

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

31

1 (b) It shall be unlawful for any insurance entity to
2 revoke or cancel a workers' compensation insurance policy or
3 membership because an employer has returned an employee to
4 work or hired an employee who has filed a workers'
5 compensation claim.

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

9 (a) It shall be unlawful for any employer to knowingly
10 fail to update applications for coverage as required by s.
11 440.381(1) and department ~~of insurance~~ rules within 7 days
12 after the reporting date for any change in the required
13 information, or to post notice of coverage pursuant to s.
14 440.40.

15 (b) It is unlawful for any attorney or other person,
16 in his or her individual capacity or in his or her capacity as
17 a public or private employee, or for any firm, corporation,
18 partnership, or association to receive any fee or other
19 consideration or any gratuity from a person on account of
20 services rendered for a person in connection with any
21 proceedings arising under this chapter, unless such fee,
22 consideration, or gratuity is approved by a judge of
23 compensation claims or by the Deputy Chief Judge of
24 Compensation Claims.

25 (4) Whoever violates any provision of this subsection
26 commits insurance fraud, punishable as provided in paragraph
27 (f).

28 (a) It shall be unlawful for any employer to
29 knowingly:
30
31

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

4 2. Make a deduction from the pay of any employee
5 entitled to the benefits of this chapter for the purpose of
6 requiring the employee to pay any portion of premium paid by
7 the employer to a carrier or to contribute to a benefit fund
8 or department maintained by such employer for the purpose of
9 providing compensation or medical services and supplies as
10 required by this chapter.

11 3. Fail to secure payment of compensation if required
12 to do so by this chapter.

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

14 1. To knowingly make, or cause to be made, any false,
15 fraudulent, or misleading oral or written statement for the
16 purpose of obtaining or denying any benefit or payment under
17 this chapter.

18 2. To present or cause to be presented any written or
19 oral statement as part of, or in support of, a claim for
20 payment or other benefit pursuant to any provision of this
21 chapter, knowing that such statement contains any false,
22 incomplete, or misleading information concerning any fact or
23 thing material to such claim.

24 3. To prepare or cause to be prepared any written or
25 oral statement that is intended to be presented to any
26 employer, insurance company, or self-insured program in
27 connection with, or in support of, any claim for payment or
28 other benefit pursuant to any provision of this chapter,
29 knowing that such statement contains any false, incomplete, or
30 misleading information concerning any fact or thing material
31 to such claim.

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

3 5. To knowingly make any false, fraudulent, or
4 misleading oral or written statement, or to knowingly omit or
5 conceal material information, required by s. 440.185 or s.
6 440.381, for the purpose of obtaining workers' compensation
7 coverage or for the purpose of avoiding, delaying, or
8 diminishing the amount of payment of any workers' compensation
9 premiums.

10 6. To knowingly misrepresent or conceal payroll,
11 classification of workers, or information regarding an
12 employer's loss history which would be material to the
13 computation and application of an experience rating
14 modification factor for the purpose of avoiding or diminishing
15 the amount of payment of any workers' compensation premiums.

16 7. To knowingly present or cause to be presented any
17 false, fraudulent, or misleading oral or written statement to
18 any person as evidence of compliance with s. 440.38, as
19 evidence of eligibility for a certificate of exemption under
20 s. 440.05.

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

23 9. To knowingly present or cause to be presented any
24 false, fraudulent, or misleading oral or written statement to
25 any person as evidence of identity for the purpose of
26 obtaining employment or filing or supporting a claim for
27 workers' compensation benefits.

28 (c) It shall be unlawful for any physician licensed
29 under chapter 458, osteopathic physician licensed under
30 chapter 459, chiropractic physician licensed under chapter
31 460, podiatric physician licensed under chapter 461,

1 optometric physician licensed under chapter 463, or any other
2 practitioner licensed under the laws of this state to
3 knowingly and willfully assist, conspire with, or urge any
4 person to fraudulently violate any of the provisions of this
5 chapter.

6 (d) It shall be unlawful for any person or
7 governmental entity licensed under chapter 395 to maintain or
8 operate a hospital in such a manner so that such person or
9 governmental entity knowingly and willfully allows the use of
10 the facilities of such hospital by any person, in a scheme or
11 conspiracy to fraudulently violate any of the provisions of
12 this chapter.

13 (e) It shall be unlawful for any attorney or other
14 person, in his or her individual capacity or in his or her
15 capacity as a public or private employee, or any firm,
16 corporation, partnership, or association, to knowingly assist,
17 conspire with, or urge any person to fraudulently violate any
18 of the provisions of this chapter.

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

22 1. Is less than \$20,000, the offender commits a felony
23 of the third degree, punishable as provided in s. 775.082, s.
24 775.083, or s. 775.084.

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

28 3. Is \$100,000 or more, the offender commits a felony
29 of the first degree, punishable as provided in s. 775.082, s.
30 775.083, or s. 775.084.

31

1 (5) It shall be unlawful for any attorney or other
2 person, in his or her individual capacity or in his or her
3 capacity as a public or private employee or for any firm,
4 corporation, partnership, or association, to unlawfully
5 solicit any business in and about city or county hospitals,
6 courts, or any public institution or public place; in and
7 about private hospitals or sanitariums; in and about any
8 private institution; or upon private property of any character
9 whatsoever for the purpose of making workers' compensation
10 claims. Whoever violates any provision of this subsection
11 commits a felony of the second ~~third~~ degree, punishable as
12 provided in s. 775.082, s. 775.083, or s. 775.085.

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

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

21 (7)(8) An injured employee or any other party making a
22 claim under this chapter shall provide his or her personal
23 signature attesting that he or she has reviewed, understands,
24 and acknowledges All claim forms as provided for in this
25 chapter shall contain a notice that clearly states in
26 substance the following statement: "Any person who, knowingly
27 and with intent to injure, defraud, or deceive any employer or
28 employee, insurance company, or self-insured program, files a
29 statement of claim containing any false or misleading
30 information commits insurance fraud, punishable as provided in
31 s. 817.234." If the injured employee or other party refuses to

1 sign the document attesting ~~Each claimant shall personally~~
2 ~~sign the claim form and attest~~ that he or she has reviewed,
3 understands, and acknowledges the statement, benefits or
4 payments under this chapter shall be suspended until such
5 signature is obtained ~~foregoing notice.~~

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

8 440.1051 Fraud reports; civil immunity; criminal
9 penalties.--

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

16 (3) A person who calls and, knowingly and falsely,
17 reports workers' compensation fraud or who, in violation of
18 subsection (2) retaliates against a person for making such
19 report, commits is guilty of a felony misdemeanor of the third
20 first degree, punishable as provided in s. 775.082, ~~or s.~~
21 775.083, or s. 775.084 both.

22 Section 13. Section 440.107, Florida Statutes, is
23 amended to read:

24 440.107 Department powers to enforce employer
25 compliance with coverage requirements.--

26 (1) The Legislature finds that the failure of an
27 employer to comply with the workers' compensation coverage
28 requirements under this chapter poses an immediate danger to
29 public health, safety, and welfare. ~~The Legislature authorizes~~
30 ~~the department to secure employer compliance with the workers'~~
31 ~~compensation coverage requirements and authorizes the~~

1 ~~department to conduct investigations for the purpose of~~
2 ~~ensuring employer compliance.~~

3 (2) For the purposes of this section, "securing the
4 payment of workers' compensation" means obtaining coverage
5 that meets the requirements of this chapter and the Florida
6 Insurance Code. However, if at any time an employer materially
7 understates or conceals payroll, materially misrepresents or
8 conceals employee duties so as to avoid proper classification
9 for premium calculations, or materially misrepresents or
10 conceals information pertinent to the computation and
11 application of an experience rating modification factor, such
12 employer shall be deemed to have failed to secure payment of
13 workers' compensation and shall be subject to the sanctions
14 set forth in this section. A stop-work order issued because an
15 employer is deemed to have failed to secure the payment of
16 workers' compensation required under this chapter because the
17 employer has materially understated or concealed payroll,
18 materially misrepresented or concealed employee duties so as
19 to avoid proper classification for premium calculations, or
20 materially misrepresented or concealed information pertinent
21 to the computation and application of an experience rating
22 modification factor shall have no effect upon an employer's or
23 carrier's duty to provide benefits under this chapter or upon
24 any of the employer's or carrier's rights and defenses under
25 this chapter, including exclusive remedy.~~The department and~~
26 ~~its authorized representatives may enter and inspect any place~~
27 ~~of business at any reasonable time for the limited purpose of~~
28 ~~investigating compliance with workers' compensation coverage~~
29 ~~requirements under this chapter. Each employer shall keep true~~
30 ~~and accurate business records that contain such information as~~
31 ~~the department prescribes by rule. The business records must~~

1 ~~contain information necessary for the department to determine~~
2 ~~compliance with workers' compensation coverage requirements~~
3 ~~and must be maintained within this state by the business, in~~
4 ~~such a manner as to be accessible within a reasonable time~~
5 ~~upon request by the department. The business records must be~~
6 ~~open to inspection and be available for copying by the~~
7 ~~department at any reasonable time and place and as often as~~
8 ~~necessary. The department may require from any employer any~~
9 ~~sworn or unsworn reports, pertaining to persons employed by~~
10 ~~that employer, deemed necessary for the effective~~
11 ~~administration of the workers' compensation coverage~~
12 ~~requirements.~~

13 (3) The department shall enforce workers' compensation
14 coverage requirements, including the requirement that the
15 employer secure the payment of workers' compensation, and the
16 requirement that the employer provide the carrier with
17 information to accurately determine payroll and correctly
18 assign classification codes. In addition to any other powers
19 under this chapter, the department shall have the power to:

20 (a) Conduct investigations for the purpose of ensuring
21 employer compliance.

22 (b) Enter and inspect any place of business at any
23 reasonable time for the purpose of investigating employer
24 compliance.

25 (c) Examine and copy business records.

26 (d) Administer oaths and affirmations.

27 (e) Certify to official acts.

28 (f) Issue and serve subpoenas for attendance of
29 witnesses or production of business records, books, papers,
30 correspondence, memoranda, and other records.

31

1 (g) Issue stop-work orders, penalty assessment orders,
2 and any other orders necessary for the administration of this
3 section.

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

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

6 (j) Seek injunctions and other appropriate relief. In
7 ~~discharging its duties, the department may administer oaths~~
8 ~~and affirmations, certify to official acts, issue subpoenas to~~
9 ~~compel the attendance of witnesses and the production of~~
10 ~~books, papers, correspondence, memoranda, and other records~~
11 ~~deemed necessary by the department as evidence in order to~~
12 ~~ensure proper compliance with the coverage provisions of this~~
13 ~~chapter.~~

14 (4) The department shall designate representatives who
15 may serve subpoenas and other process of the department issued
16 under this section.

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

20 (6)(4) If a person has refused to obey a subpoena to
21 appear before the department or its authorized representative
22 or and produce evidence requested by the department or to give
23 testimony about the matter that is under investigation, a
24 court has jurisdiction to issue an order requiring compliance
25 with the subpoena if the court has jurisdiction in the
26 geographical area where the inquiry is being carried on or in
27 the area where the person who has refused the subpoena is
28 found, resides, or transacts business. Failure to obey such a
29 court order may be punished by the court as contempt, either
30 civilly or criminally. Costs, including reasonable attorney's
31 fees, incurred by the department to obtain an order granting,

1 in whole or in part, a petition to enforce a subpoena or a
2 subpoena duces tecum shall be taxed against the subpoenaed
3 party.

4 (7)(a)(5) Whenever the department determines that an
5 employer who is required to secure the payment to his or her
6 employees of the compensation provided for by this chapter has
7 failed to secure the payment of workers' compensation required
8 by this chapter or to produce the required business records
9 under subsection (5) within 5 business days after receipt of
10 the written request of the department ~~do so~~, such failure
11 shall be deemed an immediate serious danger to public health,
12 safety, or welfare sufficient to justify service by the
13 department of a stop-work order on the employer, requiring the
14 cessation of all business operations ~~at the place of~~
15 ~~employment or job site.~~ If the department ~~division~~ makes such
16 a determination, the department ~~division~~ shall issue a
17 stop-work order within 72 hours. The order shall take effect
18 when served upon the date of service upon the employer or, for
19 a particular employer work site, when served at that work
20 site, unless the employer provides evidence satisfactory to
21 ~~the department of having secured any necessary insurance or~~
22 ~~self-insurance and pays a civil penalty to the department, to~~
23 ~~be deposited by the department into the Workers' Compensation~~
24 ~~Administration Trust Fund, in the amount of \$100 per day for~~
25 ~~each day the employer was not in compliance with this chapter.~~
26 In addition to serving a stop-work order at a particular work
27 site which shall be effective immediately, the department
28 shall immediately proceed with service upon the employer which
29 shall be effective upon all employer work sites in the state
30 for which the employer is not in compliance. A stop-work order
31 may be served with regard to an employer's work site by

1 posting a copy of the stop-work order in a conspicuous
2 location at the work site. The order shall remain in effect
3 until the department issues an order releasing the stop-work
4 order upon a finding that the employer has come into
5 compliance with the coverage requirements of this chapter and
6 has paid any penalty assessed under this section. The
7 department may require an employer who is found to have failed
8 to comply with the coverage requirements of s. 440.38 to file
9 with the department, as a condition of release from a
10 stop-work order, periodic reports for a probationary period
11 that shall not exceed 2 years that demonstrate the employer's
12 continued compliance with this chapter. The department shall
13 by rule specify the reports required and the time for filing
14 under this subsection.

15 (b) Stop-work orders and penalty assessment orders
16 issued under this section against a corporation, partnership,
17 or sole proprietorship shall be in effect against any
18 successor corporation or business entity that has one or more
19 of the same principals or officers as the corporation or
20 partnership against which the stop-work order was issued and
21 are engaged in the same or equivalent trade or activity.

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

26 (d)1. In addition to any penalty, stop-work order, or
27 injunction, the department shall assess against any employer
28 who has failed to secure the payment of compensation as
29 required by this chapter a penalty equal to 1.5 times the
30 amount the employer would have paid in premium when applying
31 approved manual rates to the employer's payroll during periods

1 for which it failed to secure the payment of workers'
2 compensation required by this chapter within the preceding
3 3-year period or \$1,000, whichever is greater.

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

8 (e) When an employer fails to provide business records
9 sufficient to enable the department to determine the
10 employer's payroll for the period requested for the
11 calculation of the penalty provided in paragraph (d), for
12 penalty calculation purposes, the imputed weekly payroll for
13 each employee, corporate officer, sole proprietor, or partner
14 shall be the statewide average weekly wage as defined in s.
15 440.12(2) multiplied by 1.5.

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

22 (8)(6) In addition to the issuance of a stop-work
23 order under subsection (7), the department may file a
24 complaint in the circuit court in and for Leon County to
25 enjoin any employer, who has failed to secure the payment of
26 workers' compensation as required by this chapter, from
27 employing individuals and from conducting business until the
28 employer presents evidence satisfactory to the department of
29 having secured the payment of workers' for compensation
30 required by this chapter and pays a civil penalty assessed by
31 to the department under this section, to be deposited by the

1 ~~department into the Workers' Compensation Administration Trust~~
2 ~~Fund, in the amount of \$100 per day for each day the employer~~
3 ~~was not in compliance with this chapter.~~

4 ~~(9)(7) In addition to any penalty, stop-work order, or~~
5 ~~injunction, the department shall assess against any employer,~~
6 ~~who has failed to secure the payment of compensation as~~
7 ~~required by this chapter, a penalty in the following amount:~~

8 ~~(a) An amount equal to at least the amount that the~~
9 ~~employer would have paid or up to twice the amount the~~
10 ~~employer would have paid during periods it illegally failed to~~
11 ~~secure payment of compensation in the preceding 3-year period~~
12 ~~based on the employer's payroll during the preceding 3-year~~
13 ~~period; or~~

14 ~~(b) One thousand dollars, whichever is greater. Any~~
15 ~~penalty assessed under this subsection is due within 30 days~~
16 ~~after the date on which the employer is notified, except that,~~
17 ~~if the department has posted a stop-work order or obtained~~
18 ~~injunctive relief against the employer, payment is due, in~~
19 ~~addition to those conditions set forth in this section, as a~~
20 ~~condition to relief from a stop-work order or an injunction.~~
21 ~~Interest shall accrue on amounts not paid when due at the rate~~
22 ~~of 1 percent per month. The department division shall adopt~~
23 ~~rules to administer this section.~~

24 ~~(10)(8) The department may bring an action in circuit~~
25 ~~court to recover penalties assessed under this section,~~
26 ~~including any interest owed to the department pursuant to this~~
27 ~~section. In any action brought by the department pursuant to~~
28 ~~this section in which it prevails, the circuit court shall~~
29 ~~award costs, including the reasonable costs of investigation~~
30 ~~and a reasonable attorney's fee.~~

31

1 (11)~~(9)~~ Any judgment obtained by the department and
2 any penalty due pursuant to the service of a stop-work order
3 or otherwise due under this section shall, until collected,
4 constitute a lien upon the entire interest of the employer,
5 legal or equitable, in any property, real or personal,
6 tangible or intangible; however, such lien is subordinate to
7 claims for unpaid wages and any prior recorded liens, and a
8 lien created by this section is not valid against any person
9 who, subsequent to such lien and in good faith and for value,
10 purchases real or personal property from such employer or
11 becomes the mortgagee on real or personal property of such
12 employer, or against a subsequent attaching creditor, unless,
13 with respect to real estate of the employer, a notice of the
14 lien is recorded in the public records of the county where the
15 real estate is located, and with respect to personal property
16 of the employer, the notice is recorded with the Secretary of
17 State.

18 (12)~~(10)~~ Any law enforcement agency in the state may,
19 at the request of the department, render any assistance
20 necessary to carry out the provisions of this section,
21 including, but not limited to, preventing any employee or
22 other person from remaining at a place of employment or job
23 site after a stop-work order or injunction has taken effect.

24 (13)~~(11)~~ Agency action ~~Actions~~ by the department under
25 this section, if contested, must be contested as provided in
26 chapter 120. All ~~civil~~ penalties assessed by the department
27 must be paid into the Workers' Compensation Administration
28 Trust Fund. ~~The department shall return any sums previously~~
29 ~~paid, upon conclusion of an action, if the department fails to~~
30 ~~prevail and if so directed by an order of court or an~~
31 ~~administrative hearing officer. The requirements of this~~

1 ~~subsection may be met by posting a bond in an amount equal to~~
2 ~~twice the penalty and in a form approved by the department.~~

3 (14)(12) If the department division finds that an
4 employer who is certified or registered under part I or part
5 II of chapter 489 and who is required to secure the payment of
6 workers' the compensation under ~~provided for by~~ this chapter
7 to his or her employees has failed to do so, the department
8 ~~division~~ shall immediately notify the Department of Business
9 and Professional Regulation.

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

12 440.11 Exclusiveness of liability.--

13 (1) The liability of an employer prescribed in s.
14 440.10 shall be exclusive and in place of all other liability,
15 including vicarious liability, of such employer to any
16 third-party tortfeasor and to the employee, the legal
17 representative thereof, husband or wife, parents, dependents,
18 next of kin, and anyone otherwise entitled to recover damages
19 from such employer at law or in admiralty on account of such
20 injury or death, except as follows:~~that~~

21 (a) If an employer fails to secure payment of
22 compensation as required by this chapter, an injured employee,
23 or the legal representative thereof in case death results from
24 the injury, may elect to claim compensation under this chapter
25 or to maintain an action at law or in admiralty for damages on
26 account of such injury or death. In such action the defendant
27 may not plead as a defense that the injury was caused by
28 negligence of a fellow employee, that the employee assumed the
29 risk of the employment, or that the injury was due to the
30 comparative negligence of the employee.

31

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

6 1. The employer deliberately intended to injure the
7 employee; or

8 2. The employer engaged in conduct that the employer
9 knew, based on prior similar accidents or on explicit warnings
10 specifically identifying a known danger, was certain to result
11 in injury or death to the employee, and the employee was not
12 aware of the risk because the danger was not apparent and the
13 employer deliberately concealed or misrepresented the danger
14 so as to prevent the employee from exercising informed
15 judgment about whether to perform the work.

16
17 The same immunities from liability enjoyed by an employer
18 shall extend as well to each employee of the employer when
19 such employee is acting in furtherance of the employer's
20 business and the injured employee is entitled to receive
21 benefits under this chapter. Such fellow-employee immunities
22 shall not be applicable to an employee who acts, with respect
23 to a fellow employee, with willful and wanton disregard or
24 unprovoked physical aggression or with gross negligence when
25 such acts result in injury or death or such acts proximately
26 cause such injury or death, nor shall such immunities be
27 applicable to employees of the same employer when each is
28 operating in the furtherance of the employer's business but
29 they are assigned primarily to unrelated works within private
30 or public employment. The same immunity provisions enjoyed by
31 an employer shall also apply to any sole proprietor, partner,

1 corporate officer or director, supervisor, or other person who
2 in the course and scope of his or her duties acts in a
3 managerial or policymaking capacity and the conduct which
4 caused the alleged injury arose within the course and scope of
5 said managerial or policymaking duties and was not a violation
6 of a law, whether or not a violation was charged, for which
7 the maximum penalty which may be imposed does not exceed 60
8 days' imprisonment as set forth in s. 775.082. The immunity
9 from liability provided in this subsection extends to county
10 governments with respect to employees of county constitutional
11 officers whose offices are funded by the board of county
12 commissioners.

13 (3) An employer's workers' compensation carrier,
14 service agent, or safety consultant shall not be liable as a
15 third-party tortfeasor to employees of the employer or
16 employees of its subcontractors for assisting the employer and
17 its subcontractors, if any, in carrying out the employer's
18 rights and responsibilities under this chapter by furnishing
19 any safety inspection, safety consultative service, or other
20 safety service incidental to the workers' compensation or
21 employers' liability coverage or to the workers' compensation
22 or employer's liability servicing contract. Without
23 limitation, a safety consultant may include an owner, as
24 defined in chapter 713, or an owner's related, affiliated, or
25 subsidiary companies and the employees of each.The exclusion
26 from liability under this subsection shall not apply in any
27 case in which injury or death is proximately caused by the
28 willful and unprovoked physical aggression, or by the
29 negligent operation of a motor vehicle, by employees,
30 officers, or directors of the employer's workers' compensation
31 carrier, service agent, or safety consultant.

1 Section 15. Section 440.13, Florida Statutes, is
2 amended to read:

3 440.13 Medical services and supplies; penalty for
4 violations; limitations.--

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

6 (a) "Alternate medical care" means a change in
7 treatment or health care provider.

8 (b) "Attendant care" means care rendered by trained
9 professional attendants which is beyond the scope of household
10 duties. Family members may provide nonprofessional attendant
11 care, but may not be compensated under this chapter for care
12 that falls within the scope of household duties and other
13 services normally and gratuitously provided by family members.
14 "Family member" means a spouse, father, mother, brother,
15 sister, child, grandchild, father-in-law, mother-in-law, aunt,
16 or uncle.

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

20 (d) "Catastrophic injury" means an injury as defined
21 in s. 440.02.

22 (e) "Certified health care provider" means a health
23 care provider who has been certified by the agency or who has
24 entered an agreement with a licensed managed care organization
25 to provide treatment to injured workers under this section.
26 Certification of such health care provider must include
27 documentation that the health care provider has read and is
28 familiar with the portions of the statute, impairment guides,
29 practice parameters, protocols of treatment, and rules which
30 govern the provision of remedial treatment, care, and
31 attendance.

1 (f) "Compensable" means a determination by a carrier
2 or judge of compensation claims that a condition suffered by
3 an employee results from an injury arising out of and in the
4 course of employment.

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

7 (h) "Health care facility" means any hospital licensed
8 under chapter 395 and any health care institution licensed
9 under chapter 400.

10 (i) "Health care provider" means a physician or any
11 recognized practitioner who provides skilled services pursuant
12 to a prescription or under the supervision or direction of a
13 physician and who has been certified by the agency as a health
14 care provider. The term "health care provider" includes a
15 health care facility.

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

20 (k) "Independent medical examination" means an
21 objective evaluation of the injured employee's medical
22 condition, including, but not limited to, impairment or work
23 status, performed by a physician or an expert medical advisor
24 at the request of a party, a judge of compensation claims, or
25 the agency to assist in the resolution of a dispute arising
26 under this chapter.

27 (l) "Instance of overutilization" means a specific
28 inappropriate service or level of service provided to an
29 injured employee that includes the provision of treatment in
30 excess of established practice parameters and protocols of
31 treatment established in accordance with this chapter.

1 (m) "Medically necessary" or "medical necessity" means
2 any medical service or medical supply which is used to
3 identify or treat an illness or injury, is appropriate to the
4 patient's diagnosis and status of recovery, and is consistent
5 with the location of service, the level of care provided, and
6 applicable practice parameters. The service should be widely
7 accepted among practicing health care providers, based on
8 scientific criteria, and determined to be reasonably safe. The
9 service must not be of an experimental, investigative, or
10 research nature, ~~except in those instances in which prior~~
11 ~~approval of the Agency for Health Care Administration has been~~
12 ~~obtained. The Agency for Health Care Administration shall~~
13 ~~adopt rules providing for such approval on a case-by-case~~
14 ~~basis when the service or supply is shown to have significant~~
15 ~~benefits to the recovery and well-being of the patient.~~

16 (n) "Medicine" means a drug prescribed by an
17 authorized health care provider and includes only generic
18 drugs or single-source patented drugs for which there is no
19 generic equivalent, unless the authorized health care provider
20 writes or states that the brand-name drug as defined in s.
21 465.025 is medically necessary, or is a drug appearing on the
22 schedule of drugs created pursuant to s. 465.025(6), or is
23 available at a cost lower than its generic equivalent.

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

27 (p) "Pattern or practice of overutilization" means
28 repetition of instances of overutilization within a specific
29 medical case or multiple cases by a single health care
30 provider.

31

1 (q) "Peer review" means an evaluation by two or more
2 physicians licensed under the same authority and with the same
3 or similar specialty as the physician under review, of the
4 appropriateness, quality, and cost of health care and health
5 services provided to a patient, based on medically accepted
6 standards.

7 (r) "Physician" or "doctor" means a physician licensed
8 under chapter 458, an osteopathic physician licensed under
9 chapter 459, a chiropractic physician licensed under chapter
10 460, a podiatric physician licensed under chapter 461, an
11 optometrist licensed under chapter 463, or a dentist licensed
12 under chapter 466, each of whom must be certified by the
13 agency as a health care provider.

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

17 (t) "Utilization control" means a systematic process
18 of implementing measures that assure overall management and
19 cost containment of services delivered, including compliance
20 with practice parameters and protocols of treatment as
21 provided for in this chapter.

22 (u) "Utilization review" means the evaluation of the
23 appropriateness of both the level and the quality of health
24 care and health services provided to a patient, including, but
25 not limited to, evaluation of the appropriateness of
26 treatment, hospitalization, or office visits based on
27 medically accepted standards. Such evaluation must be
28 accomplished by means of a system that identifies the
29 utilization of medical services based on practice parameters
30 and protocols of treatment as provided for in this chapter
31 ~~medically accepted standards as established by medical~~

1 ~~consultants with qualifications similar to those providing the~~
2 ~~care under review, and that refers patterns and practices of~~
3 ~~overutilization to the agency.~~

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

5 (a) Subject to the limitations specified elsewhere in
6 this chapter, the employer shall furnish to the employee such
7 medically necessary remedial treatment, care, and attendance
8 for such period as the nature of the injury or the process of
9 recovery may require, which is in accordance with established
10 practice parameters and protocols of treatment as provided for
11 in this chapter, including medicines, medical supplies,
12 durable medical equipment, orthoses, prostheses, and other
13 medically necessary apparatus. Remedial treatment, care, and
14 attendance, including work-hardening programs or
15 pain-management programs accredited by the Commission on
16 Accreditation of Rehabilitation Facilities or Joint Commission
17 on the Accreditation of Health Organizations or
18 pain-management programs affiliated with medical schools,
19 shall be considered as covered treatment only when such care
20 is given based on a referral by a physician as defined in this
21 chapter. ~~Each facility shall maintain outcome data, including~~
22 ~~work status at discharges, total program charges, total number~~
23 ~~of visits, and length of stay. The department shall utilize~~
24 ~~such data and report to the President of the Senate and the~~
25 ~~Speaker of the House of Representatives regarding the efficacy~~
26 ~~and cost-effectiveness of such program, no later than October~~
27 ~~1, 1994.~~ Medically necessary treatment, care, and attendance
28 does not include chiropractic services in excess of 24 ~~18~~
29 treatments or rendered 12 ~~8~~ weeks beyond the date of the
30 initial chiropractic treatment, whichever comes first, unless
31

1 the carrier authorizes additional treatment or the employee is
2 catastrophically injured.

3 (b) The employer shall provide appropriate
4 professional or nonprofessional attendant care performed only
5 at the direction and control of a physician when such care is
6 medically necessary. The physician shall prescribe such care
7 in writing. The employer or carrier shall not be responsible
8 for such care until the prescription for attendant care is
9 received by the employer and carrier, which shall specify the
10 time periods for such care, the level of care required, and
11 the type of assistance required. A prescription for attendant
12 care shall not prescribe such care retroactively. The value of
13 nonprofessional attendant care provided by a family member
14 must be determined as follows:

15 1. If the family member is not employed or if the
16 family member is employed and is providing attendant care
17 services during hours that he or she is not engaged in
18 employment, the per-hour value equals the federal minimum
19 hourly wage.

20 2. If the family member is employed and elects to
21 leave that employment to provide attendant or custodial care,
22 the per-hour value of that care equals the per-hour value of
23 the family member's former employment, not to exceed the
24 per-hour value of such care available in the community at
25 large. A family member or a combination of family members
26 providing nonprofessional attendant care under this paragraph
27 may not be compensated for more than a total of 12 hours per
28 day.

29 3. If the family member remains employed while
30 providing attendant or custodial care, the per-hour value of
31 that care equals the per-hour value of the family member's

1 employment, not to exceed the per-hour value of such care
2 available in the community at large.

3 (c) If the employer fails to provide initial treatment
4 or care required by this section after request by the injured
5 employee, the employee may obtain such initial treatment at
6 the expense of the employer, if the initial treatment or care
7 is compensable and medically necessary and is in accordance
8 with established practice parameters and protocols of
9 treatment as provided for in this chapter. There must be a
10 specific request for the initial treatment or care, and the
11 employer or carrier must be given a reasonable time period
12 within which to provide the initial treatment or care.
13 However, the employee is not entitled to recover any amount
14 personally expended for the initial treatment or care service
15 unless he or she has requested the employer to furnish that
16 initial treatment or service and the employer has failed,
17 refused, or neglected to do so within a reasonable time or
18 unless the nature of the injury requires such initial
19 treatment, nursing, and services and the employer or his or
20 her superintendent or foreman, having knowledge of the injury,
21 has neglected to provide the initial treatment or care
22 service.

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

27 (e) Except in emergency situations and for treatment
28 rendered by a managed care arrangement, after any initial
29 examination and diagnosis by a physician providing remedial
30 treatment, care, and attendance, and before a proposed course
31 of medical treatment begins, each insurer shall review, in

1 accordance with the requirements of this chapter, the proposed
2 course of treatment, to determine whether such treatment would
3 be recognized as reasonably prudent. The review must be in
4 accordance with all applicable workers' compensation practice
5 parameters and protocols of treatment established in
6 accordance with this chapter. The insurer must accept any such
7 proposed course of treatment unless the insurer notifies the
8 physician of its specific objections to the proposed course of
9 treatment by the close of the tenth business day after
10 notification by the physician, or a supervised designee of the
11 physician, of the proposed course of treatment.

12 (f) Upon the written request of the employee, the
13 carrier shall give the employee the opportunity for one change
14 of physician during the course of treatment for any one
15 accident. Upon the granting of a change of physician, the
16 originally authorized physician in the same specialty as the
17 changed physician shall become deauthorized upon written
18 notification by the employer or carrier. The carrier shall
19 authorize an alternative physician who shall not be
20 professionally affiliated with the previous physician within 5
21 days after receipt of the request. If the carrier fails to
22 provide a change of physician as requested by the employee,
23 the employee may select the physician and such physician shall
24 be considered authorized if the treatment being provided is
25 compensable and medically necessary.

26
27 Failure of the carrier to timely comply with this subsection
28 shall be a violation of this chapter and the carrier shall be
29 subject to penalties as provided for in s. 440.525. ~~The~~
30 ~~employee shall be entitled to select another physician from~~
31

1 ~~among not fewer than three carrier-authorized physicians who~~
2 ~~are not professionally affiliated.~~

3 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

4 (a) As a condition to eligibility for payment under
5 this chapter, a health care provider who renders services must
6 be a certified health care provider and must receive
7 authorization from the carrier before providing treatment.
8 This paragraph does not apply to emergency care. The agency
9 shall adopt rules to implement the certification of health
10 care providers.

11 (b) A health care provider who renders emergency care
12 must notify the carrier by the close of the third business day
13 after it has rendered such care. If the emergency care results
14 in admission of the employee to a health care facility, the
15 health care provider must notify the carrier by telephone
16 within 24 hours after initial treatment. Emergency care is not
17 compensable under this chapter unless the injury requiring
18 emergency care arose as a result of a work-related accident.
19 Pursuant to chapter 395, all licensed physicians and health
20 care providers in this state shall be required to make their
21 services available for emergency treatment of any employee
22 eligible for workers' compensation benefits. To refuse to make
23 such treatment available is cause for revocation of a license.

24 (c) A health care provider may not refer the employee
25 to another health care provider, diagnostic facility, therapy
26 center, or other facility without prior authorization from the
27 carrier, except when emergency care is rendered. Any referral
28 must be to a health care provider that has been certified by
29 the agency, unless the referral is for emergency treatment,
30 and the referral must be made in accordance with practice

31

1 parameters and protocols of treatment as provided for in this
2 chapter.

3 (d) A carrier must respond, by telephone or in
4 writing, to a request for authorization from an authorized
5 health care provider by the close of the third business day
6 after receipt of the request. A carrier who fails to respond
7 to a written request for authorization for referral for
8 medical treatment by the close of the third business day after
9 receipt of the request consents to the medical necessity for
10 such treatment. All such requests must be made to the carrier.
11 Notice to the carrier does not include notice to the employer.

12 (e) Carriers shall adopt procedures for receiving,
13 reviewing, documenting, and responding to requests for
14 authorization. Such procedures shall be for a health care
15 provider certified under this section.

16 (f) By accepting payment under this chapter for
17 treatment rendered to an injured employee, a health care
18 provider consents to the jurisdiction of the agency as set
19 forth in subsection (11) and to the submission of all records
20 and other information concerning such treatment to the agency
21 in connection with a reimbursement dispute, audit, or review
22 as provided by this section. The health care provider must
23 further agree to comply with any decision of the agency
24 rendered under this section.

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

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

31

1 (i) Notwithstanding paragraph (d), a claim for
2 specialist consultations, surgical operations,
3 physiotherapeutic or occupational therapy procedures, X-ray
4 examinations, or special diagnostic laboratory tests that cost
5 more than \$1,000 and other specialty services that the agency
6 identifies by rule is not valid and reimbursable unless the
7 services have been expressly authorized by the carrier, or
8 unless the carrier has failed to respond within 10 days to a
9 written request for authorization, or unless emergency care is
10 required. The insurer shall ~~not refuse to~~ authorize such
11 consultation or procedure unless the health care provider or
12 facility is not authorized or certified, unless such treatment
13 is not in accordance with practice parameters and protocols of
14 treatment established in this chapter, or unless a judge of
15 compensation claims ~~an expert medical advisor~~ has determined
16 that the consultation or procedure is not medically necessary,
17 not in accordance with the practice parameters and protocols
18 of treatment established in this chapter, or otherwise not
19 compensable under this chapter. Authorization of a treatment
20 plan does not constitute express authorization for purposes of
21 this section, except to the extent the carrier provides
22 otherwise in its authorization procedures. This paragraph does
23 not limit the carrier's obligation to identify and disallow
24 overutilization or billing errors.

25 (j) Notwithstanding anything in this chapter to the
26 contrary, a sick or injured employee shall be entitled, at all
27 times, to free, full, and absolute choice in the selection of
28 the pharmacy or pharmacist dispensing and filling
29 prescriptions for medicines required under this chapter. It is
30 expressly forbidden for the agency, an employer, or a carrier,
31 or any agent or representative of the agency, an employer, or

1 a carrier to select the pharmacy or pharmacist which the sick
2 or injured employee must use; condition coverage or payment on
3 the basis of the pharmacy or pharmacist utilized; or to
4 otherwise interfere in the selection by the sick or injured
5 employee of a pharmacy or pharmacist.

6 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
7 DEPARTMENT.--

8 (a) Any health care provider providing necessary
9 remedial treatment, care, or attendance to any injured worker
10 shall submit treatment reports to the carrier in a format
11 prescribed by the department ~~in consultation with the agency~~.
12 A claim for medical or surgical treatment is not valid or
13 enforceable against such employer or employee, unless, by the
14 close of the third business day following the first treatment,
15 the physician providing the treatment furnishes to the
16 employer or carrier a preliminary notice of the injury and
17 treatment in a format ~~on forms~~ prescribed by the department ~~in~~
18 ~~consultation with the agency~~ and, within 15 days thereafter,
19 furnishes to the employer or carrier a complete report, and
20 subsequent thereto furnishes progress reports, if requested by
21 the employer or insurance carrier, at intervals of not less
22 than 3 weeks apart or at less frequent intervals if requested
23 in a format ~~on forms~~ prescribed by the department ~~in~~
24 ~~consultation with the agency~~.

25 (b) Upon the request of the department ~~or agency~~, each
26 medical report or bill obtained or received by the employer,
27 the carrier, or the injured employee, or the attorney for the
28 employer, carrier, or injured employee, with respect to the
29 remedial treatment, care, and attendance of the injured
30 employee, including any report of an examination, diagnosis,
31 or disability evaluation, must be produced by the health care

1 provider to ~~filed with~~ the department ~~or agency~~ pursuant to
2 rules adopted by the department ~~in consultation with the~~
3 ~~agency~~. The health care provider shall also furnish to the
4 injured employee or ~~to~~ his or her attorney and the employer or
5 carrier or its attorney, on demand, a copy of his or her
6 office chart, records, and reports, and may charge the injured
7 employee no more than 50 cents per page for copying the
8 records and the actual direct cost to the health care provider
9 or health care facility for X rays, microfilm, or other
10 nonpaper records ~~an amount authorized by the department for~~
11 ~~the copies~~. Each such health care provider shall provide to
12 the ~~agency or~~ department information about the remedial
13 treatment, care, and attendance which the ~~agency or~~ department
14 reasonably requests.

15 (c) It is the policy for the administration of the
16 workers' compensation system that there shall be reasonable
17 access to medical information by all parties to facilitate the
18 self-executing features of the law. An employee who reports an
19 injury or illness alleged to be work-related waives any
20 physician-patient privilege with respect to any condition or
21 complaint reasonably related to the condition for which the
22 employee claims compensation. Notwithstanding the limitations
23 in s. 456.057 and subject to the limitations in s. 381.004,
24 upon the request of the employer, the carrier, an authorized
25 qualified rehabilitation provider, or the attorney for the
26 employer or carrier, the medical records, reports, and
27 information of an injured employee relevant to the particular
28 injury or illness for which compensation is sought must be
29 furnished to those persons and the medical condition of the
30 injured employee must be discussed with those persons, if the
31 records and the discussions are restricted to conditions

1 relating to the workplace injury. Release of medical
2 information by the health care provider or other physician
3 does not require the authorization of the injured employee. If
4 medical records, reports, and information of an injured
5 employee are sought from health care providers who are not
6 subject to the jurisdiction of the state, the injured employee
7 shall sign an authorization allowing for the employer or
8 carrier to obtain the medical records, reports, or
9 information.Any such discussions or release of information
10 may be held before or after the filing of a claim or petition
11 for benefits without the knowledge, consent, or presence of
12 any other party or his or her agent or representative. A
13 health care provider who willfully refuses to provide medical
14 records or to discuss the medical condition of the injured
15 employee, after a reasonable request is made for such
16 information pursuant to this subsection, shall be subject by
17 the department ~~agency~~ to one or more of the penalties set
18 forth in paragraph (8)(b). The department may adopt rules to
19 carry out this subsection.

20 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

21 (a) In any dispute concerning overutilization, medical
22 benefits, compensability, or disability under this chapter,
23 the carrier or the employee may select an independent medical
24 examiner. If the parties agree,the examiner may be a health
25 care provider treating or providing other care to the
26 employee. An independent medical examiner may not render an
27 opinion outside his or her area of expertise, as demonstrated
28 by licensure and applicable practice parameters. The employer
29 and employee shall be entitled to only one independent medical
30 examination per accident and not one independent medical
31 examination per medical specialty. The party requesting and

1 selecting the independent medical examination shall be
2 responsible for all expenses associated with said examination,
3 including, but not limited to, medically necessary diagnostic
4 testing performed and physician or medical care provider fees
5 for the evaluation. The party selecting the independent
6 medical examination shall identify the choice of the
7 independent medical examiner to all other parties within 15
8 days after the date the independent medical examination is to
9 take place. Failure to timely provide such notification shall
10 preclude the requesting party from submitting the findings of
11 such independent medical examiner in a proceeding before a
12 judge of compensation claims. The independent medical examiner
13 may not provide followup care if such recommendation for care
14 is found to be medically necessary. If the employee prevails
15 in a medical dispute as determined in an order by a judge of
16 compensation claims or if benefits are paid or treatment
17 provided after the employee has obtained an independent
18 medical examination based upon the examiner's findings, the
19 costs of such examination shall be paid by the employer or
20 carrier.

21 (b) Each party is bound by his or her selection of an
22 independent medical examiner, including the selection of the
23 independent medical examiner in accordance with s. 440.134 and
24 the opinions of such independent medical examiner. Each party
25 ~~and~~ is entitled to an alternate examiner only if:

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

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

31

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

4 4. The parties agree to an alternate examiner.

5
6 ~~Any party may request, or a judge of compensation claims may~~
7 ~~require, designation of an agency medical advisor as an~~
8 ~~independent medical examiner. The opinion of the advisors~~
9 ~~acting as examiners shall not be afforded the presumption set~~
10 ~~forth in paragraph (9)(c).~~

11 (c) The carrier may, at its election, contact the
12 claimant directly to schedule a reasonable time for an
13 independent medical examination. The carrier must confirm the
14 scheduling agreement in writing with the claimant and the
15 ~~within 5 days and notify~~ claimant's counsel, if any, at least
16 7 days before the date upon which the independent medical
17 examination is scheduled to occur. An attorney representing a
18 claimant is not authorized to schedule the self-insured
19 employer's or carrier's independent medical evaluations under
20 this subsection. Neither the self-insured employer nor the
21 carrier shall be responsible for scheduling any independent
22 medical examination other than an employer or carrier
23 independent medical examination.

24 (d) If the employee fails to appear for the
25 independent medical examination scheduled by the employer or
26 carrier without good cause and fails to advise the physician
27 at least 24 hours before the scheduled date for the
28 examination that he or she cannot appear, the employee is
29 barred from recovering compensation for any period during
30 which he or she has refused to submit to such examination.
31 Further, the employee shall reimburse the employer or carrier

1 50 percent of the physician's cancellation or no-show fee
2 unless the employer or carrier that schedules the examination
3 fails to timely provide to the employee a written confirmation
4 of the date of the examination pursuant to paragraph (c) which
5 includes an explanation of why he or she failed to appear. The
6 employee may appeal to a judge of compensation claims for
7 reimbursement when the employer or carrier withholds payment
8 in excess of the authority granted by this section.

9 (e) No medical opinion other than the opinion of a
10 medical advisor appointed by the judge of compensation claims
11 or the department ~~agency~~, an independent medical examiner, or
12 an authorized treating provider is admissible in proceedings
13 before the judges of compensation claims.

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

18 (g) When a medical dispute arises, the parties may
19 mutually agree to refer the employee to a licensed physician
20 specializing in the diagnosis and treatment of the medical
21 condition at issue for an independent medical examination and
22 report. Such medical examination shall be referred to as a
23 "consensus independent medical examination." The findings and
24 conclusions of such mutually agreed upon consensus independent
25 medical examination shall be binding on the parties and shall
26 constitute resolution of the medical dispute addressed in the
27 independent consensus medical examination and in any
28 proceeding. Agreement by the parties to a consensus
29 independent medical examination shall not affect the
30 employer's, carrier's, or employee's entitlement to one
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1 independent medical examination per accident as provided for
2 in this subsection.

3 (6) UTILIZATION REVIEW.--Carriers shall review all
4 bills, invoices, and other claims for payment submitted by
5 health care providers in order to identify overutilization and
6 billing errors, including compliance with practice parameters
7 and protocols of treatment established in accordance with this
8 chapter, and may hire peer review consultants or conduct
9 independent medical evaluations. Such consultants, including
10 peer review organizations, are immune from liability in the
11 execution of their functions under this subsection to the
12 extent provided in s. 766.101. If a carrier finds that
13 overutilization of medical services or a billing error has
14 occurred, or there is a violation of the practice parameters
15 and protocols of treatment established in accordance with this
16 chapter, it must disallow or adjust payment for such services
17 or error without order of a judge of compensation claims or
18 the agency, if the carrier, in making its determination, has
19 complied with this section and rules adopted by the agency.

20 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

21 (a) Any health care provider, carrier, or employer who
22 elects to contest the disallowance or adjustment of payment by
23 a carrier under subsection (6) must, within 30 days after
24 receipt of notice of disallowance or adjustment of payment,
25 petition the agency to resolve the dispute. The petitioner
26 must serve a copy of the petition on the carrier and on all
27 affected parties by certified mail. The petition must be
28 accompanied by all documents and records that support the
29 allegations contained in the petition. Failure of a petitioner
30 to submit such documentation to the agency results in
31 dismissal of the petition.

1 (b) The carrier must submit to the agency within 10
2 days after receipt of the petition all documentation
3 substantiating the carrier's disallowance or adjustment.
4 Failure of the carrier to timely submit the requested
5 documentation to the agency within 10 days constitutes a
6 waiver of all objections to the petition.

7 (c) Within 60 days after receipt of all documentation,
8 the agency must provide to the petitioner, the carrier, and
9 the affected parties a written determination of whether the
10 carrier properly adjusted or disallowed payment. The agency
11 must be guided by standards and policies set forth in this
12 chapter, including all applicable reimbursement schedules,
13 practice parameters, and protocols of treatment, in rendering
14 its determination.

15 (d) If the agency finds an improper disallowance or
16 improper adjustment of payment by an insurer, the insurer
17 shall reimburse the health care provider, facility, insurer,
18 or employer within 30 days, subject to the penalties provided
19 in this subsection.

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

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

28 1. Repayment of the appropriate amount to the health
29 care provider.

30
31

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

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

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

8 (a) Carriers must report to the agency all instances
9 of overutilization including, but not limited to, all
10 instances in which the carrier disallows or adjusts payment or
11 a determination has been made that the provided or recommended
12 treatment is in excess of the practice parameters and
13 protocols of treatment established in this chapter. The agency
14 shall determine whether a pattern or practice of
15 overutilization exists.

16 (b) If the agency determines that a health care
17 provider has engaged in a pattern or practice of
18 overutilization or a violation of this chapter or rules
19 adopted by the agency, including a pattern or practice of
20 providing treatment in excess of the practice parameters or
21 protocols of treatment, it may impose one or more of the
22 following penalties:

23 1. An order of the agency barring the provider from
24 payment under this chapter;

25 2. Deauthorization of care under review;

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

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

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

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

6 (9) EXPERT MEDICAL ADVISORS.--

7 (a) The agency shall certify expert medical advisors
8 in each specialty to assist the agency and the judges of
9 compensation claims within the advisor's area of expertise as
10 provided in this section. The agency shall, in a manner
11 prescribed by rule, in certifying, recertifying, or
12 decertifying an expert medical advisor, consider the
13 qualifications, training, impartiality, and commitment of the
14 health care provider to the provision of quality medical care
15 at a reasonable cost. As a prerequisite for certification or
16 recertification, the agency shall require, at a minimum, that
17 an expert medical advisor have specialized workers'
18 compensation training or experience under the workers'
19 compensation system of this state and board certification or
20 board eligibility.

21 (b) The agency shall contract with one or more
22 entities that employ, contract with, or otherwise secure or
23 employ expert medical advisors to provide peer review or
24 expert medical consultation, opinions, and testimony to the
25 agency or to a judge of compensation claims in connection with
26 resolving disputes relating to reimbursement, differing
27 opinions of health care providers, and health care and
28 physician services rendered under this chapter, including
29 utilization issues. The agency shall by rule establish the
30 qualifications of expert medical advisors, including training
31 and experience in the workers' compensation system in the

1 state and the expert medical advisor's knowledge of and
2 commitment to the standards of care, practice parameters, and
3 protocols established pursuant to this chapter. Expert medical
4 advisors contracting with the agency shall, as a term of such
5 contract, agree to provide consultation or services in
6 accordance with the timetables set forth in this chapter and
7 to abide by rules adopted by the agency, including, but not
8 limited to, rules pertaining to procedures for review of the
9 services rendered by health care providers and preparation of
10 reports and testimony or recommendations for submission to the
11 agency or the judge of compensation claims.

12 (c) If there is disagreement in the opinions of the
13 health care providers, if two health care providers disagree
14 on medical evidence supporting the employee's complaints or
15 the need for additional medical treatment, or if two health
16 care providers disagree that the employee is able to return to
17 work, the agency may, and the judge of compensation claims
18 shall, upon his or her own motion or within 15 days after
19 receipt of a written request by either the injured employee,
20 the employer, or the carrier, order the injured employee to be
21 evaluated by an expert medical advisor. The opinion of the
22 expert medical advisor is presumed to be correct unless there
23 is clear and convincing evidence to the contrary as determined
24 by the judge of compensation claims. The expert medical
25 advisor appointed to conduct the evaluation shall have free
26 and complete access to the medical records of the employee. An
27 employee who fails to report to and cooperate with such
28 evaluation forfeits entitlement to compensation during the
29 period of failure to report or cooperate.

30 (d) The expert medical advisor must complete his or
31 her evaluation and issue his or her report to the agency or to

1 the judge of compensation claims within 15 ~~45~~ days after
2 receipt of all medical records. The expert medical advisor
3 must furnish a copy of the report to the carrier and to the
4 employee.

5 (e) An expert medical advisor is not liable under any
6 theory of recovery for evaluations performed under this
7 section without a showing of fraud or malice. The protections
8 of s. 766.101 apply to any officer, employee, or agent of the
9 agency and to any officer, employee, or agent of any entity
10 with which the agency has contracted under this subsection.

11 (f) If the agency or a judge of compensation claims
12 orders ~~determines that~~ the services of a certified expert
13 medical advisor ~~are required~~ to resolve a dispute under this
14 section, the party requesting such examination ~~carrier~~ must
15 compensate the advisor for his or her time in accordance with
16 a schedule adopted by the agency. If the employee prevails in
17 a dispute as determined in an order by a judge of compensation
18 claims based upon the expert medical advisor's findings, the
19 employer or carrier shall pay for the costs of such expert
20 medical advisor. If a judge of compensation claims, upon his
21 or her motion, finds that an expert medical advisor is needed
22 to resolve the dispute, the carrier must compensate the
23 advisor for his or her time in accordance with a schedule
24 adopted by the agency.The agency may assess a penalty not to
25 exceed \$500 against any carrier that fails to timely
26 compensate an advisor in accordance with this section.

27 (10) WITNESS FEES.--Any health care provider who gives
28 a deposition shall be allowed a witness fee. The amount
29 charged by the witness may not exceed \$200 per hour. An expert
30 witness who has never provided direct professional services to
31 a party but has merely reviewed medical records and provided

1 an expert opinion or has provided only direct professional
2 services that were unrelated to the workers' compensation case
3 may not be allowed a witness fee in excess of \$200 per day.

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

6 (a) The Agency for Health Care Administration may
7 investigate health care providers to determine whether
8 providers are complying with this chapter and with rules
9 adopted by the agency, whether the providers are engaging in
10 overutilization, ~~and~~ whether providers are engaging in
11 improper billing practices, and whether providers are adhering
12 to practice parameters and protocols established in accordance
13 with this chapter. If the agency finds that a health care
14 provider has improperly billed, overutilized, or failed to
15 comply with agency rules or the requirements of this chapter,
16 including, but not limited to, practice parameters and
17 protocols established in accordance with this chapter, it must
18 notify the provider of its findings and may determine that the
19 health care provider may not receive payment from the carrier
20 or may impose penalties as set forth in subsection (8) or
21 other sections of this chapter. If the health care provider
22 has received payment from a carrier for services that were
23 improperly billed, that constitute overutilization, or that
24 were outside practice parameters or protocols established in
25 accordance with this chapter ~~or for overutilization~~, it must
26 return those payments to the carrier. The agency may assess a
27 penalty not to exceed \$500 for each overpayment that is not
28 refunded within 30 days after notification of overpayment by
29 the agency or carrier.

30 (b) The department shall monitor and audit carriers as
31 provided in s. 624.3161, to determine if medical bills are

1 paid in accordance with this section and department rules. Any
2 employer, if self-insured, or carrier found by the division
3 not to be within 90 percent compliance as to the payment of
4 medical bills after July 1, 1994, must be assessed a fine not
5 to exceed 1 percent of the prior year's assessment levied
6 against such entity under s. 440.51 for every quarter in which
7 the entity fails to attain 90-percent compliance. The
8 department shall fine or otherwise discipline an employer or
9 carrier, pursuant to this chapter, the insurance code, or
10 rules adopted by the department, for each late payment of
11 compensation that is below the minimum 95-percent ~~90-percent~~
12 performance standard. Any carrier that is found to be not in
13 compliance in subsequent consecutive quarters must implement a
14 medical-bill review program approved by the division, and the
15 carrier is subject to disciplinary action by the Department of
16 Insurance.

17 (c) The agency has exclusive jurisdiction to decide
18 any matters concerning reimbursement, to resolve any
19 overutilization dispute under subsection (7), and to decide
20 any question concerning overutilization under subsection (8),
21 which question or dispute arises after January 1, 1994.

22 (d) The following agency actions do not constitute
23 agency action subject to review under ss. 120.569 and 120.57
24 and do not constitute actions subject to s. 120.56: referral
25 by the entity responsible for utilization review; a decision
26 by the agency to refer a matter to a peer review committee;
27 establishment by a health care provider or entity of
28 procedures by which a peer review committee reviews the
29 rendering of health care services; and the review proceedings,
30 report, and recommendation of the peer review committee.

31

1 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
2 REIMBURSEMENT ALLOWANCES.--

3 (a) A three-member panel is created, consisting of the
4 Insurance Commissioner, or the Insurance Commissioner's
5 designee, and two members to be appointed by the Governor,
6 subject to confirmation by the Senate, one member who, on
7 account of present or previous vocation, employment, or
8 affiliation, shall be classified as a representative of
9 employers, the other member who, on account of previous
10 vocation, employment, or affiliation, shall be classified as a
11 representative of employees. The panel shall determine
12 statewide schedules of maximum reimbursement allowances for
13 medically necessary treatment, care, and attendance provided
14 by physicians, hospitals, ambulatory surgical centers,
15 work-hardening programs, pain programs, and durable medical
16 equipment. The maximum reimbursement allowances for inpatient
17 hospital care shall be based on a schedule of per diem rates,
18 to be approved by the three-member panel no later than March
19 1, 1994, to be used in conjunction with a precertification
20 manual as determined by the department, including maximum
21 hours in which an outpatient may remain in observation status,
22 which shall not exceed 23 hours ~~agency~~. All compensable
23 charges for hospital outpatient care shall be reimbursed at 75
24 percent of usual and customary charges, except as otherwise
25 provided by this subsection. ~~Until the three-member panel~~
26 ~~approves a schedule of per diem rates for inpatient hospital~~
27 ~~care and it becomes effective, all compensable charges for~~
28 ~~hospital inpatient care must be reimbursed at 75 percent of~~
29 ~~their usual and customary charges.~~ Annually, the three-member
30 panel shall adopt schedules of maximum reimbursement
31 allowances for physicians, hospital inpatient care, hospital

1 outpatient care, ambulatory surgical centers, work-hardening
2 programs, and pain programs. ~~However, the maximum percentage~~
3 ~~of increase in the individual reimbursement allowance may not~~
4 ~~exceed the percentage of increase in the Consumer Price Index~~
5 ~~for the previous year.~~ An individual physician, hospital,
6 ambulatory surgical center, pain program, or work-hardening
7 program shall be reimbursed either ~~the usual and customary~~
8 ~~charge for treatment, care, and attendance,~~ the agreed-upon
9 contract price, ~~or~~ the maximum reimbursement allowance in the
10 appropriate schedule, ~~whichever is less.~~

11 (b) It is the intent of the Legislature to increase
12 the schedule of maximum reimbursement allowances for selected
13 physicians effective January 1, 2004, and to pay for the
14 increases through reductions in payments to hospitals.
15 Revisions developed pursuant to this subsection are limited to
16 the following:

17 1. Payments for outpatient physical, occupational, and
18 speech therapy provided by hospitals shall be reduced to the
19 schedule of maximum reimbursement allowances for these
20 services which applies to nonhospital providers.

21 2. Payments for scheduled outpatient nonemergency
22 radiological and clinical laboratory services that are not
23 provided in conjunction with a surgical procedure shall be
24 reduced to the schedule of maximum reimbursement allowances
25 for these services which applies to nonhospital providers.

26 3. Outpatient reimbursement for scheduled surgeries
27 shall be reduced from 75 percent of charges to 60 percent of
28 charges.

29 4. Maximum reimbursement for a physician licensed
30 under chapter 458 or chapter 459 shall be increased to 110
31 percent of the reimbursement allowed by Medicare, using

1 appropriate codes and modifiers or the medical reimbursement
2 level adopted by the three-member panel as of January 1, 2003,
3 whichever is greater.

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

9 (c)(b) As to reimbursement for a prescription
10 medication, the reimbursement amount for a prescription shall
11 be the average wholesale price ~~times 1.2~~ plus \$4.18 for the
12 dispensing fee, except where the carrier has contracted for a
13 lower amount. Fees for pharmaceuticals and pharmaceutical
14 services shall be reimbursable at the applicable fee schedule
15 amount. Where the employer or carrier has contracted for such
16 services and the employee elects to obtain them through a
17 provider not a party to the contract, the carrier shall
18 reimburse at the schedule, negotiated, or contract price,
19 whichever is lower. No such contract shall rely on a provider
20 that is not reasonably accessible to the employee.

21 (d)(c) Reimbursement for all fees and other charges
22 for such treatment, care, and attendance, including treatment,
23 care, and attendance provided by any hospital or other health
24 care provider, ambulatory surgical center, work-hardening
25 program, or pain program, must not exceed the amounts provided
26 by the uniform schedule of maximum reimbursement allowances as
27 determined by the panel or as otherwise provided in this
28 section. This subsection also applies to independent medical
29 examinations performed by health care providers under this
30 chapter. ~~Until the three-member panel approves a uniform~~
31 ~~schedule of maximum reimbursement allowances and it becomes~~

1 ~~effective, all compensable charges for treatment, care, and~~
2 ~~attendance provided by physicians, ambulatory surgical~~
3 ~~centers, work-hardening programs, or pain programs shall be~~
4 ~~reimbursed at the lowest maximum reimbursement allowance~~
5 ~~across all 1992 schedules of maximum reimbursement allowances~~
6 ~~for the services provided regardless of the place of service.~~
7 In determining the uniform schedule, the panel shall first
8 approve the data which it finds representative of prevailing
9 charges in the state for similar treatment, care, and
10 attendance of injured persons. Each health care provider,
11 health care facility, ambulatory surgical center,
12 work-hardening program, or pain program receiving workers'
13 compensation payments shall maintain records verifying their
14 usual charges. In establishing the uniform schedule of maximum
15 reimbursement allowances, the panel must consider:

- 16 1. The levels of reimbursement for similar treatment,
17 care, and attendance made by other health care programs or
18 third-party providers;
- 19 2. The impact upon cost to employers for providing a
20 level of reimbursement for treatment, care, and attendance
21 which will ensure the availability of treatment, care, and
22 attendance required by injured workers;
- 23 3. The financial impact of the reimbursement
24 allowances upon health care providers and health care
25 facilities, including trauma centers as defined in s.
26 395.4001, and its effect upon their ability to make available
27 to injured workers such medically necessary remedial
28 treatment, care, and attendance. The uniform schedule of
29 maximum reimbursement allowances must be reasonable, must
30 promote health care cost containment and efficiency with
31 respect to the workers' compensation health care delivery

1 system, and must be sufficient to ensure availability of such
2 medically necessary remedial treatment, care, and attendance
3 to injured workers; and

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

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

9 1. Take testimony, receive records, and collect data
10 to evaluate the adequacy of the workers' compensation fee
11 schedule, nationally recognized fee schedules and alternative
12 methods of reimbursement to certified health care providers
13 and health care facilities for inpatient and outpatient
14 treatment and care.

15 2. Survey certified health care providers and health
16 care facilities to determine the availability and
17 accessibility of workers' compensation health care delivery
18 systems for injured workers.

19 3. Survey carriers to determine the estimated impact
20 on carrier costs and workers' compensation premium rates by
21 implementing changes to the carrier reimbursement schedule or
22 implementing alternative reimbursement methods.

23 4. Submit recommendations on or before January 1,
24 2003, and biennially thereafter, to the President of the
25 Senate and the Speaker of the House of Representatives on
26 methods to improve the workers' compensation health care
27 delivery system.

28
29 The division shall provide data to the panel, including but
30 not limited to, utilization trends in the workers'
31 compensation health care delivery system. The division shall

1 provide the panel with an annual report regarding the
2 resolution of medical reimbursement disputes and any actions
3 pursuant to s. 440.13(8). The division shall provide
4 administrative support and service to the panel to the extent
5 requested by the panel.

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

12 (a) Engaged in professional or other misconduct or
13 incompetency in connection with medical services rendered
14 under this chapter;

15 (b) Exceeded the limits of his or her or its
16 professional competence in rendering medical care under this
17 chapter, or to have made materially false statements regarding
18 his or her or its qualifications in his or her application;

19 (c) Failed to transmit copies of medical reports to
20 the employer or carrier, or failed to submit full and truthful
21 medical reports of all his or her or its findings to the
22 employer or carrier as required under this chapter;

23 (d) Solicited, or employed another to solicit for
24 himself or herself or itself or for another, professional
25 treatment, examination, or care of an injured employee in
26 connection with any claim under this chapter;

27 (e) Refused to appear before, or to answer upon
28 request of, the agency or any duly authorized officer of the
29 state, any legal question, or to produce any relevant book or
30 paper concerning his or her conduct under any authorization
31 granted to him or her under this chapter;

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

3 (g) Engaged in a pattern of practice of
4 overutilization or a violation of this chapter or rules
5 adopted by the agency, including failure to adhere to practice
6 parameters and protocols established in accordance with this
7 chapter.

8 (14) PAYMENT OF MEDICAL FEES.--

9 (a) Except for emergency care treatment, fees for
10 medical services are payable only to a health care provider
11 certified and authorized to render remedial treatment, care,
12 or attendance under this chapter. Carriers shall pay,
13 disallow, or deny payment to health care providers in the
14 manner and at times set forth in this chapter.A health care
15 provider may not collect or receive a fee from an injured
16 employee within this state, except as otherwise provided by
17 this chapter. Such providers have recourse against the
18 employer or carrier for payment for services rendered in
19 accordance with this chapter. Payment to health care providers
20 or physicians shall be subject to the medical fee schedule and
21 applicable practice parameters and protocols, regardless of
22 whether the health care provider or claimant is asserting that
23 the payment should be made.

24 (b) Fees charged for remedial treatment, care, and
25 attendance, except for independent medical examinations and
26 consensus independent medical examinations, may not exceed the
27 applicable fee schedules adopted under this chapter and
28 department rule. Notwithstanding any other provision in this
29 chapter, if a physician or health care provider specifically
30 agrees in writing to follow identified procedures aimed at
31 providing quality medical care to injured workers at

1 reasonable costs, deviations from established fee schedules
2 shall be permitted. Written agreements warranting deviations
3 may include, but are not limited to, the timely scheduling of
4 appointments for injured workers, participating in
5 return-to-work programs with injured workers' employers,
6 expediting the reporting of treatments provided to injured
7 workers, and agreeing to continuing education, utilization
8 review, quality assurance, precertification, and case
9 management systems that are designed to provide needed
10 treatment for injured workers.

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

17 (15) PRACTICE PARAMETERS.--The practice parameters and
18 protocols mandated under this chapter shall be the practice
19 parameters and protocols adopted by the United States Agency
20 for Healthcare Research and Quality in effect on January 1,
21 2003.

22 ~~(a) The Agency for Health Care Administration, in~~
23 ~~conjunction with the department and appropriate health~~
24 ~~professional associations and health-related organizations~~
25 ~~shall develop and may adopt by rule scientifically sound~~
26 ~~practice parameters for medical procedures relevant to~~
27 ~~workers' compensation claimants. Practice parameters developed~~
28 ~~under this section must focus on identifying effective~~
29 ~~remedial treatments and promoting the appropriate utilization~~
30 ~~of health care resources. Priority must be given to those~~
31 ~~procedures that involve the greatest utilization of resources~~

1 ~~either because they are the most costly or because they are~~
2 ~~the most frequently performed. Practice parameters for~~
3 ~~treatment of the 10 top procedures associated with workers'~~
4 ~~compensation injuries including the remedial treatment of~~
5 ~~lower-back injuries must be developed by December 31, 1994.~~

6 ~~(b) The guidelines may be initially based on~~
7 ~~guidelines prepared by nationally recognized health care~~
8 ~~institutions and professional organizations but should be~~
9 ~~tailored to meet the workers' compensation goal of returning~~
10 ~~employees to full employment as quickly as medically possible,~~
11 ~~taking into consideration outcomes data collected from managed~~
12 ~~care providers and any other inpatient and outpatient~~
13 ~~facilities serving workers' compensation claimants.~~

14 ~~(c) Procedures must be instituted which provide for~~
15 ~~the periodic review and revision of practice parameters based~~
16 ~~on the latest outcomes data, research findings, technological~~
17 ~~advancements, and clinical experiences, at least once every 3~~
18 ~~years.~~

19 ~~(d) Practice parameters developed under this section~~
20 ~~must be used by carriers and the agency in evaluating the~~
21 ~~appropriateness and overutilization of medical services~~
22 ~~provided to injured employees.~~

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

26 (a) Abnormal anatomical findings alone, in the absence
27 of objective relevant medical findings, shall not be an
28 indicator of injury or illness, a justification for the
29 provision of remedial medical care or the assignment of
30 restrictions, or a foundation for limitations.

31

1 (b) At all times during evaluation and treatment, the
2 provider shall act on the premise that returning to work is an
3 integral part of the treatment plan. The goal of removing all
4 restrictions and limitations as early as appropriate shall be
5 part of the treatment plan on a continuous basis. The
6 assignment of restrictions and limitations shall be reviewed
7 with each patient exam and upon receipt of new information,
8 such as progress reports from physical therapists and other
9 providers. Consideration shall be given to upgrading or
10 removing the restrictions and limitations with each patient
11 exam, based upon the presence or absence of objective relevant
12 medical findings.

13 (c) Reasonable necessary medical care of injured
14 employees shall in all situations:

15 1. Utilize a high intensity, short duration treatment
16 approach that focuses on early activation and restoration of
17 function whenever possible.

18 2. Include reassessment of the treatment plans,
19 regimes, therapies, prescriptions, and functional limitations
20 or restrictions prescribed by the provider every 30 days.

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

24
25 All treatment shall be inherently scientifically logical and
26 the evaluation or treatment procedure must match the
27 documented physiologic and clinical problem. Treatment shall
28 match the type, intensity, and duration of service required by
29 the problem identified.

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

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

8 440.134 Workers' compensation managed care
9 arrangement.--

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

11 (d) "Grievance" means a written complaint, other than
12 a petition for benefits, filed by the injured worker pursuant
13 to the requirements of the managed care arrangement,
14 expressing dissatisfaction with the ~~medical care provided by~~
15 ~~an~~ insurer's workers' compensation managed care arrangement's
16 refusal to provide medical care or the medical care provided
17 arrangement health care providers, expressed in writing by an
18 injured worker.

19 (i) "Medical care coordinator" means a primary care
20 provider within a provider network who is responsible for
21 managing the medical care of an injured worker including
22 determining other health care providers and health care
23 facilities to which the injured employee will be referred for
24 evaluation or treatment. A medical care coordinator shall be a
25 physician licensed under chapter 458, ~~or~~ an osteopathic
26 physician licensed under chapter 459, a chiropractic physician
27 licensed under chapter 460, or a podiatric physician licensed
28 under chapter 461.

29 (2)(a) The self-insured employer or carrier may,
30 subject to the terms and limitations specified elsewhere in
31 this section and chapter, furnish to the employee solely

1 through managed care arrangements such medically necessary
2 remedial treatment, care, and attendance for such period as
3 the nature of the injury or the process of recovery requires
4 and which shall be in accordance with practice parameters and
5 protocols established pursuant to this chapter. For any
6 self-insured employer or carrier who elects to deliver the
7 medical benefits required by this chapter through a method
8 other than a workers' compensation managed care arrangement,
9 the discontinuance of the use of the workers' compensation
10 managed care arrangement shall be without regard to the date
11 of the accident, notwithstanding any other provision of law or
12 rule.

13 (b) The agency shall authorize an insurer to offer or
14 utilize a workers' compensation managed care arrangement after
15 the insurer files a completed application along with the
16 payment of a \$1,000 application fee, and upon the agency's
17 being satisfied that the applicant has the ability to provide
18 quality of care consistent with the prevailing professional
19 standards of care and the insurer and its workers'
20 compensation managed care arrangement otherwise meets the
21 requirements of this section. No insurer may offer or utilize
22 a managed care arrangement without such authorization. The
23 authorization, unless sooner suspended or revoked, shall
24 automatically expire 2 years after the date of issuance unless
25 renewed by the insurer. The authorization shall be renewed
26 upon application for renewal and payment of a renewal fee of
27 \$1,000, provided that the insurer is in compliance with the
28 requirements of this section and any rules adopted hereunder.
29 An application for renewal of the authorization shall be made
30 90 days prior to expiration of the authorization, on forms
31 provided by the agency. The renewal application shall not

1 require the resubmission of any documents previously filed
2 with the agency if such documents have remained valid and
3 unchanged since their original filing.

4 (6) The proposed managed care plan of operation must
5 include:

6 (a) A statement or map providing a clear description
7 of the service area.

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

10 (c) A description of the quality assurance program
11 which assures that the health care services provided to
12 workers shall be rendered under reasonable standards of
13 quality of care consistent with the prevailing standards of
14 medical practice in the medical community. The program shall
15 include, but not be limited to:

16 1. A written statement of goals and objectives that
17 stresses health and return-to-work outcomes as the principal
18 criteria for the evaluation of the quality of care rendered to
19 injured workers.

20 2. A written statement describing how methodology has
21 been incorporated into an ongoing system for monitoring of
22 care that is individual case oriented and, when implemented,
23 can provide interpretation and analysis of patterns of care
24 rendered to individual patients by individual providers.

25 3. Written procedures for taking appropriate remedial
26 action whenever, as determined under the quality assurance
27 program, inappropriate or substandard services have been
28 provided or services that should have been furnished have not
29 been provided.

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1 4. A written plan, which includes ongoing review, for
2 providing review of physicians and other licensed medical
3 providers.

4 5. Appropriate financial incentives to reduce service
5 costs and utilization without sacrificing the quality of
6 service.

7 6. Adequate methods of peer review and utilization
8 review. The utilization review process shall include a health
9 care facility's facilities precertification mechanism,
10 including, but not limited to, all elective admissions and
11 nonemergency surgeries and adherence to practice parameters
12 and protocols established in accordance with this chapter.

13 7. Provisions for resolution of disputes arising
14 between a health care provider and an insurer regarding
15 reimbursements and utilization review.

16 8. Availability of a process for aggressive medical
17 care coordination, as well as a program involving cooperative
18 efforts by the workers, the employer, and the workers'
19 compensation managed care arrangement to promote early return
20 to work for injured workers.

21 9. A written plan allowing for the independent medical
22 examination provided for in s. 440.13(5). Notwithstanding any
23 provision to the contrary, the costs for the independent
24 medical examination shall be paid by the carrier if such
25 examination is performed by a physician in the provider
26 network. Otherwise, such costs shall be paid in accordance
27 with s. 440.13(5). An independent medical examination
28 requested by a claimant and paid for by the carrier shall
29 constitute the claimant's one independent medical examination
30 per accident under s. 440.13(5).~~A process allowing employees~~
31 ~~to obtain one second medical opinion in the same specialty and~~

1 ~~within the provider network during the course of treatment for~~
2 ~~a work-related injury.~~

3 10. A provision for the selection of a primary care
4 provider by the employee from among primary providers in the
5 provider network.

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

8 (7) Written procedures to provide the insurer with
9 timely medical records and information including, but not
10 limited to, work status, work restrictions, date of maximum
11 medical improvement, permanent impairment ratings, and other
12 information as required, including information demonstrating
13 compliance with the practice parameters and protocols of
14 treatment established pursuant to this chapter.

15 (8) Evidence that appropriate health care providers
16 and administrative staff of the insurer's workers'
17 compensation managed care arrangement have received training
18 and education on the provisions of this chapter; and the
19 administrative rules that govern the provision of remedial
20 treatment, care, and attendance of injured workers; and the
21 practice parameters and protocols of treatment established
22 pursuant to this chapter.

23 (9) Written procedures and methods to prevent
24 inappropriate or excessive treatment that are in accordance
25 with the practice parameters and protocols of treatment
26 established pursuant to this chapter.

27 (10) Written procedures and methods for the management
28 of an injured worker's medical care by a medical care
29 coordinator including:

30 (a) The mechanism for assuring that covered employees
31 receive all initial covered services from a primary care

1 provider participating in the provider network, except for
2 emergency care.

3 (b) The mechanism for assuring that all continuing
4 covered services be received from the same primary care
5 provider participating in the provider network that provided
6 the initial covered services, except when services from
7 another provider are authorized by the medical care
8 coordinator pursuant to paragraph (d).

9 (c) The policies and procedures for allowing an
10 employee one change to another provider within the ~~same~~
11 ~~specialty and~~ provider network as the authorized treating
12 physician during the course of treatment for a work-related
13 injury, in accordance with the procedures provided in s.
14 440.13(2)(f), if a request is made to the medical care
15 coordinator by the employee; and requiring that special
16 provision be made for more than one such referral through the
17 arrangement's grievance procedures.

18 (d) The process for assuring that all referrals
19 authorized by a medical care coordinator, in accordance with
20 the practice parameters and protocols of treatment established
21 pursuant to this chapter, are made to the participating
22 network providers, unless medically necessary treatment, care,
23 and attendance are not available and accessible to the injured
24 worker in the provider network.

25 (e) Assignment of a medical care coordinator licensed
26 under chapter 458 or chapter 459 to manage care by physicians
27 licensed under chapter 458 or chapter 459, a medical care
28 coordinator licensed under chapter 460 to manage care by
29 physicians licensed under chapter 460, and a medical care
30 coordinator licensed under chapter 461 to manage care by
31 physicians licensed under chapter 461 upon request by an

1 injured employee for care by a physician licensed under
2 chapter 458, chapter 459, chapter 460, or chapter 461.

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

6 (17) Notwithstanding any other provisions of this
7 chapter, when a carrier provides medical care through a
8 workers' compensation managed care arrangement, pursuant to
9 this section, those workers who are subject to the arrangement
10 must receive medical services for work-related injuries and
11 diseases as prescribed in the contract, provided the employer
12 and carrier have provided notice to the employees of the
13 arrangement in a manner approved by the agency and the medical
14 services are in accordance with the practice parameters and
15 protocols established pursuant to this chapter. Treatment
16 received outside the workers' compensation managed care
17 arrangement is not compensable, regardless of the purpose of
18 the treatment, including, but not limited to, evaluations,
19 examinations, or diagnostic studies to determine causation
20 between medical findings and a compensable accident, the
21 existence or extent of impairments or disabilities, and
22 whether the injured employee has reached maximum medical
23 improvement, unless authorized by the carrier prior to the
24 treatment date.

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

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

28 (b) Requirements and procedures for authorization of
29 workers' compensation arrangement provider networks and
30 procedures for the agency to grant exceptions from
31 accessibility of services.

1 (c) Requirements and procedures for case management,
2 utilization management, and peer review.

3 (d) Requirements and procedures for quality assurance
4 and medical records.

5 (e) Requirements and procedures for dispute resolution
6 in conformance with this chapter.

7 (f) Requirements and procedures for employee and
8 provider education.

9 (g) Requirements and procedures for reporting data
10 regarding grievances, return-to-work outcomes, and provider
11 networks.

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

15 440.14 Determination of pay.--

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

22 (a) If the injured employee has worked in the
23 employment in which she or he was working on the date of the
24 accident ~~at the time of the injury~~, whether for the same or
25 another employer, during substantially the whole of 13 weeks
26 immediately preceding the accident ~~injury~~, her or his average
27 weekly wage shall be one-thirteenth of the total amount of
28 wages earned in such employment during the 13 weeks. As used
29 in this paragraph, the term "substantially the whole of 13
30 weeks" means the calendar ~~shall be deemed to mean and refer to~~
31 ~~a constructive~~ period of 13 weeks as a whole, which shall be

1 defined as the 13 calendar weeks before the date of the
2 accident, excluding the week during which the accident
3 occurred.~~a consecutive period of 91 days, and~~ The term
4 "during substantially the whole of 13 weeks" shall be deemed
5 to mean during not less than 75 ~~90~~ percent of the total
6 customary ~~full-time~~ hours of employment within such period
7 considered as a whole.

8 (b) If the injured employee has not worked in such
9 employment during substantially the whole of 13 weeks
10 immediately preceding the accident ~~injury~~, the wages of a
11 similar employee in the same employment who has worked
12 substantially the whole of such 13 weeks shall be used in
13 making the determination under the preceding paragraph.

14 (c) If an employee is a seasonal worker and the
15 foregoing method cannot be fairly applied in determining the
16 average weekly wage, then the employee may use, instead of the
17 13 weeks immediately preceding the accident ~~injury~~, the
18 calendar year or the 52 weeks immediately preceding the
19 accident ~~injury~~. The employee will have the burden of proving
20 that this method will be more reasonable and fairer than the
21 method set forth in paragraphs (a) and (b) and, further, must
22 document prior earnings with W-2 forms, written wage
23 statements, or income tax returns. The employer shall have 30
24 days following the receipt of this written proof to adjust the
25 compensation rate, including the making of any additional
26 payment due for prior weekly payments, based on the lower rate
27 compensation.

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

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

7 (f) If it is established that the injured employee was
8 a part-time worker on the date of the accident ~~at the time of~~
9 ~~the injury~~, that she or he had adopted part-time employment as
10 a customary practice, and that under normal working conditions
11 she or he probably would have remained a part-time worker
12 during the period of disability, these factors shall be
13 considered in arriving at her or his average weekly wages. For
14 the purpose of this paragraph, the term "part-time worker"
15 means an individual who customarily works less than the
16 full-time hours or full-time workweek of a similar employee in
17 the same employment.

18 (g) If compensation is due for a fractional part of
19 the week, the compensation for such fractional part shall be
20 determined by dividing the weekly compensation rate by the
21 number of days employed per week to compute the amount due for
22 each day.

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

30 (5)

31

1 (b) The employee waives any entitlement to interest,
2 penalties, and attorney's fees during the period in which the
3 employee has not provided information concerning the loss of
4 earnings from concurrent employment. Carriers are not subject
5 to penalties by the division under s. 440.20(8)(b) ~~and (c)~~ for
6 unpaid compensation related to concurrent employment during
7 the period in which the employee has not provided information
8 concerning the loss of earnings from concurrent employment.

9 Section 18. Section 440.15, Florida Statutes, is
10 amended to read:

11 440.15 Compensation for disability.--Compensation for
12 disability shall be paid to the employee, subject to the
13 limits provided in s. 440.12(2), as follows:

14 (1) PERMANENT TOTAL DISABILITY.--

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

19 (b) ~~Only~~ A catastrophic injury as defined in s.
20 440.02(38) shall, in the absence of conclusive proof of a
21 substantial earning capacity, constitute permanent total
22 disability. In all other cases, no compensation shall be
23 payable under paragraph (a) if the employee is engaged in, or
24 is physically capable of engaging in at least sedentary
25 employment. In order to obtain permanent total disability
26 benefits, the employee must establish that he or she is not
27 able uninterruptedly to engage in at least sedentary
28 employment, within a 50-mile radius of the employee's
29 residence, due to his or her physical limitation. Such
30 benefits shall be payable until the employee reaches age 75,
31 notwithstanding any age limits. If the accident occurred on or

1 after the employee reaches age 70, benefits shall be payable
2 during the continuance of permanent total disability, not to
3 exceed 5 years following the determination of permanent total
4 disability. Only claimants with catastrophic injuries or
5 claimants who are incapable of engaging in employment, as
6 described in this paragraph, are eligible for permanent total
7 benefits. In no other case may permanent total disability be
8 awarded.

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

12 (d) If an employee who is being paid compensation for
13 permanent total disability becomes rehabilitated to the extent
14 that she or he establishes an earning capacity, the employee
15 shall be paid, instead of the compensation provided in
16 paragraph (a), benefits pursuant to subsection (3). The
17 department shall adopt rules to enable a permanently and
18 totally disabled employee who may have reestablished an
19 earning capacity to undertake a trial period of reemployment
20 without prejudicing her or his return to permanent total
21 status in the case that such employee is unable to sustain an
22 earning capacity.

23 (e)1. The employer's or carrier's right to conduct
24 vocational evaluations or testing by the employer's or
25 carrier's chosen rehabilitation advisor or provider pursuant
26 to s. 440.491 continues even after the employee has been
27 accepted or adjudicated as entitled to compensation under this
28 chapter and costs for such evaluations and testing shall be
29 borne by the employer or carrier, respectively. This right
30 includes, but is not limited to, instances in which such
31 evaluations or tests are recommended by a treating physician

1 or independent medical-examination physician, instances
2 warranted by a change in the employee's medical condition, or
3 instances in which the employee appears to be making
4 appropriate progress in recuperation. This right may not be
5 exercised more than once every calendar year.

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

11 3. ~~Pursuant to an order of the judge of compensation~~
12 ~~claims,~~The employer or carrier may withhold payment of
13 benefits for permanent total disability or supplements for any
14 period during which the employee willfully fails or refuses to
15 appear without good cause for the scheduled vocational
16 evaluation or testing.

17 (f)1. If permanent total disability results from
18 injuries that occurred subsequent to June 30, 1955, and for
19 which the liability of the employer for compensation has not
20 been discharged under s. 440.20(11), the injured employee
21 shall receive additional weekly compensation benefits equal to
22 3 5 percent of her or his weekly compensation rate, as
23 established pursuant to the law in effect on the date of her
24 or his injury, multiplied by the number of calendar years
25 since the date of injury. The weekly compensation payable and
26 the additional benefits payable under this paragraph, when
27 combined, may not exceed the maximum weekly compensation rate
28 in effect at the time of payment as determined pursuant to s.
29 440.12(2). ~~Entitlement to~~ These supplemental payments shall
30 not be paid or payable after the employee attains ~~cease at~~ age
31 62, regardless of whether ~~if~~ the employee has applied for or

1 is eligible to apply ~~is eligible~~ for social security benefits
2 under 42 U.S.C. ss. 402 and 423, ~~whether or not the employee~~
3 ~~has applied for such benefits~~. These supplemental benefits
4 shall be paid by the department out of the Workers'
5 Compensation Administration Trust Fund when the injury
6 occurred subsequent to June 30, 1955, and before July 1, 1984.
7 These supplemental benefits shall be paid by the employer when
8 the injury occurred on or after July 1, 1984. Supplemental
9 benefits are not payable for any period prior to October 1,
10 1974.

11 2.a. The department shall provide by rule for the
12 periodic reporting to the department of all earnings of any
13 nature and social security income by the injured employee
14 entitled to or claiming additional compensation under
15 subparagraph 1. Neither the department nor the employer or
16 carrier shall make any payment of those additional benefits
17 provided by subparagraph 1. for any period during which the
18 employee willfully fails or refuses to report upon request by
19 the department in the manner prescribed by such rules.

20 b. The department shall provide by rule for the
21 periodic reporting to the employer or carrier of all earnings
22 of any nature and social security income by the injured
23 employee entitled to or claiming benefits for permanent total
24 disability. The employer or carrier is not required to make
25 any payment of benefits for permanent total disability for any
26 period during which the employee willfully fails or refuses to
27 report upon request by the employer or carrier in the manner
28 prescribed by such rules or if any employee who is receiving
29 permanent total disability benefits refuses to apply for or
30 cooperate with the employer or carrier in applying for social
31 security benefits.

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

6 (2) TEMPORARY TOTAL DISABILITY.--

7 (a) Subject to subsection (7), in case of disability
8 total in character but temporary in quality, 66 2/3 percent of
9 the average weekly wages shall be paid to the employee during
10 the continuance thereof, not to exceed 104 weeks except as
11 provided in this subsection, s. 440.12(1), and s. 440.14(3).
12 Once the employee reaches the maximum number of weeks allowed,
13 or the employee reaches the date of maximum medical
14 improvement, whichever occurs earlier, temporary disability
15 benefits shall cease and the injured worker's permanent
16 impairment shall be determined.

17 (b) Notwithstanding the provisions of paragraph (a),
18 an employee who has sustained the loss of an arm, leg, hand,
19 or foot, has been rendered a paraplegic, paraparetic,
20 quadriplegic, or quadriparetic, or has lost the sight of both
21 eyes shall be paid temporary total disability of 80 percent of
22 her or his average weekly wage. The increased temporary total
23 disability compensation provided for in this paragraph must
24 not extend beyond 6 months from the date of the accident;
25 however, such benefits shall not be due or payable if the
26 employee is eligible for, entitled to, or collecting permanent
27 total disability benefits. The compensation provided by this
28 paragraph is not subject to the limits provided in s.
29 440.12(2), but instead is subject to a maximum weekly
30 compensation rate of \$700. If, at the conclusion of this
31 period of increased temporary total disability compensation,

1 the employee is still temporarily totally disabled, the
2 employee shall continue to receive temporary total disability
3 compensation as set forth in paragraphs (a) and (c). The
4 period of time the employee has received this increased
5 compensation will be counted as part of, and not in addition
6 to, the maximum periods of time for which the employee is
7 entitled to compensation under paragraph (a) but not paragraph
8 (c).

9 (c) Temporary total disability benefits paid pursuant
10 to this subsection shall include such period as may be
11 reasonably necessary for training in the use of artificial
12 members and appliances, and shall include such period as the
13 employee may be receiving training and education under a
14 program pursuant to s. 440.491. ~~Notwithstanding s. 440.02, the~~
15 ~~date of maximum medical improvement for purposes of paragraph~~
16 ~~(3)(b) shall be no earlier than the last day for which such~~
17 ~~temporary disability benefits are paid.~~

18 (d) The department shall, by rule, provide for the
19 periodic reporting to the department, employer, or carrier of
20 all earned income, including income from social security, by
21 the injured employee who is entitled to or claiming benefits
22 for temporary total disability. The employer or carrier is not
23 required to make any payment of benefits for temporary total
24 disability for any period during which the employee willfully
25 fails or refuses to report upon request by the employer or
26 carrier in the manner prescribed by the rules. The rule must
27 require the claimant to personally sign the claim form and
28 attest that she or he has reviewed, understands, and
29 acknowledges the foregoing.

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

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

1 ~~1~~. Once the employee has reached the date of maximum
2 medical improvement, impairment benefits are due and payable
3 within 14 ~~20~~ days after the carrier has knowledge of the
4 impairment.

5 **(b)2**. The three-member panel, in cooperation with the
6 department, shall establish and use a uniform permanent
7 impairment rating schedule. This schedule must be based on
8 medically or scientifically demonstrable findings as well as
9 the systems and criteria set forth in the American Medical
10 Association's Guides to the Evaluation of Permanent
11 Impairment; the Snellen Charts, published by American Medical
12 Association Committee for Eye Injuries; and the Minnesota
13 Department of Labor and Industry Disability Schedules. The
14 schedule must ~~should~~ be based upon objective findings. The
15 schedule shall be more comprehensive than the AMA Guides to
16 the Evaluation of Permanent Impairment and shall expand the
17 areas already addressed and address additional areas not
18 currently contained in the guides. On August 1, 1979, and
19 pending the adoption, by rule, of a permanent schedule, Guides
20 to the Evaluation of Permanent Impairment, copyright 1977,
21 1971, 1988, by the American Medical Association, shall be the
22 temporary schedule and shall be used for the purposes hereof.
23 For injuries after July 1, 1990, pending the adoption by rule
24 of a uniform disability rating agency schedule, the Minnesota
25 Department of Labor and Industry Disability Schedule shall be
26 used unless that schedule does not address an injury. In such
27 case, the Guides to the Evaluation of Permanent Impairment by
28 the American Medical Association shall be used. Determination
29 of permanent impairment under this schedule must be made by a
30 physician licensed under chapter 458, a doctor of osteopathic
31 medicine licensed under chapters 458 and 459, a chiropractic

1 physician licensed under chapter 460, a podiatric physician
2 licensed under chapter 461, an optometrist licensed under
3 chapter 463, or a dentist licensed under chapter 466, as
4 appropriate considering the nature of the injury. No other
5 persons are authorized to render opinions regarding the
6 existence of or the extent of permanent impairment.

7 ~~(c)3.~~ All impairment income benefits shall be based on
8 an impairment rating using the impairment schedule referred to
9 in ~~paragraph (b) subparagraph 2.~~ Impairment income benefits
10 are paid biweekly ~~weekly~~ at the rate of 75 ~~50~~ percent of the
11 employee's average weekly temporary total disability benefit
12 not to exceed the maximum weekly benefit under s. 440.12;
13 provided, however, that such benefits shall be reduced by 50
14 percent for each week in which the employee has earned income
15 equal to or in excess of the employee's average weekly wage.

16 An employee's entitlement to impairment income benefits begins
17 the day after the employee reaches maximum medical improvement
18 or the expiration of temporary benefits, whichever occurs
19 earlier, and continues until the earlier of:

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

22 2.b. The death of the employee.

23
24 Impairment income benefits as defined by this subsection are
25 payable only for impairment ratings for physical impairments.
26 If objective medical findings can substantiate a permanent
27 psychiatric impairment resulting from the accident, permanent
28 impairment benefits are limited for the permanent psychiatric
29 impairment to 1-percent permanent impairment.

30 ~~(d)4.~~ After the employee has been certified by a
31 doctor as having reached maximum medical improvement or 6

1 weeks before the expiration of temporary benefits, whichever
2 occurs earlier, the certifying doctor shall evaluate the
3 condition of the employee and assign an impairment rating,
4 using the impairment schedule referred to in paragraph (b)
5 ~~subparagraph 2. Compensation is not payable for the mental,~~
6 ~~psychological, or emotional injury arising out of depression~~
7 ~~from being out of work.~~If the certification and evaluation
8 are performed by a doctor other than the employee's treating
9 doctor, the certification and evaluation must be submitted to
10 the treating doctor, the employee, and the carrier within 10
11 days after the evaluation.~~and~~ The treating doctor must
12 indicate to the carrier agreement or disagreement with the
13 other doctor's certification and evaluation.

14 1. The certifying doctor shall issue a written report
15 to the ~~department, the~~ employee, and the carrier certifying
16 that maximum medical improvement has been reached, stating the
17 impairment rating to the body as a whole, and providing any
18 other information required by the department by rule. The
19 carrier shall establish an overall maximum medical improvement
20 date and permanent impairment rating, based upon all such
21 reports.

22 2. Within 14 days after the carrier's knowledge of
23 each maximum medical improvement date and impairment rating to
24 the body as a whole upon which the carrier is paying benefits,
25 the carrier shall report such maximum medical improvement date
26 and, when determined, the overall maximum medical improvement
27 date and associated impairment rating to the department in a
28 format as set forth in department rule.If the employee has
29 not been certified as having reached maximum medical
30 improvement before the expiration of 98 ~~102~~ weeks after the
31 date temporary ~~total~~ disability benefits begin to accrue, the

1 carrier shall notify the treating doctor of the requirements
2 of this section.

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

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

10 ~~(b) Supplemental benefits.~~

11 ~~1. All supplemental benefits must be paid in~~
12 ~~accordance with this subsection. An employee is entitled to~~
13 ~~supplemental benefits as provided in this paragraph as of the~~
14 ~~expiration of the impairment period, if:~~

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

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

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

24 ~~2. If an employee is not entitled to supplemental~~
25 ~~benefits at the time of payment of the final weekly impairment~~
26 ~~income benefit because the employee is earning at least 80~~
27 ~~percent of the employee's average weekly wage, the employee~~
28 ~~may become entitled to supplemental benefits at any time~~
29 ~~within 1 year after the impairment income benefit period ends~~
30 ~~if:~~

31

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

4 ~~b. The employee meets the other requirements of~~
5 ~~subparagraph 1.; and~~

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

9 ~~3. If an employee earns wages that are at least 80~~
10 ~~percent of the employee's average weekly wage for a period of~~
11 ~~at least 90 days during which the employee is receiving~~
12 ~~supplemental benefits, the employee ceases to be entitled to~~
13 ~~supplemental benefits for the filing period. Supplemental~~
14 ~~benefits that have been terminated shall be reinstated when~~
15 ~~the employee satisfies the conditions enumerated in~~
16 ~~subparagraph 2. and files the statement required under~~
17 ~~subparagraph 4. Notwithstanding any other provision, if an~~
18 ~~employee is not entitled to supplemental benefits for 12~~
19 ~~consecutive months, the employee ceases to be entitled to any~~
20 ~~additional income benefits for the compensable injury. If the~~
21 ~~employee is discharged within 12 months after losing~~
22 ~~entitlement under this subsection, benefits may be reinstated~~
23 ~~if the employee was discharged at that time with the intent to~~
24 ~~deprive the employee of supplemental benefits.~~

25 ~~4. After the initial determination of supplemental~~
26 ~~benefits, the employee must file a statement with the carrier~~
27 ~~stating that the employee has earned less than 80 percent of~~
28 ~~the employee's average weekly wage as a direct result of the~~
29 ~~employee's impairment, stating the amount of wages the~~
30 ~~employee earned in the filing period, and stating that the~~
31 ~~employee has in good faith sought employment commensurate with~~

1 ~~the employee's ability to work. The statement must be filed~~
2 ~~quarterly on a form and in the manner prescribed by the~~
3 ~~department. The department may modify the filing period as~~
4 ~~appropriate to an individual case. Failure to file a statement~~
5 ~~relieves the carrier of liability for supplemental benefits~~
6 ~~for the period during which a statement is not filed.~~

7 ~~5. The carrier shall begin payment of supplemental~~
8 ~~benefits not later than the seventh day after the expiration~~
9 ~~date of the impairment income benefit period and shall~~
10 ~~continue to timely pay those benefits. The carrier may request~~
11 ~~a mediation conference for the purpose of contesting the~~
12 ~~employee's entitlement to or the amount of supplemental income~~
13 ~~benefits.~~

14 ~~6. Supplemental benefits are calculated quarterly and~~
15 ~~paid monthly. For purposes of calculating supplemental~~
16 ~~benefits, 80 percent of the employee's average weekly wage and~~
17 ~~the average wages the employee has earned per week are~~
18 ~~compared quarterly. For purposes of this paragraph, if the~~
19 ~~employee is offered a bona fide position of employment that~~
20 ~~the employee is capable of performing, given the physical~~
21 ~~condition of the employee and the geographic accessibility of~~
22 ~~the position, the employee's weekly wages are considered~~
23 ~~equivalent to the weekly wages for the position offered to the~~
24 ~~employee.~~

25 ~~7. Supplemental benefits are payable at the rate of 80~~
26 ~~percent of the difference between 80 percent of the employee's~~
27 ~~average weekly wage determined pursuant to s. 440.14 and the~~
28 ~~weekly wages the employee has earned during the reporting~~
29 ~~period, not to exceed the maximum weekly income benefit under~~
30 ~~s. 440.12.~~

31

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

6 ~~(c) Duration of temporary impairment and supplemental~~
7 ~~income benefits.--The employee's eligibility for temporary~~
8 ~~benefits, impairment income benefits, and supplemental~~
9 ~~benefits terminates on the expiration of 401 weeks after the~~
10 ~~date of injury.~~

11 (g) Notwithstanding paragraph (c), for accidents
12 occurring on or after October 1, 2003, an employee's
13 entitlement to impairment income benefits begins the day after
14 the employee reaches maximum medical improvement or the
15 expiration of temporary benefits, whichever occurs earlier,
16 and continues for the following periods:

17 1. Two weeks of benefits are to be paid to the
18 employee for each percentage point of impairment from 1
19 percent up to and including 10 percent.

20 2. For each percentage point of impairment from 11
21 percent up to and including 15 percent, 3 weeks of benefits
22 are to be paid.

23 3. For each percentage point of impairment from 16
24 percent up to and including 20 percent, 4 weeks of benefits
25 are to be paid.

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

28 (4) TEMPORARY PARTIAL DISABILITY.--

29 (a) Subject to subsection (7), in case of temporary
30 partial disability, compensation shall be equal to 80 percent
31 of the difference between 80 percent of the employee's average

1 weekly wage and the salary, wages, and other remuneration the
2 employee is able to earn post injury, as compared weekly;
3 however, ~~the~~ weekly temporary partial disability benefits may
4 not exceed an amount equal to 66 2/3 percent of the employee's
5 average weekly wage at the time of accident injury. In order
6 to simplify the comparison of the preinjury average weekly
7 wage with the salary, wages, and other remuneration the
8 employee is able to earn post injury, the department may by
9 rule provide for payment of the initial installment of
10 temporary partial disability benefits to be paid as a partial
11 week so that payment for remaining weeks of temporary partial
12 disability can ~~the modification of the weekly comparison so as~~
13 ~~to~~ coincide as closely as possible with the post injury
14 employer's work week injured worker's pay periods. The amount
15 determined to be the salary, wages, and other remuneration the
16 employee is able to earn shall in no case be less than the sum
17 actually being earned by the employee, including earnings from
18 sheltered employment. Benefits shall be payable under this
19 subsection only if overall maximum medical improvement has not
20 been reached and the medical conditions resulting from the
21 accident create restrictions on the injured employee's ability
22 to return to work.

23 (b) Within 5 business days after the carrier's
24 knowledge of the employee's release to restricted work, the
25 carrier shall mail to the employee and employer an
26 informational letter, adopted by department rule, explaining
27 the employee's possible eligibility and responsibilities for
28 temporary partial disability benefits.

29 (c) When an employee returns to work with the
30 restrictions resulting from the accident and is earning wages
31 less than 80 percent of the preinjury average weekly wage, the

1 first installment of temporary partial disability benefits is
2 due 7 days after the last date of the post injury employer's
3 first biweekly work week. Thereafter, payment for temporary
4 partial benefits shall be paid biweekly no later than the 7th
5 day following the last day of each biweekly work week.

6 (d) If the employee is unable to return to work with
7 the restrictions resulting from the accident and is not
8 earning wages, salary, or other remuneration, temporary
9 partial disability benefits shall be paid no later than the
10 last day of each biweekly period. The employee shall notify
11 the carrier within 5 business days after returning to work.
12 Failure to notify the carrier of the establishment of an
13 earning capacity in the required time shall result in a
14 suspension or nonpayment of temporary partial disability
15 benefits until the proper notification is provided.

16 (e)~~(b)~~ Such benefits shall be paid during the
17 continuance of such disability, not to exceed a period of 104
18 weeks, as provided by this subsection and subsection (2). Once
19 the injured employee reaches the maximum number of weeks,
20 temporary disability benefits cease and the injured worker's
21 permanent impairment must be determined. If the employee is
22 terminated from post injury employment based on the employee's
23 misconduct, temporary partial disability benefits are not
24 payable as provided for in this section.The department shall
25 ~~may~~ by rule specify forms and procedures governing the method
26 and time for ~~of~~ payment of temporary disability benefits for
27 dates of accidents before January 1, 1994, and for dates of
28 accidents on or after January 1, 1994.

29 (5) SUBSEQUENT INJURY.--

30 (a) The fact that an employee has suffered previous
31 disability, impairment, anomaly, or disease, or received

1 compensation therefor, shall not preclude her or him from
2 benefits, as specified in paragraph (b), for a subsequent
3 aggravation or acceleration of the preexisting condition or
4 ~~nor~~ preclude benefits for death resulting therefrom, except
5 that no benefits shall be payable if the employee, at the time
6 of entering into the employment of the employer by whom the
7 benefits would otherwise be payable, falsely represents
8 herself or himself in writing as not having previously been
9 disabled or compensated because of such previous disability,
10 impairment, anomaly, or disease and the employer detrimentally
11 relies on the misrepresentation. ~~Compensation for temporary~~
12 ~~disability, medical benefits, and wage-loss benefits shall not~~
13 ~~be subject to apportionment.~~

14 (b) If a compensable injury, disability, or need for
15 medical care permanent impairment, or any portion thereof, is
16 a result of aggravation or acceleration of a preexisting
17 condition, or is the result of merger with a preexisting
18 condition, only the disabilities and medical treatment
19 associated with such compensable injury shall be payable under
20 this chapter, excluding the degree of disability or medical
21 conditions existing at the time of the impairment rating or at
22 the time of the accident, regardless of whether the
23 preexisting condition was disabling at the time of the
24 accident or at the time of the impairment rating and without
25 considering whether the preexisting condition would be
26 disabling without the compensable accident impairment, an
27 ~~employee eligible to receive impairment benefits under~~
28 ~~paragraph (3)(a) shall receive such benefits for the total~~
29 ~~impairment found to result, excluding the degree of impairment~~
30 ~~existing at the time of the subject accident or injury or~~
31 ~~which would have existed by the time of the impairment rating~~

1 ~~without the intervention of the compensable accident or~~
2 ~~injury.~~ The degree of permanent impairment or disability
3 attributable to the accident or injury shall be compensated in
4 accordance with this section, apportioning out the preexisting
5 condition based on the anatomical impairment rating
6 attributable to the preexisting condition. Medical benefits
7 shall be paid apportioning out the percentage of the need for
8 such care attributable to the preexisting condition paragraph
9 (3)(a). As used in this paragraph, "merger" means the
10 combining of a preexisting permanent impairment or disability
11 with a subsequent compensable permanent impairment or
12 disability which, when the effects of both are considered
13 together, result in a permanent impairment or disability
14 rating which is greater than the sum of the two permanent
15 impairment or disability ratings when each impairment or
16 disability is considered individually.

17 ~~(6) OBLIGATION TO REHIRE.--If the employer has not in~~
18 ~~good faith made available to the employee, within a 100-mile~~
19 ~~radius of the employee's residence, work appropriate to the~~
20 ~~employee's physical limitations within 30 days after the~~
21 ~~carrier notifies the employer of maximum medical improvement~~
22 ~~and the employee's physical limitations, the employer shall~~
23 ~~pay to the department for deposit into the Workers'~~
24 ~~Compensation Administration Trust Fund a fine of \$250 for~~
25 ~~every \$5,000 of the employer's workers' compensation premium~~
26 ~~or payroll, not to exceed \$2,000 per violation, as the~~
27 ~~department requires by rule. The employer is not subject to~~
28 ~~this subsection if the employee is receiving permanent total~~
29 ~~disability benefits or if the employer has 50 or fewer~~
30 ~~employees.~~

31

1 ~~(6)(7)~~ EMPLOYEE REFUSES EMPLOYMENT.--If an injured
2 employee refuses employment suitable to the capacity thereof,
3 offered to or procured therefor, such employee shall not be
4 entitled to any compensation at any time during the
5 continuance of such refusal unless at any time in the opinion
6 of the judge of compensation claims such refusal is
7 justifiable. Time periods for the payment of benefits in
8 accordance with this section shall be counted in determining
9 the limitation of benefits as provided for in paragraphs
10 (2)(a), (3)(c), and (4)(b).

11 ~~(7)(8)~~ EMPLOYEE LEAVES EMPLOYMENT.--If an injured
12 employee, when receiving compensation for temporary partial
13 disability, leaves the employment of the employer by whom she
14 or he was employed at the time of the accident for which such
15 compensation is being paid, the employee shall, upon securing
16 employment elsewhere, give to such former employer an
17 affidavit in writing containing the name of her or his new
18 employer, the place of employment, and the amount of wages
19 being received at such new employment; and, until she or he
20 gives such affidavit, the compensation for temporary partial
21 disability will cease. The employer by whom such employee was
22 employed at the time of the accident for which such
23 compensation is being paid may also at any time demand of such
24 employee an additional affidavit in writing containing the
25 name of her or his employer, the place of her or his
26 employment, and the amount of wages she or he is receiving;
27 and if the employee, upon such demand, fails or refuses to
28 make and furnish such affidavit, her or his right to
29 compensation for temporary partial disability shall cease
30 until such affidavit is made and furnished. If the employee
31 leaves her or his employment while receiving temporary partial

1 benefits without just cause as determined by the judge of
2 compensation claims, temporary partial benefits shall be
3 payable based on the deemed earnings of the employee as if she
4 or he had remained employed.

5 (8)~~(9)~~ EMPLOYEE BECOMES INMATE OF INSTITUTION.--In
6 case an employee becomes an inmate of a public institution,
7 then no compensation shall be payable unless she or he has
8 dependent upon her or him for support a person or persons
9 defined as dependents elsewhere in this chapter, whose
10 dependency shall be determined as if the employee were
11 deceased and to whom compensation would be paid in case of
12 death; and such compensation as is due such employee shall be
13 paid such dependents during the time she or he remains such
14 inmate.

15 (9)~~(10)~~ EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS
16 CHAPTER AND FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY
17 INSURANCE ACT.--

18 (a) Weekly compensation benefits payable under this
19 chapter for disability resulting from injuries to an employee
20 who becomes eligible for benefits under 42 U.S.C. s. 423 shall
21 be reduced to an amount whereby the sum of such compensation
22 benefits payable under this chapter and such total benefits
23 otherwise payable for such period to the employee and her or
24 his dependents, had such employee not been entitled to
25 benefits under this chapter, under 42 U.S.C. ss. 402 and 423,
26 does not exceed 80 percent of the employee's average weekly
27 wage. However, this provision shall not operate to reduce an
28 injured worker's benefits under this chapter to a greater
29 extent than such benefits would have otherwise been reduced
30 under 42 U.S.C. s. 424(a). This reduction of compensation
31 benefits is not applicable to any compensation benefits

1 payable for any week subsequent to the week in which the
2 injured worker reaches the age of 62 years.

3 (b) If the provisions of 42 U.S.C. s. 424(a) are
4 amended to provide for a reduction or increase of the
5 percentage of average current earnings that the sum of
6 compensation benefits payable under this chapter and the
7 benefits payable under 42 U.S.C. ss. 402 and 423 can equal,
8 the amount of the reduction of benefits provided in this
9 subsection shall be reduced or increased accordingly. The
10 department may by rule specify forms and procedures governing
11 the method for calculating and administering the offset of
12 benefits payable under this chapter and benefits payable under
13 42 U.S.C. ss. 402 and 423. The department shall have first
14 priority in taking any available social security offsets on
15 dates of accidents occurring before July 1, 1984.

16 (c) No disability compensation benefits payable for
17 any week, including those benefits provided by paragraph
18 (1)(f), shall be reduced pursuant to this subsection until the
19 Social Security Administration determines the amount otherwise
20 payable to the employee under 42 U.S.C. ss. 402 and 423 and
21 the employee has begun receiving such social security benefit
22 payments. The employee shall, upon demand by the department,
23 the employer, or the carrier, authorize the Social Security
24 Administration to release disability information relating to
25 her or him and authorize the Division of Unemployment
26 Compensation to release unemployment compensation information
27 relating to her or him, in accordance with rules to be adopted
28 by the department prescribing the procedure and manner for
29 requesting the authorization and for compliance by the
30 employee. Neither the department nor the employer or carrier
31 shall make any payment of benefits for total disability or

1 those additional benefits provided by paragraph (1)(f) for any
2 period during which the employee willfully fails or refuses to
3 authorize the release of information in the manner and within
4 the time prescribed by such rules. The authority for release
5 of disability information granted by an employee under this
6 paragraph shall be effective for a period not to exceed 12
7 months, such authority to be renewable as the department may
8 prescribe by rule.

9 (d) If compensation benefits are reduced pursuant to
10 this subsection, the minimum compensation provisions of s.
11 440.12(2) do not apply.

12 (10)~~(11)~~ EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS
13 CHAPTER WHO HAS RECEIVED OR IS ENTITLED TO RECEIVE
14 UNEMPLOYMENT COMPENSATION.--

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

19 (b) If an employee is entitled to temporary partial
20 benefits pursuant to subsection (4) and unemployment
21 compensation benefits, such unemployment compensation benefits
22 shall be primary and the temporary partial benefits shall be
23 supplemental only, the sum of the two benefits not to exceed
24 the amount of temporary partial benefits which would otherwise
25 be payable.

26 (11)~~(12)~~ FULL-PAY STATUS FOR CERTAIN LAW ENFORCEMENT
27 OFFICERS.--Any law enforcement officer as defined in s.
28 943.10(1), (2), or (3) who, while acting within the course of
29 employment as provided by s. 440.091, is maliciously or
30 intentionally injured and who thereby sustains a job-connected
31 disability compensable under this chapter shall be carried in

1 full-pay status rather than being required to use sick,
2 annual, or other leave. Full-pay status shall be granted only
3 after submission to the employing agency's head of a medical
4 report which gives a current diagnosis of the employee's
5 recovery and ability to return to work. In no case shall the
6 employee's salary and workers' compensation benefits exceed
7 the amount of the employee's regular salary requirements.

8 (12)~~(13)~~ REPAYMENT.--If an employee has received a sum
9 as an indemnity benefit under any classification or category
10 of benefit under this chapter to which she or he is not
11 entitled, the employee is liable to repay that sum to the
12 employer or the carrier or to have that sum deducted from
13 future benefits, regardless of the classification of benefits,
14 payable to the employee under this chapter; however, a partial
15 payment of the total repayment may not exceed 20 percent of
16 the amount of the biweekly payment.

17 Section 19. Subsections (1), (2), and (3) of section
18 440.151, Florida Statutes, are amended to read:

19 440.151 Occupational diseases.--

20 (1)(a) Where the employer and employee are subject to
21 the provisions of the Workers' Compensation Law, the
22 disablement or death of an employee resulting from an
23 occupational disease as hereinafter defined shall be treated
24 as the happening of an injury by accident, notwithstanding any
25 other provisions of this chapter, and the employee or, in case
26 of death, the employee's dependents shall be entitled to
27 compensation as provided by this chapter, except as
28 hereinafter otherwise provided; and the practice and procedure
29 prescribed by this chapter shall apply to all proceedings
30 under this section, except as hereinafter otherwise provided.
31 Provided, however, that in no case shall an employer be liable

1 for compensation under the provisions of this section unless
2 such disease has resulted from the nature of the employment in
3 which the employee was engaged under such employer, ~~and~~ was
4 actually contracted while so engaged, and the nature of the
5 employment was the major contributing cause of the disease.
6 Major contributing cause must be shown by medical evidence
7 only, as demonstrated by physical examination findings and
8 diagnostic testing. ~~meaning by "Nature of the employment"~~
9 means that in to the occupation in which the employee was so
10 engaged there is attached a particular hazard of such disease
11 that distinguishes it from the usual run of occupations, or
12 the incidence of such disease is substantially higher in the
13 occupation in which the employee was so engaged than in the
14 usual run of occupations. In claims for death under s. 440.16,
15 death must occur ~~or, in case of death, unless death follows~~
16 ~~continuous disability from such disease, commencing within the~~
17 ~~period above limited, for which compensation has been paid or~~
18 ~~awarded, or timely claim made as provided in this section, and~~
19 ~~results~~ within 350 weeks after ~~such~~ last exposure. Both
20 causation and sufficient exposure to a specific harmful
21 substance shown to be present in the workplace to support
22 causation shall be proven by clear and convincing evidence.

23 (b) No compensation shall be payable for an
24 occupational disease if the employee, at the time of entering
25 into the employment of the employer by whom the compensation
26 would otherwise be payable, falsely represents herself or
27 himself in writing as not having previously been disabled,
28 laid off or compensated in damages or otherwise, because of
29 such disease.

30 (c) Where an occupational disease is aggravated by any
31 other disease or infirmity, not itself compensable, or where

1 disability or death from any other cause, not itself
2 compensable, is aggravated, prolonged, accelerated or in
3 anywise contributed to by an occupational disease, the
4 compensation shall be payable only if the occupational disease
5 is the major contributing cause of the injury. Any
6 compensation shall be reduced and limited to such proportion
7 only of the compensation that would be payable if the
8 occupational disease were the sole cause of the disability or
9 death as such occupational disease, as a causative factor,
10 bears to all the causes of such disability or death, such
11 reduction in compensation to be effected by reducing the
12 number of weekly or monthly payments or the amounts of such
13 payments, as under the circumstances of the particular case
14 may be for the best interest of the claimant or claimants.
15 Major contributing cause must be demonstrated by medical
16 evidence based on physical examination findings and diagnostic
17 testing.

18 (d) No compensation for death from an occupational
19 disease shall be payable to any person whose relationship to
20 the deceased, which under the provisions of this Workers'
21 Compensation Law would give right to compensation, arose
22 subsequent to the beginning of the first compensable
23 disability, save only to afterborn children of a marriage
24 existing at the beginning of such disability.

25 (e) No compensation shall be payable for disability or
26 death resulting from tuberculosis arising out of and in the
27 course of employment by the Department of Health at a state
28 tuberculosis hospital, or aggravated by such employment, when
29 the employee had suffered from said disease at any time prior
30 to the commencement of such employment.

31

1 (2) Whenever used in this section the term
2 "occupational disease" shall be construed to mean only a
3 disease which is due to causes and conditions which are
4 characteristic of and peculiar to a particular trade,
5 occupation, process, or employment, and to exclude all
6 ordinary diseases of life to which the general public is
7 exposed, unless the incidence of the disease is substantially
8 higher in the particular trade, occupation, process, or
9 employment than for the general public. "Occupational disease"
10 means only a disease for which there are epidemiological
11 studies showing that exposure to the specific substance
12 involved, at the levels to which the employee was exposed, may
13 cause the precise disease sustained by the employee.

14 (3) Except as ~~hereinafter~~ otherwise provided in this
15 section, "disablement" means disability as described in s.
16 440.02(13)~~the event of an employee's becoming actually~~
17 ~~incapacitated, partially or totally, because of an~~
18 ~~occupational disease, from performing her or his work in the~~
19 ~~last occupation in which injuriously exposed to the hazards of~~
20 ~~such disease; and "disability" means the state of being so~~
21 ~~incapacitated .~~

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

24 440.16 Compensation for death.--

25 (1) If death results from the accident within 1 year
26 thereafter or follows continuous disability and results from
27 the accident within 5 years thereafter, the employer shall
28 pay:

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

31

1 (b) Compensation, in addition to the above, in the
2 following percentages of the average weekly wages to the
3 following persons entitled thereto on account of dependency
4 upon the deceased, and in the following order of preference,
5 subject to the limitation provided in subparagraph 2., but
6 such compensation shall be subject to the limits provided in
7 s. 440.12(2), shall not exceed \$150,000 ~~\$100,000~~, and may be
8 less than, but shall not exceed, for all dependents or persons
9 entitled to compensation, 66 2/3 percent of the average wage:
10 1. To the spouse, if there is no child, 50 percent of
11 the average weekly wage, such compensation to cease upon the
12 spouse's death.
13 2. To the spouse, if there is a child or children, the
14 compensation payable under subparagraph 1. and, in addition,
15 16 2/3 percent on account of the child or children. However,
16 when the deceased is survived by a spouse and also a child or
17 children, whether such child or children are the product of
18 the union existing at the time of death or of a former
19 marriage or marriages, the judge of compensation claims may
20 provide for the payment of compensation in such manner as may
21 appear to the judge of compensation claims just and proper and
22 for the best interests of the respective parties and, in so
23 doing, may provide for the entire compensation to be paid
24 exclusively to the child or children; and, in the case of
25 death of such spouse, 33 1/3 percent for each child. However,
26 upon the surviving spouse's remarriage, the spouse shall be
27 entitled to a lump-sum payment equal to 26 weeks of
28 compensation at the rate of 50 percent of the average weekly
29 wage as provided in s. 440.12(2), unless the \$150,000 ~~\$100,000~~
30 limit provided in this paragraph is exceeded, in which case
31 the surviving spouse shall receive a lump-sum payment equal to

1 the remaining available benefits in lieu of any further
2 indemnity benefits. In no case shall a surviving spouse's
3 acceptance of a lump-sum payment affect payment of death
4 benefits to other dependents.

5 3. To the child or children, if there is no spouse, 33
6 1/3 percent for each child.

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

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

11 (c) To the surviving spouse, payment of postsecondary
12 student fees for instruction at any area technical center
13 established under s. 1001.44 for up to 1,800 classroom hours
14 or payment of student fees at any community college
15 established under part III of chapter 1004 for up to 80
16 semester hours. The spouse of a deceased state employee shall
17 be entitled to a full waiver of such fees as provided in ss.
18 1009.22 and 1009.23 in lieu of the payment of such fees. The
19 benefits provided for in this paragraph shall be in addition
20 to other benefits provided for in this section and shall
21 terminate 7 years after the death of the deceased employee, or
22 when the total payment in eligible compensation under
23 paragraph (b) has been received. To qualify for the
24 educational benefit under this paragraph, the spouse shall be
25 required to meet and maintain the regular admission
26 requirements of, and be registered at, such area technical
27 center or community college, and make satisfactory academic
28 progress as defined by the educational institution in which
29 the student is enrolled.

30 (7) Compensation under this chapter to aliens not
31 residents (or about to become nonresidents) of the United

1 States or Canada shall be the same in amount as provided for
2 residents, except that dependents in any foreign country shall
3 be limited to surviving spouse and child or children, or if
4 there be no surviving spouse or child or children, to
5 surviving father or mother whom the employee has supported,
6 either wholly or in part, for the period of 1 year prior to
7 the date of the injury, and except that the judge of
8 compensation claims may, at the option of the judge of
9 compensation claims, or upon the application of the insurance
10 carrier, commute all future installments of compensation to be
11 paid to such aliens by paying or causing to be paid to them
12 one-half of the commuted amount of such future installments of
13 compensation as determined by the judge of compensation
14 claims, and provided further that compensation to dependents
15 referred to in this subsection shall in no case exceed \$75,000
16 ~~\$50,000~~.

17 Section 21. Subsection (9) of section 440.185, Florida
18 Statutes, is amended, and subsection (12) is added to that
19 section, to read:

20 440.185 Notice of injury or death; reports; penalties
21 for violations.--

22 (9) Any employer or carrier who fails or refuses to
23 timely send any form, report, or notice required by this
24 section shall be subject to an administrative fine by the
25 department ~~a civil penalty~~ not to exceed \$1,000~~\$500~~ for each
26 such failure or refusal. If, within 1 calendar year, an
27 employer fails to timely submit to the carrier more than 10
28 percent of its notices of injury or death, the employer shall
29 be subject to an administrative fine by the department not to
30 exceed \$2,000 for each such failure or refusal. However, any
31 employer who fails to notify the carrier of the injury on the

1 prescribed form or by letter within the 7 days required in
2 subsection (2) shall be liable for the administrative fine
3 ~~civil penalty~~, which shall be paid by the employer and not the
4 carrier. Failure by the employer to meet its obligations under
5 subsection (2) shall not relieve the carrier from liability
6 for the administrative fine ~~civil penalty~~ if it fails to
7 comply with subsections (4) and (5).

8 (12) Upon receiving notice of an injury from an
9 employee under subsection (1), the employer or carrier shall
10 provide the employee with a written notice, in the form and
11 manner determined by the department by rule, of the
12 availability of services from the Employee Assistance and
13 Ombudsman Office. The substance of the notice to the employee
14 shall include:

15 (a) A description of the scope of services provided by
16 the office.

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

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

22 (d) Any other information regarding access to
23 assistance that the department finds is immediately necessary
24 for an injured employee.

25 Section 22. Subsections (1) and (2) of section
26 440.192, Florida Statutes, are amended, and subsection (9) is
27 added to that section, to read:

28 440.192 Procedure for resolving benefit disputes.--

29 ~~(1) Subject to s. 440.191, Any employee may, for any~~
30 ~~benefit that is ripe, due, and owing, who has not received a~~
31 ~~benefit to which the employee believes she or he is entitled~~

1 ~~under this chapter shall~~ file by certified mail, or by
2 electronic means approved by the Deputy Chief Judge, with the
3 Office of the Judges of Compensation Claims a petition for
4 benefits which meets the requirements of this section and the
5 definition of specificity in s. 440.02. The department shall
6 inform employees of the location of the Office of the Judges
7 of Compensation Claims for purposes of filing a petition for
8 benefits. The employee shall also serve copies of the petition
9 for benefits by certified mail, or by electronic means
10 approved by the Deputy Chief Judge, upon the employer and the
11 employer's carrier. The ~~Deputy~~ Chief Judge shall refer the
12 petitions to the judges of compensation claims.

13 (2) Upon receipt, the Office of the Judges of
14 Compensation Claims shall review each petition and shall
15 dismiss each petition or any portion of such a petition, ~~upon~~
16 ~~the judge's own motion or upon the motion of any party,~~ that
17 does not on its face specifically identify or itemize the
18 following:

19 (a) Name, address, telephone number, and social
20 security number of the employee.

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

23 (c) A detailed description of the injury and cause of
24 the injury, including the location of the occurrence and the
25 date or dates of the accident.

26 (d) A detailed description of the employee's job, work
27 responsibilities, and work the employee was performing when
28 the injury occurred.

29 (e) The time period for which compensation and the
30 specific classification of compensation were not timely
31 provided.

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

4 (g) All specific travel costs to which the employee
5 believes she or he is entitled, including dates of travel and
6 purpose of travel, means of transportation, and mileage and
7 including the date the request for mileage was filed with the
8 carrier and a copy of the request filed with the carrier.

9 (h) Specific listing of all medical charges alleged
10 unpaid, including the name and address of the medical
11 provider, the amounts due, and the specific dates of
12 treatment.

13 (i) The type or nature of treatment care or attendance
14 sought and the justification for such treatment. If the
15 employee is under the care of a physician for an injury
16 identified under paragraph (c), a copy of the physician's
17 request, authorization, or recommendation for treatment, care,
18 or attendance must accompany the petition.

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

22
23 The dismissal of any petition or portion of such a petition
24 under this section is without prejudice and does not require a
25 hearing.

26 (9) A petition for benefits must contain claims for
27 all benefits that are ripe, due, and owing on the date the
28 petition is filed. Unless stipulated in writing by the
29 parties, only claims which have been properly raised in a
30 petition for benefits and have undergone mediation may be
31 considered for adjudication by a judge of compensation claims.

1 Section 23. Section 440.1926, Florida Statutes, is
2 created to read:

3 440.1926 Alternate dispute resolution; claim
4 arbitration.--Notwithstanding any other provision of this
5 chapter, the employer, carrier, and employee may mutually
6 agree to seek consent from a judge of compensation claims to
7 enter into binding claim arbitration in lieu of any other
8 remedy provided for in this chapter to resolve all issues in
9 dispute regarding an injury. Arbitrations agreed to pursuant
10 to this section shall be governed by chapter 682, the Florida
11 Arbitration Code, except that, notwithstanding any provision
12 in chapter 682, the term "court" shall mean a judge of
13 compensation claims. An arbitration award in accordance with
14 this section shall be enforceable in the same manner and with
15 the same powers as any final compensation order.

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

19 440.20 Time for payment of compensation and medical
20 bills; penalties for late payment.--

21 (2)(a) The carrier must pay the first installment of
22 compensation for total disability or death benefits or deny
23 compensability no later than the 14th calendar day after the
24 employer receives notification ~~notice~~ of the injury or death,
25 when disability is immediate and continuous for 8 calendar
26 days or more after the injury. If the first 7 days after
27 disability are nonconsecutive or delayed, the first
28 installment of compensation is due on the 6th day after the
29 first 8 calendar days of disability. The carrier shall
30 thereafter pay compensation in biweekly installments or as
31 otherwise provided in s. 440.15, unless the judge of

1 compensation claims determines or the parties agree that an
2 alternate installment schedule is in the best interests of the
3 employee.

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

8 (3) Upon making initial payment of indemnity benefits,
9 or upon suspension or cessation of payment for any reason, the
10 carrier shall immediately notify the injured employee, the
11 employer, and the department that it has commenced, suspended,
12 or ceased payment of compensation. The department may require
13 such notification to the injured employee, employer, and the
14 department in a ~~any~~ format and manner it deems necessary to
15 obtain accurate and timely notification ~~reporting~~.

16 (4) If the carrier is uncertain of its obligation to
17 provide all benefits or compensation, ~~it may initiate payment~~
18 ~~without prejudice and without admitting liability.~~ the carrier
19 shall immediately and in good faith commence investigation of
20 the employee's entitlement to benefits under this chapter and
21 shall admit or deny compensability within 120 days after the
22 initial provision of compensation or benefits as required
23 under subsection (2) or s. 440.192(8). Additionally, the
24 carrier shall initiate payment and continue the provision of
25 all benefits and compensation as if the claim had been
26 accepted as compensable, without prejudice and without
27 admitting liability. Upon commencement of payment as required
28 under subsection (2) or s. 440.192 (8), the carrier shall
29 provide written notice to the employee that it has elected to
30 pay ~~all or part of~~ the claim pending further investigation,
31 and that it will advise the employee of claim acceptance or

1 denial within 120 days. A carrier that fails to deny
2 compensability within 120 days after the initial provision of
3 benefits or payment of compensation as required under
4 subsection (2) or s. 440.192(8) waives the right to deny
5 compensability, unless the carrier can establish material
6 facts relevant to the issue of compensability that it could
7 not have discovered through reasonable investigation within
8 the 120-day period. The initial provision of compensation or
9 benefits, for purposes of this subsection, means the first
10 installment of compensation or benefits to be paid by the
11 carrier under subsection (2) or pursuant to a petition for
12 benefits under s. 440.192(8).

13 (6)(a) If any installment of compensation for death or
14 dependency benefits, or compensation for disability benefits,
15 ~~permanent impairment, or wage loss~~ payable without an award is
16 not paid within 7 days after it becomes due, as provided in
17 subsection (2), subsection (3), or subsection (4), there shall
18 be added to such unpaid installment a ~~punitive~~ penalty of an
19 amount equal to 20 percent of the unpaid installment ~~or \$5,~~
20 which shall be paid at the same time as, but in addition to,
21 such installment of compensation. This penalty shall not apply
22 for late payments resulting, unless notice is filed under
23 ~~subsection (4) or unless such nonpayment results~~ from
24 conditions over which the employer or carrier had no control.
25 When any installment of compensation payable without an award
26 has not been paid within 7 days after it became due and the
27 claimant concludes the prosecution of the claim before a judge
28 of compensation claims without having specifically claimed
29 additional compensation in the nature of a penalty under this
30 section, the claimant will be deemed to have acknowledged
31 that, owing to conditions over which the employer or carrier

1 had no control, such installment could not be paid within the
2 period prescribed for payment and to have waived the right to
3 claim such penalty. However, during the course of a hearing,
4 the judge of compensation claims shall on her or his own
5 motion raise the question of whether such penalty should be
6 awarded or excused. The department may assess without a
7 hearing the ~~punitive~~ penalty against either the employer or
8 the ~~insurance~~ carrier, depending upon who was at fault in
9 causing the delay. The insurance policy cannot provide that
10 this sum will be paid by the carrier if the department or the
11 judge of compensation claims determines that the ~~punitive~~
12 penalty should be paid ~~made~~ by the employer rather than the
13 carrier. Any additional installment of compensation paid by
14 the carrier pursuant to this section shall be paid directly to
15 the employee by check or, if authorized by the employee, by
16 direct deposit into the employee's account at a financial
17 institution. ~~As used in this subsection, the term "financial~~
18 ~~institution" means a financial institution as defined in s.~~
19 ~~655.005(1)(h).~~

20 (b) For medical services provided on or after January
21 1, 2004, the department shall require that all medical,
22 hospital, pharmacy, or dental bills properly submitted by the
23 provider, except for bills that are disallowed or denied by
24 the carrier or its authorized vendor in accordance with
25 department rule, are timely paid within 45 calendar days after
26 the carrier's receipt of the bill. The department shall impose
27 penalties for late payments or disallowances or denials of
28 medical, hospital, pharmacy, or dental bills that are below a
29 minimum 95 percent timely performance standard. The carrier
30 shall pay to the Workers' Compensation Administration Trust
31 Fund a penalty of:

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

4 2. Fifty dollars for each bill below a 90 percent
5 timely performance standard.

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

15 ~~(a) Within 30 days after final payment of compensation~~
16 ~~has been made, the employer, carrier, or servicing agent shall~~
17 ~~send to the department a notice, in accordance with a format~~
18 ~~and manner prescribed by the department, stating that such~~
19 ~~final payment has been made and stating the total amount of~~
20 ~~compensation paid, the name of the employee and of any other~~
21 ~~person to whom compensation has been paid, the date of the~~
22 ~~injury or death, and the date to which compensation has been~~
23 ~~paid.~~

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

28 (b)(c) In order to ensure carrier compliance under
29 this chapter ~~and provisions of the Florida Insurance Code~~, the
30 office department shall monitor, audit, and investigate the
31 performance of carriers ~~by conducting market conduct~~

1 ~~examinations, as provided in s. 624.3161, and conducting~~
2 ~~investigations, as provided in s. 624.317. The office~~
3 ~~department shall require establish by rule minimum performance~~
4 ~~standards for carriers to ensure that a minimum of 90 percent~~
5 ~~of all compensation benefits are timely paid in accordance~~
6 ~~with this section. The office department shall impose~~
7 ~~penalties fine a carrier as provided in s. 440.13(11)(b) up to~~
8 ~~\$50 for each late payments payment of compensation that are is~~
9 ~~below a the minimum 95 90 percent timely payment performance~~
10 ~~standard. The carrier shall pay to the Workers' Compensation~~
11 ~~Administration Trust Fund a penalty of:~~

12 1. Fifty dollars per number of installments of
13 compensation below the 95 percent timely payment performance
14 standard and equal to or greater than a 90 percent timely
15 payment performance standard.

16 2. One hundred dollars per number of installments of
17 compensation below a 90 percent timely payment performance
18 standard.

19
20 This section does not affect the imposition of any penalties
21 or interest due to the claimant. If a carrier contracts with a
22 servicing agent to fulfill its administrative responsibilities
23 under this chapter, the payment practices of the servicing
24 agent are deemed the payment practices of the carrier for the
25 purpose of assessing penalties against the carrier.

26 (11)

27 (d)1. With respect to any lump-sum settlement under
28 this subsection, a judge of compensation claims must consider
29 at the time of the settlement, whether the settlement
30 allocation provides for the appropriate recovery of child
31 support arrearages. An employer or carrier does not have a

1 duty to investigate or collect information regarding child
2 support arrearages.

3 2. When reviewing any settlement of lump-sum payment
4 pursuant to this subsection, judges of compensation claims
5 shall consider the interests of the worker and the worker's
6 family when approving the settlement, which must consider and
7 provide for appropriate recovery of past due support.

8 3. With respect to any lump-sum settlement under this
9 subsection, any correspondence to a clerk of the circuit court
10 of this state regarding child support documentation shall be
11 exempt from any fees or costs ordinarily assessed by the
12 clerk's office.

13 Section 25. Section 440.25, Florida Statutes, is
14 amended to read:

15 440.25 Procedures for mediation and hearings.--

16 (1) Forty days ~~Within 90 days~~ after a petition for
17 benefits is filed under s. 440.192, ~~a mediation conference~~
18 ~~concerning such petition shall be held.~~ ~~Within 40 days after~~
19 ~~such petition is filed,~~ the judge of compensation claims shall
20 notify the interested parties by order that a mediation
21 conference concerning such petition has been scheduled ~~will be~~
22 ~~held~~ unless the parties have notified the judge ~~Office of the~~
23 ~~Judges~~ of compensation claims that a private mediation has
24 been held or is scheduled to be held. A mediation, whether
25 private or public, shall be held within 130 days after the
26 filing of the petition. ~~Such order must give the date by which~~
27 the mediation conference is to ~~must~~ be held. Such order may be
28 served personally upon the interested parties or may be sent
29 to the interested parties by mail. If multiple petitions are
30 pending, or if additional petitions are filed after the
31 scheduling of a mediation, the judge of compensation claims

1 shall consolidate all petitions into one mediation.The
2 claimant or the adjuster of the employer or carrier may, at
3 the mediator's discretion, attend the mediation conference by
4 telephone or, if agreed to by the parties, other electronic
5 means. A continuance may be granted upon the agreement of the
6 parties or if the requesting party demonstrates to the judge
7 of compensation claims that the reason for requesting the
8 continuance arises from circumstances beyond the party's
9 control. Any order granting a continuance must set forth the
10 date of the rescheduled mediation conference. A mediation
11 conference may not be used solely for the purpose of mediating
12 attorney's fees.

13 (2) Any party who participates in a mediation
14 conference shall not be precluded from requesting a hearing
15 following the mediation conference should both parties not
16 agree to be bound by the results of the mediation conference.
17 A mediation conference is required to be held unless this
18 requirement is waived by the Deputy Chief Judge. ~~No later than~~
19 ~~3 days prior to the mediation conference, all parties must~~
20 ~~submit any applicable motions, including, but not limited to,~~
21 ~~a motion to waive the mediation conference, to the judge of~~
22 ~~compensation claims.~~

23 (3)~~(a)~~ Such mediation conference shall be conducted
24 informally and does not require the use of formal rules of
25 evidence or procedure. Any information from the files,
26 reports, case summaries, mediator's notes, or other
27 communications or materials, oral or written, relating to a
28 mediation conference under this section obtained by any person
29 performing mediation duties is privileged and confidential and
30 may not be disclosed without the written consent of all
31 parties to the conference. Any research or evaluation effort

1 directed at assessing the mediation program activities or
2 performance must protect the confidentiality of such
3 information. Each party to a mediation conference has a
4 privilege during and after the conference to refuse to
5 disclose and to prevent another from disclosing communications
6 made during the conference whether or not the contested issues
7 are successfully resolved. This subsection and paragraphs
8 (4)(a) and (b) shall not be construed to prevent or inhibit
9 the discovery or admissibility of any information that is
10 otherwise subject to discovery or that is admissible under
11 applicable law or rule of procedure, except that any conduct
12 or statements made during a mediation conference or in
13 negotiations concerning the conference are inadmissible in any
14 proceeding under this chapter.

15 (a)~~1.~~ Unless the parties conduct a private mediation
16 under paragraph (b)~~subparagraph 2.~~, mediation shall be
17 conducted by a mediator selected by the Director of the
18 Division of Administrative Hearings from among mediators
19 employed on a full-time basis by the Office of the Judges of
20 Compensation Claims. A mediator must be a member of The
21 Florida Bar for at least 5 years and must complete a mediation
22 training program approved by the Deputy Chief Judge ~~Director~~
23 ~~of the Division of Administrative Hearings~~. Adjunct mediators
24 may be employed by the Office of the Judges of Compensation
25 Claims on an as-needed basis and shall be selected from a list
26 prepared by the Director of the Division of Administrative
27 Hearings. An adjunct mediator must be independent of all
28 parties participating in the mediation conference. An adjunct
29 mediator must be a member of The Florida Bar for at least 5
30 years and must complete a mediation training program approved
31 by the Office of the Judges of Compensation Claims ~~Director of~~

1 ~~the Division of Administrative Hearings~~. An adjunct mediator
2 shall have access to the office, equipment, and supplies of
3 the judge of compensation claims in each district.

4 (b)2. With respect to any private mediation ~~occurring~~
5 ~~on or after January 1, 2003~~, if the parties agree or if
6 mediators are not available under paragraph (a), pursuant to
7 notice from the judge of compensation claims, subparagraph 1.
8 to conduct the required mediation within the period specified
9 in this section, the parties shall hold a mediation conference
10 at the carrier's expense within the 130-day ~~90-day~~ period set
11 for mediation. The mediation conference shall be conducted by
12 a mediator certified under s. 44.106. If the parties do not
13 agree upon a mediator within 10 days after the date of the
14 order, the claimant shall notify the judge in writing and the
15 judge shall appoint a mediator under this subparagraph within
16 7 days. In the event both parties agree, the results of the
17 mediation conference shall be binding and neither party shall
18 have a right to appeal the results. In the event either party
19 refuses to agree to the results of the mediation conference,
20 the results of the mediation conference as well as the
21 testimony, witnesses, and evidence presented at the conference
22 shall not be admissible at any subsequent proceeding on the
23 claim. The mediator shall not be called in to testify or give
24 deposition to resolve any claim for any hearing before the
25 judge of compensation claims. The employer may be represented
26 by an attorney at the mediation conference if the employee is
27 also represented by an attorney at the mediation conference.

28 ~~(b) The parties shall complete the pretrial~~
29 ~~stipulations before the conclusion of the mediation conference~~
30 ~~if the claims, except for attorney's fees and costs, have not~~
31 ~~been settled and if any claims in any filed petition remain~~

1 ~~unresolved. The judge of compensation claims may impose~~
2 ~~sanctions against a party or both parties for failing to~~
3 ~~complete the pretrial stipulations before the conclusion of~~
4 ~~the mediation conference.~~

5 (4)(a) If the parties fail to agree to upon written
6 submission of pretrial stipulations ~~at the mediation~~
7 ~~conference~~, the judge of compensation claims shall conduct a
8 live order a pretrial hearing ~~to occur within 14 days after~~
9 ~~the date of mediation ordered by the judge of compensation~~
10 ~~claims~~. The judge of compensation claims shall give the
11 interested parties at least 14 ~~7~~ days' advance notice of the
12 pretrial hearing by mail. ~~At the pretrial hearing, the judge~~
13 ~~of compensation claims shall, subject to paragraph (b), set a~~
14 ~~date for the final hearing that allows the parties at least 60~~
15 ~~days to conduct discovery unless the parties consent to an~~
16 ~~earlier hearing date.~~

17 (b) The final hearing must be held and concluded
18 within 90 days after the mediation conference is held,
19 allowing the parties sufficient time to complete discovery.
20 Except as set forth in this section, continuances may be
21 granted only if the requesting party demonstrates to the judge
22 of compensation claims that the reason for requesting the
23 continuance arises from circumstances beyond the party's
24 control. The written consent of the claimant must be obtained
25 before any request from a claimant's attorney is granted for
26 an additional continuance after the initial continuance has
27 been granted. Any order granting a continuance must set forth
28 the date and time of the rescheduled hearing. A continuance
29 may be granted only if the requesting party demonstrates to
30 the judge of compensation claims that the reason for
31 requesting the continuance arises from circumstances beyond

1 the control of the parties. The judge of compensation claims
2 shall report any grant of two or more continuances to the
3 Deputy Chief Judge.

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

7 (d) The final hearing shall be held within 210 days
8 after receipt of the petition for benefits in the county where
9 the injury occurred, if the injury occurred in this state,
10 unless otherwise agreed to between the parties and authorized
11 by the judge of compensation claims in the county where the
12 injury occurred. However, the claimant may waive the
13 timeframes within this section for good cause shown.If the
14 injury occurred outside the state and is one for which
15 compensation is payable under this chapter, then the final
16 hearing may be held in the county of the employer's residence
17 or place of business, or in any other county of the state that
18 will, in the discretion of the Deputy Chief Judge, be the most
19 convenient for a hearing. The final hearing shall be conducted
20 by a judge of compensation claims, who shall, within 30 days
21 after final hearing or closure of the hearing record, unless
22 otherwise agreed by the parties, enter a final order on the
23 merits of the disputed issues. The judge of compensation
24 claims may enter an abbreviated final order in cases in which
25 compensability is not disputed. Either party may request
26 separate findings of fact and conclusions of law. At the final
27 hearing, the claimant and employer may each present evidence
28 with respect to the claims presented by the petition for
29 benefits and may be represented by any attorney authorized in
30 writing for such purpose. When there is a conflict in the
31 medical evidence submitted at the hearing, the provisions of

1 s. 440.13 shall apply. The report or testimony of the expert
2 medical advisor shall be admitted into evidence in a made a
3 ~~part of the record of the proceeding and shall be given the~~
4 ~~same consideration by the judge of compensation claims as is~~
5 ~~accorded other medical evidence submitted in the proceeding;~~
6 and all costs incurred in connection with such examination and
7 testimony may be assessed as costs in the proceeding, subject
8 to the provisions of s. 440.13. No judge of compensation
9 claims may make a finding of a degree of permanent impairment
10 that is greater than the greatest permanent impairment rating
11 given the claimant by any examining or treating physician,
12 except upon stipulation of the parties. Any benefit due but
13 not raised at the final hearing which was ripe, due, or owing
14 at the time of the final hearing is waived.

15 (e) The order making an award or rejecting the claim,
16 referred to in this chapter as a "compensation order," shall
17 set forth the findings of ultimate facts and the mandate; and
18 the order need not include any other reason or justification
19 for such mandate. The compensation order shall be filed in the
20 Office of the Judges of Compensation Claims at Tallahassee. A
21 copy of such compensation order shall be sent by mail to the
22 parties and attorneys of record at the last known address of
23 each, with the date of mailing noted thereon.

24 ~~(f) Each judge of compensation claims is required to~~
25 ~~submit a special report to the Deputy Chief Judge in each~~
26 ~~contested workers' compensation case in which the case is not~~
27 ~~determined within 30 days of final hearing or closure of the~~
28 ~~hearing record. Said form shall be provided by the director of~~
29 ~~the Division of Administrative Hearings and shall contain the~~
30 ~~names of the judge of compensation claims and of the attorneys~~
31 ~~involved and a brief explanation by the judge of compensation~~

1 ~~claims as to the reason for such a delay in issuing a final~~
2 ~~order.~~

3 (f)~~(g)~~ Notwithstanding any other provision of this
4 section, the judge of compensation claims may require the
5 appearance of the parties and counsel before her or him
6 without written notice for an emergency conference where there
7 is a bona fide emergency involving the health, safety, or
8 welfare of an employee. An emergency conference under this
9 section may result in the entry of an order or the rendering
10 of an adjudication by the judge of compensation claims.

11 (g)~~(h)~~ To expedite dispute resolution and to enhance
12 the self-executing features of the Workers' Compensation Law,
13 the Deputy Chief Judge shall make provision by rule or order
14 for the resolution of appropriate motions by judges of
15 compensation claims without oral hearing upon submission of
16 brief written statements in support and opposition, and for
17 expedited discovery and docketing. Unless the judge of
18 compensation claims, for good cause, orders a hearing under
19 paragraph(h)~~(i)~~, each claim in a petition relating to the
20 determination of the average weekly wage pay under s. 440.14
21 shall be resolved under this paragraph without oral hearing.

22 (h)~~(i)~~ To further expedite dispute resolution and to
23 enhance the self-executing features of the system, those
24 petitions filed in accordance with s. 440.192 that involve a
25 claim for benefits of \$5,000 or less shall, in the absence of
26 compelling evidence to the contrary, be presumed to be
27 appropriate for expedited resolution under this paragraph; and
28 any other claim filed in accordance with s. 440.192, upon the
29 written agreement of both parties and application by either
30 party, may similarly be resolved under this paragraph. A claim
31 in a petition or \$5,000 or less for medical benefits only or a

1 petition for reimbursement for mileage for medical purposes
2 shall, in the absence of compelling evidence to the contrary,
3 be resolved through the expedited dispute resolution process
4 provided in this paragraph. For purposes of expedited
5 resolution pursuant to this paragraph, the Deputy Chief Judge
6 shall make provision by rule or order for expedited and
7 limited discovery and expedited docketing in such cases. At
8 least 15 days prior to hearing, the parties shall exchange and
9 file with the judge of compensation claims a pretrial outline
10 of all issues, defenses, and witnesses on a form adopted by
11 the Deputy Chief Judge; provided, in no event shall such
12 hearing be held without 15 days' written notice to all
13 parties. No pretrial hearing shall be held and no mediation
14 scheduled unless requested by a party. The judge of
15 compensation claims shall limit all argument and presentation
16 of evidence at the hearing to a maximum of 30 minutes, and
17 such hearings shall not exceed 30 minutes in length. Neither
18 party shall be required to be represented by counsel. The
19 employer or carrier may be represented by an adjuster or other
20 qualified representative. The employer or carrier and any
21 witness may appear at such hearing by telephone. The rules of
22 evidence shall be liberally construed in favor of allowing
23 introduction of evidence.

24 (i)~~(j)~~ A judge of compensation claims may, upon the
25 motion of a party or the judge's own motion, dismiss a
26 petition for lack of prosecution if a petition, response,
27 motion, order, request for hearing, or notice of deposition
28 has not been filed during the previous 12 months unless good
29 cause is shown. A dismissal for lack of prosecution is without
30 prejudice and does not require a hearing.

31

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

8 (5)(a) Procedures with respect to appeals from orders
9 of judges of compensation claims shall be governed by rules
10 adopted by the Supreme Court. Such an order shall become final
11 30 days after mailing of copies of such order to the parties,
12 unless appealed pursuant to such rules.

13 (b) An appellant may be relieved of any necessary
14 filing fee by filing a verified petition of indigency for
15 approval as provided in s. 57.081(1) and may be relieved in
16 whole or in part from the costs for preparation of the record
17 on appeal if, within 15 days after the date notice of the
18 estimated costs for the preparation is served, the appellant
19 files with the judge of compensation claims a copy of the
20 designation of the record on appeal, and a verified petition
21 to be relieved of costs. A verified petition filed prior to
22 the date of service of the notice of the estimated costs shall
23 be deemed not timely filed. The verified petition relating to
24 record costs shall contain a sworn statement that the
25 appellant is insolvent and a complete, detailed, and sworn
26 financial affidavit showing all the appellant's assets,
27 liabilities, and income. Failure to state in the affidavit all
28 assets and income, including marital assets and income, shall
29 be grounds for denying the petition with prejudice. The Office
30 of the Judges of Compensation Claims shall adopt rules as may
31 be required pursuant to this subsection, including forms for

1 use in all petitions brought under this subsection. The
2 appellant's attorney, or the appellant if she or he is not
3 represented by an attorney, shall include as a part of the
4 verified petition relating to record costs an affidavit or
5 affirmation that, in her or his opinion, the notice of appeal
6 was filed in good faith and that there is a probable basis for
7 the District Court of Appeal, First District, to find
8 reversible error, and shall state with particularity the
9 specific legal and factual grounds for the opinion. Failure to
10 so affirm shall be grounds for denying the petition. A copy of
11 the verified petition relating to record costs shall be served
12 upon all interested parties. The judge of compensation claims
13 shall promptly conduct a hearing on the verified petition
14 relating to record costs, giving at least 15 days' notice to
15 the appellant, the department, and all other interested
16 parties, all of whom shall be parties to the proceedings. The
17 judge of compensation claims may enter an order without such
18 hearing if no objection is filed by an interested party within
19 20 days from the service date of the verified petition
20 relating to record costs. Such proceedings shall be conducted
21 in accordance with the provisions of this section and with the
22 workers' compensation rules of procedure, to the extent
23 applicable. In the event an insolvency petition is granted,
24 the judge of compensation claims shall direct the department
25 to pay record costs and filing fees from the Workers'
26 Compensation Administration Trust Fund pending final
27 disposition of the costs of appeal. The department may
28 transcribe or arrange for the transcription of the record in
29 any proceeding for which it is ordered to pay the cost of the
30 record.
31

1 (c) As a condition of filing a notice of appeal to the
2 District Court of Appeal, First District, an employer who has
3 not secured the payment of compensation under this chapter in
4 compliance with s. 440.38 shall file with the notice of appeal
5 a good and sufficient bond, as provided in s. 59.13,
6 conditioned to pay the amount of the demand and any interest
7 and costs payable under the terms of the order if the appeal
8 is dismissed, or if the District Court of Appeal, First
9 District, affirms the award in any amount. Upon the failure of
10 such employer to file such bond with ~~the judge of compensation~~
11 ~~claims~~ or the District Court of Appeal, First District, along
12 with the notice of appeal, the District Court of Appeal, First
13 District, shall dismiss the notice of appeal.

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

16 (7) ~~An injured employee claiming or entitled to~~
17 ~~compensation shall submit to such physical examination by a~~
18 ~~certified expert medical advisor approved by the agency or the~~
19 ~~judge of compensation claims as the agency or the judge of~~
20 ~~compensation claims may require. The place or places shall be~~
21 ~~reasonably convenient for the employee. Such physician or~~
22 ~~physicians as the employee, employer, or carrier may select~~
23 ~~and pay for may participate in an examination if the employee,~~
24 ~~employer, or carrier so requests. Proceedings shall be~~
25 ~~suspended and no compensation shall be payable for any period~~
26 ~~during which the employee may refuse to submit to examination.~~
27 Any interested party shall have the right in any case of death
28 to require an autopsy, the cost thereof to be borne by the
29 party requesting it; and the judge of compensation claims
30 shall have authority to order and require an autopsy and may,
31

1 in her or his discretion, withhold her or his findings and
2 award until an autopsy is held.

3 Section 26. Subsections (1), (2), and (3) of section
4 440.34, Florida Statutes, are amended, and subsection (7) is
5 added to that section, to read:

6 440.34 Attorney's fees; costs.--

7 (1) A fee, gratuity, or other consideration may not be
8 paid for ~~services rendered for~~ a claimant in connection with
9 any proceedings arising under this chapter, unless approved as
10 reasonable by the judge of compensation claims or court having
11 jurisdiction over such proceedings. ~~Except as provided by this~~
12 ~~subsection,~~Any attorney's fee approved by a judge of
13 compensation claims for benefits secured on behalf of services
14 ~~rendered to~~ a claimant must equal to 20 percent of the first
15 \$5,000 of the amount of the benefits secured, 15 percent of
16 the next \$5,000 of the amount of the benefits secured, 10
17 percent of the remaining amount of the benefits secured to be
18 provided during the first 10 years after the date the claim is
19 filed, and 5 percent of the benefits secured after 10 years.
20 The judge of compensation claims shall not approve a
21 compensation order, a joint stipulation for lump-sum
22 settlement, a stipulation or agreement between a claimant and
23 his or her attorney, or any other agreement related to
24 benefits under this chapter that provides for an attorney's
25 fee in excess of the amount permitted by this section. The
26 judge of compensation claims is not required to approve any
27 retainer agreement between the claimant and his or her
28 attorney. The retainer agreement as to fees and costs may not
29 be for compensation in excess of the amount allowed under this
30 section.~~However, the judge of compensation claims shall~~
31 ~~consider the following factors in each case and may increase~~

1 ~~or decrease the attorney's fee if, in her or his judgment, the~~
2 ~~circumstances of the particular case warrant such action:~~

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

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

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

10 ~~(d) The time limitation imposed by the claimant or the~~
11 ~~circumstances.~~

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

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

15 (2) In awarding a reasonable claimant's attorney's
16 fee, the judge of compensation claims shall consider only
17 those benefits secured by ~~to the claimant that~~ the attorney is
18 ~~responsible for securing.~~ An attorney is not entitled to
19 attorney's fees for representation in any issue that was ripe,
20 due, and owing and that reasonably could have been addressed,
21 but was not addressed, during the pendency of other issues for
22 the same injury. The amount, statutory basis, and type of
23 benefits obtained through legal representation shall be listed
24 on all attorney's fees awarded by the judge of compensation
25 claims. For purposes of this section, the term "benefits
26 secured" ~~means benefits obtained as a result of the claimant's~~
27 ~~attorney's legal services rendered in connection with the~~
28 ~~claim for benefits.~~ However, such term does not include
29 future medical benefits to be provided on any date more than 5
30 years after the date the claim is filed. In the event an offer
31 to settle an issue pending before a judge of compensation

1 claims, including attorney's fees as provided for in this
2 section, is communicated in writing to the claimant or the
3 claimant's attorney at least 30 days prior to the trial date
4 on such issue, for purposes of calculating the amount of
5 attorney's fees to be taxed against the employer or carrier,
6 the term "benefits secured" shall be deemed to include only
7 that amount awarded to the claimant above the amount specified
8 in the offer to settle. If multiple issues are pending before
9 the judge of compensation claims, said offer of settlement
10 shall address each issue pending and shall state explicitly
11 whether or not the offer on each issue is severable. The
12 written offer shall also unequivocally state whether or not it
13 includes medical witness fees and expenses and all other costs
14 associated with the claim.

15 (3) If any party ~~the claimant~~ should prevail in any
16 proceedings before a judge of compensation claims or court,
17 there shall be taxed against the nonprevailing party ~~employer~~
18 the reasonable costs of such proceedings, not to include ~~the~~
19 attorney's fees ~~of the claimant~~. A claimant shall be
20 responsible for the payment of her or his own attorney's fees,
21 except that a claimant shall be entitled to recover a
22 reasonable attorney's fee from a carrier or employer:

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

28 (b) In any case in which the employer or carrier files
29 a response to petition denying benefits with the Office of the
30 Judges of Compensation Claims and the injured person has
31

1 employed an attorney in the successful prosecution of the
2 petition;

3 (c) In a proceeding in which a carrier or employer
4 denies that an accident occurred for which compensation
5 benefits are payable, and the claimant prevails on the issue
6 of compensability; or

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

9
10 Regardless of the date benefits were initially requested,
11 attorney's fees shall not attach under this subsection until
12 30 days after the date the carrier or employer, if
13 self-insured, receives the petition. ~~In applying the factors
14 set forth in subsection (1) to cases arising under paragraphs
15 (a), (b), (c), and (d), the judge of compensation claims must
16 only consider only such benefits and the time reasonably spent
17 in obtaining them as were secured for the claimant within the
18 scope of paragraphs (a), (b), (c), and (d).~~

19 (7) If an attorney's fee is owed under paragraph
20 (3)(a), the judge of compensation claims may approve an
21 alternative attorney's fee not to exceed \$1,500 only once per
22 accident, based on a maximum hourly rate of \$150 per hour, if
23 the judge of compensation claims expressly finds that the
24 attorney's fee amount provided for in subsection (1), based on
25 benefits secured, fails to fairly compensate the attorney for
26 disputed medical-only claims as provided in paragraph (3)(a)
27 and the circumstances of the particular case warrant such
28 action.

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

31

1 440.38 Security for compensation; insurance carriers
2 and self-insurers.--

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

10 Section 28. Subsections (2) and (6) of section
11 440.381, Florida Statutes, are amended to read:

12 440.381 Application for coverage; reporting payroll;
13 payroll audit procedures; penalties.--

14 (2) Submission of an application that contains false,
15 misleading, or incomplete information provided with the
16 purpose of avoiding or reducing the amount of premiums for
17 workers' compensation coverage is a felony of the second
18 degree, punishable as provided in s. 775.082, s. 775.083, or
19 s. 775.084.The application must contain a statement that the
20 filing of an application containing false, misleading, or
21 incomplete information provided with the purpose of avoiding
22 or reducing the amount of premiums for workers' compensation
23 coverage is a felony of the third degree, punishable as
24 provided in s. 775.082, s. 775.083, or s. 775.084. The
25 application must contain a sworn statement by the employer
26 attesting to the accuracy of the information submitted and
27 acknowledging the provisions of former s. 440.37(4). The
28 application must contain a sworn statement by the agent
29 attesting that the agent explained to the employer or officer
30 the classification codes that are used for premium
31 calculations.

1 (6)(a) If an employer understates or conceals payroll,
2 or misrepresents or conceals employee duties so as to avoid
3 proper classification for premium calculations, or
4 misrepresents or conceals information pertinent to the
5 computation and application of an experience rating
6 modification factor, the employer, or the employer's agent or
7 attorney, shall pay to the insurance carrier a penalty of 10
8 times the amount of the difference in premium paid and the
9 amount the employer should have paid and reasonable attorney's
10 fees. The penalty may be enforced in the circuit courts of
11 this state.

12 (b) If the department determines that an employer has
13 materially understated or concealed payroll, has materially
14 misrepresented or concealed employee duties so as to avoid
15 proper classification for premium calculations, or has
16 materially misrepresented or concealed information pertinent
17 to the computation and application of an experience rating
18 modification factor, the department shall immediately notify
19 the employer's carrier of such determination. The carrier
20 shall commence a physical onsite audit of the employer within
21 30 days after receiving notification from the department. If
22 the carrier fails to commence the audit as required by this
23 section, the department shall contract with auditing
24 professionals to conduct the audit at the carrier's expense. A
25 copy of the carrier's audit of the employer shall be provided
26 to the department upon completion. The carrier is not required
27 to conduct the physical onsite audit of the employer as set
28 forth in this paragraph if the carrier gives written notice of
29 cancellation to the employer within 30 days after receiving
30 notification from the department of the material

31

1 misrepresentation, understatement, or concealment and an audit
2 is conducted in conjunction with the cancellation.

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

5 440.42 Insurance policies; liability.--

6 (3) No contract or policy of insurance issued by a
7 carrier under this chapter shall expire or be canceled until
8 at least 30 days have elapsed after a notice of cancellation
9 has been sent to the department and to the employer in
10 accordance with the provisions of s. 440.185(7). For
11 cancellation due to nonpayment of premium, the insurer shall
12 mail notification to the employer at least 10 days prior to
13 the effective date of the cancellation. However, when

14 duplicate or dual coverage exists by reason of two different
15 carriers having issued policies of insurance to the same
16 employer securing the same liability, it shall be presumed
17 that only that policy with the later effective date shall be
18 in force and that the earlier policy terminated upon the
19 effective date of the latter. In the event that both policies
20 carry the same effective date, one of the policies may be
21 canceled instanter upon filing a notice of cancellation with
22 the department and serving a copy thereof upon the employer in
23 such manner as the department prescribes by rule. The
24 department may by rule prescribe the content of the notice of
25 retroactive cancellation and specify the time, place, and
26 manner in which the notice of cancellation is to be served.

27 Section 30. Paragraph (a) of subsection (4) of section
28 440.49, Florida Statutes, is amended to read:

29 440.49 Limitation of liability for subsequent injury
30 through Special Disability Trust Fund.--

31

1 (4) PERMANENT IMPAIRMENT OR PERMANENT TOTAL
2 DISABILITY, TEMPORARY BENEFITS, MEDICAL BENEFITS, OR ATTENDANT
3 CARE AFTER OTHER PHYSICAL IMPAIRMENT.--

4 (a) Permanent impairment.--If an employee who has a
5 preexisting permanent physical impairment incurs a subsequent
6 permanent impairment from injury or occupational disease
7 arising out of, and in the course of, her or his employment
8 which merges with the preexisting permanent physical
9 impairment to cause a permanent impairment, the employer
10 shall, in the first instance, pay all benefits provided by
11 this chapter; but, subject to the limitations specified in
12 subsection (6), such employer shall be reimbursed from the
13 Special Disability Trust Fund created by subsection (9) for 50
14 percent of all impairment benefits which the employer has been
15 required to provide pursuant to s. 440.15(3)~~(a)~~ as a result of
16 the subsequent accident or occupational disease.

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

19 440.491 Reemployment of injured workers;
20 rehabilitation.--

21 (6) TRAINING AND EDUCATION.--

22 (a) Upon referral of an injured employee by the
23 carrier, or upon the request of an injured employee, the
24 department shall conduct a training and education screening to
25 determine whether it should refer the employee for a
26 vocational evaluation and, if appropriate, approve training
27 and education or other vocational services for the employee.
28 The department may not approve formal training and education
29 programs unless it determines, after consideration of the
30 reemployment assessment, pertinent reemployment status reviews
31 or reports, and such other relevant factors as it prescribes

1 by rule, that the reemployment plan is likely to result in
2 return to suitable gainful employment. The department is
3 authorized to expend moneys from the Workers' Compensation
4 Administration Trust Fund, established by s. 440.50, to secure
5 appropriate training and education at a community college
6 established under part III of chapter 240 or at a
7 vocational-technical school established under s. 230.63, or to
8 secure other vocational services when necessary to satisfy the
9 recommendation of a vocational evaluator. As used in this
10 paragraph, "appropriate training and education" includes
11 securing a general education diploma (GED), if necessary.The
12 department shall establish training and education standards
13 pertaining to employee eligibility, course curricula and
14 duration, and associated costs.

15 (b) When ~~it appears that~~ an employee who has attained
16 maximum medical improvement is unable to earn at least 80
17 percent of the compensation rate and requires training and
18 education to obtain suitable gainful employment, the employer
19 or carrier shall pay the employee additional training and
20 education temporary total compensation benefits while the
21 employee receives such training and education for a period not
22 to exceed 26 weeks, which period may be extended for an
23 additional 26 weeks or less, if such extended period is
24 determined to be necessary and proper by a judge of
25 compensation claims. The benefits provided under this
26 paragraph shall not be in addition to the 104 weeks as
27 specified in s. 440.15(2).However, a carrier or employer is
28 not precluded from voluntarily paying additional temporary
29 total disability compensation beyond that period. If an
30 employee requires temporary residence at or near a facility or
31 an institution providing training and education which is

1 | located more than 50 miles away from the employee's customary
2 | residence, the reasonable cost of board, lodging, or travel
3 | must be borne by the department from the Workers' Compensation
4 | Administration Trust Fund established by s. 440.50. An
5 | employee who refuses to accept training and education that is
6 | recommended by the vocational evaluator and considered
7 | necessary by the department will forfeit any additional
8 | training and education benefits and any additional payment for
9 | lost wages under this chapter. The department shall adopt
10 | rules to implement this section, which shall include
11 | requirements placed upon the carrier to notify the injured
12 | employee of the availability of training and education
13 | benefits as specified in this chapter. The department shall
14 | also include information regarding the eligibility for
15 | training and education benefits in informational materials
16 | specified in ss. 440.207 and 440.40 ~~is subject to a 50-percent~~
17 | ~~reduction in weekly compensation benefits, including wage-loss~~
18 | ~~benefits, as determined under s. 440.15(3)(b).~~

19 | Section 32. Section 440.525, Florida Statutes, is
20 | amended to read:

21 | 440.525 Examination and investigation of carriers and
22 | claims-handling entities.--

23 | (1) The department may examine, or investigate any
24 | ~~each~~ carrier, third-party administrator, servicing agent, or
25 | other claims-handling entity as often as is warranted to
26 | ensure that it is ~~carriers are~~ fulfilling its ~~their~~
27 | obligations under this chapter ~~the law. The examination may~~
28 | ~~cover any period of the carrier's operations since the last~~
29 | ~~previous examination.~~

30 | (2) An examination may cover any period of the
31 | carrier's, third-party administrator's, servicing agent's, or

1 other claims-handling entity's operations since the last
2 previous examination. An investigation based upon a reasonable
3 belief by the department that a material violation of this
4 chapter has occurred may cover any time period, but may not
5 predate the last examination by more than 5 years. The
6 department may by rule establish procedures, standards, and
7 protocols for examinations and investigations. If the
8 department finds any violation of this chapter, it may impose
9 administrative penalties pursuant to this chapter. If the
10 department finds any self-insurer in violation of this
11 chapter, it may take action pursuant s. 440.38(3).
12 Examinations or investigations by the department may address,
13 but are not limited to addressing, patterns or practices of
14 unreasonable delay in claims handling; timeliness and accuracy
15 of payments and reports under ss. 440.13, 440.16, and 440.185;
16 or patterns or practices of harassment, coercion, or
17 intimidation of claimants. The department may also specify by
18 rule the documentation to be maintained for each claim file.
19 (3) As to any examination or investigation conducted
20 under this chapter, the department shall have the power to
21 conduct onsite inspections of claims records and documentation
22 of a carrier, third-party administrator, servicing agent, or
23 other claims-handling entity, and conduct interviews, both
24 sworn and unsworn, of claims-handling personnel. Carriers,
25 third-party administrators, servicing agents, and other
26 claims-handling entities shall make all claims records,
27 documentation, communication, and correspondence available to
28 department personnel during regular business hours. If any
29 person fails to comply with a request for production of
30 records or documents or fails to produce an employee for
31 interview, the department may compel production or attendance

1 by subpoena. The results of an examination or investigation
2 shall be provided to the carrier, third-party administrator,
3 servicing agent, or other claims-handling entity in a written
4 report setting forth the basis for any violations that are
5 asserted. Such report is agency action for purposes of chapter
6 120, and the aggrieved party may request a proceeding under s.
7 120.57 with regard to the findings and conclusion of the
8 report.

9 (4) If the department finds that violations of this
10 chapter have occurred, the department may impose an
11 administrative penalty upon the offending entity or entities.
12 For each offending entity, such penalties shall not exceed
13 \$2,500 for each pattern or practice constituting nonwillful
14 violation and shall not exceed an aggregate amount of \$10,000
15 for all nonwillful violations arising out of the same action.
16 If the department finds a pattern of practice that constitutes
17 a willful violation, the department may impose an
18 administrative penalty upon each offending entity not to
19 exceed \$20,000 for each willful pattern or practice. Such
20 finest shall not exceed \$100,000 for all willful violations
21 arising out of the same action. No penalty assessed under this
22 section may be recouped by any carrier in the rate base, the
23 premium, or any rate filing. Any administrative penalty
24 imposed under this section for a nonwillful violation shall
25 not duplicate an administrative penalty imposed under another
26 provision of this chapter or the Insurance Code. The
27 department may adopt rules to implement this section. The
28 department shall adopt penalty guidelines by rule to set
29 penalties under this chapter.

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

1 627.162 Requirements for premium installments;
2 delinquency, collection, and check return charges; attorney's
3 fees.--

4 (2) Insurers providing workers' compensation coverage
5 under chapter 440 may charge the insured a delinquency and
6 collection fee on each installment in default for a period of
7 not less than 5 days in an amount not to exceed~~\$25~~^{\$10} or 5
8 percent of the delinquent installment, whichever is greater.
9 Only one such delinquency and collection fee may be collected
10 on any such installment regardless of the period during which
11 it remains in default.

12 Section 34. Section 627.285, Florida Statutes, is
13 created to read:

14 627.285 Independent actuarial peer review of workers'
15 compensation rating organization.--The Financial Services
16 Commission shall at least once every other year contract for
17 an independent actuarial peer review and analysis of the
18 ratemaking processes of any licensed rating organization that
19 makes rate filings for workers' compensation insurance and the
20 rating organization shall fully cooperate in the peer review.
21 The contract shall require submission of a final report to the
22 commission, the President of the Senate, and the Speaker of
23 the House of Representatives by February 1. The first report
24 shall be submitted by February 1, 2004. The costs of the
25 independent actuarial peer review shall be paid from the
26 Workers' Compensation Administration Trust Fund.

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

30 627.311 Joint underwriters and joint reinsurers.--
31 (4)

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

4 1. Three members appointed by the Financial Services
5 Commission. Each member appointed by the commission shall
6 serve at the pleasure of the commission;

7 ~~2.1. Two~~ Five of the 20 domestic insurers, as defined
8 in s. 624.06(1), having the largest voluntary direct premiums
9 written in this state for workers' compensation and employer's
10 liability insurance, which shall be elected by those 20
11 domestic insurers;

12 ~~3.2. Two~~ Five of the 20 foreign insurers as defined in
13 s. 624.06(2) having the largest voluntary direct premiums
14 written in this state for workers' compensation and employer's
15 liability insurance, which shall be elected by those 20
16 foreign insurers;

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

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

21 5. The consumer advocate appointed under s. 627.0613
22 or the consumer advocate's designee.

23
24 Each board member shall serve a 4-year term and may serve
25 consecutive terms. A vacancy on the board shall be filled in
26 the same manner as the original appointment for the unexpired
27 portion of the term. The Financial Services Commission shall
28 designate a member of the board to serve as chair.No board
29 member shall be an insurer which provides service to the plan
30 or which has an affiliate which provides services to the plan
31 or which is serviced by a service company or third-party

1 administrator which provides services to the plan or which has
2 an affiliate which provides services to the plan. The minutes,
3 audits, and procedures of the board of governors are subject
4 to chapter 119.

5 (c) The operation of the plan shall be governed by a
6 plan of operation that is prepared at the direction of the
7 board of governors. The plan of operation may be changed at
8 any time by the board of governors or upon request of the
9 department. The plan of operation and all changes thereto are
10 subject to the approval of the department. The plan of
11 operation shall:

12 1. Authorize the board to engage in the activities
13 necessary to implement this subsection, including, but not
14 limited to, borrowing money.

15 2. Develop criteria for eligibility for coverage by
16 the plan, including, but not limited to, documented rejection
17 by at least two insurers which reasonably assures that
18 insureds covered under the plan are unable to acquire coverage
19 in the voluntary market. Any insured may voluntarily elect to
20 accept coverage from an insurer for a premium equal to or
21 greater than the plan premium if the insurer writing the
22 coverage adheres to the provisions of s. 627.171.

23 3. Require notice from the agent to the insured at the
24 time of the application for coverage that the application is
25 for coverage with the plan and that coverage may be available
26 through an insurer, group self-insurers' fund, commercial
27 self-insurance fund, or assessable mutual insurer through
28 another agent at a lower cost.

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

1 a. Establishing procedures for an insurer to use in
2 notifying the plan of the insurer's desire to provide coverage
3 to applicants to the plan or existing insureds of the plan and
4 in describing the types of risks in which the insurer is
5 interested. The description of the desired risks must be on a
6 form developed by the plan.

7 b. Developing forms and procedures that provide an
8 insurer with the information necessary to determine whether
9 the insurer wants to write particular applicants to the plan
10 or insureds of the plan.

11 c. Developing procedures for notice to the plan and
12 the applicant to the plan or insured of the plan that an
13 insurer will insure the applicant or the insured of the plan,
14 and notice of the cost of the coverage offered; and developing
15 procedures for the selection of an insuring entity by the
16 applicant or insured of the plan.

17 d. Provide for a market-assistance plan to assist in
18 the placement of employers. All applications for coverage in
19 the plan received 45 days before the effective date for
20 coverage shall be processed through the market-assistance
21 plan. A market-assistance plan specifically designed to serve
22 the needs of small good policyholders as defined by the board
23 must be finalized by January 1, 1994.

24 5. Provide for policy and claims services to the
25 insureds of the plan of the nature and quality provided for
26 insureds in the voluntary market.

27 6. Provide for the review of applications for coverage
28 with the plan for reasonableness and accuracy, using any
29 available historic information regarding the insured.

30 7. Provide for procedures for auditing insureds of the
31 plan which are based on reasonable business judgment and are

1 designed to maximize the likelihood that the plan will collect
2 the appropriate premiums.

3 8. Authorize the plan to terminate the coverage of and
4 refuse future coverage for any insured that submits a
5 fraudulent application to the plan or provides fraudulent or
6 grossly erroneous records to the plan or to any service
7 provider of the plan in conjunction with the activities of the
8 plan.

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

11 10. Establish criteria and procedures to prohibit any
12 agent who does not adhere to the established service standards
13 from placing business with the plan or receiving, directly or
14 indirectly, any commissions for business placed with the plan.

15 11. Provide for the establishment of reasonable safety
16 programs for all insureds in the plan. All insureds of the
17 plan must participate in the safety program.

18 12. Authorize the plan to terminate the coverage of
19 and refuse future coverage to any insured who fails to pay
20 premiums or surcharges when due; who, at the time of
21 application, is delinquent in payments of workers'
22 compensation or employer's liability insurance premiums or
23 surcharges owed to an insurer, group self-insurers' fund,
24 commercial self-insurance fund, or assessable mutual insurer
25 licensed to write such coverage in this state; or who refuses
26 to substantially comply with any safety programs recommended
27 by the plan.

28 13. Authorize the board of governors to provide the
29 services required by the plan through staff employed by the
30 plan, through reasonably compensated service providers who
31 contract with the plan to provide services as specified by the

1 board of governors, or through a combination of employees and
2 service providers.

3 14. Provide for service standards for service
4 providers, methods of determining adherence to those service
5 standards, incentives and disincentives for service, and
6 procedures for terminating contracts for service providers
7 that fail to adhere to service standards.

8 15. Provide procedures for selecting service providers
9 and standards for qualification as a service provider that
10 reasonably assure that any service provider selected will
11 continue to operate as an ongoing concern and is capable of
12 providing the specified services in the manner required.

13 16. Provide for reasonable accounting and
14 data-reporting practices.

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

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

20 19. Provide for an annual report to the department on
21 a date specified by the department and containing such
22 information as the department reasonably requires.

23 20. Establish multiple rating plans for various
24 classifications of risk which reflect risk of loss, hazard
25 grade, actual losses, size of premium, and compliance with
26 loss control. At least one of such plans must be a
27 preferred-rating plan to accommodate small-premium
28 policyholders with good experience as defined in
29 sub-subparagraph 22.a.

30 21. Establish agent commission schedules.

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

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

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

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

15 d. Subplan "D" must include any employer, regardless
16 of the length of time for which it has conducted business
17 operations, which has an experience modification factor of
18 1.10 or less and either employs 15 or fewer employees or is an
19 organization that is exempt from federal income tax pursuant
20 to s. 501(c)(3) of the Internal Revenue Code and receives more
21 than 50 percent of its funding from gifts, grants, endowments,
22 or federal or state contracts. The rate plan for subplan "D"
23 shall be the same rate plan as the plan approved under ss.
24 627.091-627.151 and each participant in subplan "D" shall pay
25 the premium determined under such rate plan, plus a surcharge
26 determined by the board to be sufficient to ensure that the
27 plan does not compete with the voluntary market rate for any
28 participant, but not to exceed 25 percent. However, the
29 surcharge shall not exceed 10 percent for an organization that
30 is exempt from federal income tax pursuant to s. 501(c)(3) of
31 the Internal Revenue Code.

1 23. Provide for a depopulation program to reduce the
2 number of insureds in subplan "D." If an employer insured
3 through subplan "D" is offered coverage from a voluntary
4 market carrier:

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

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

8 c. By issuance of a policy upon expiration or
9 cancellation of the policy under the subplan; or

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

12
13 that employer is no longer eligible for coverage through the
14 plan. The premium for risks assumed by the voluntary market
15 carrier must be the same premium plus, for the first 2 years,
16 the surcharge as determined in sub-subparagraph 22.d. A
17 premium under this subparagraph, including surcharge, is
18 deemed approved and is not an excess premium for purposes of
19 s. 627.171.

20 24. Require that policies issued under subplan "D" and
21 applications for such policies must include a notice that the
22 policy issued under subplan "D" could be replaced by a policy
23 issued from a voluntary market carrier and that, if an offer
24 of coverage is obtained from a voluntary market carrier, the
25 policyholder is no longer eligible for coverage through
26 subplan "D." The notice must also specify that acceptance of
27 coverage under subplan "D" creates a conclusive presumption
28 that the applicant or policyholder is aware of this potential.

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

31

1 2. The plan may issue assessable policies only to
2 those insureds in subplan "C" and subplan "D." Subject to
3 verification by the department, the board may levy assessments
4 against insureds in subplan "C" or subplan "D," on a pro rata
5 earned premium basis, to fund any deficits that exist in those
6 subplans. Assessments levied against subplan "C" participants
7 shall cover only the deficits attributable to subplan "C," and
8 assessments levied against subplan "D" participants shall
9 cover only the deficits attributable to subplan "D." In no
10 event may the plan levy assessments against any person or
11 entity, except as authorized by this paragraph. Those
12 assessable policies must be clearly identified as assessable
13 by containing, in contrasting color and in not less than
14 10-point type, the following statements: "This is an
15 assessable policy. If the plan is unable to pay its
16 obligations, policyholders will be required to contribute on a
17 pro rata earned premium basis the money necessary to meet any
18 assessment levied."

19 3. The plan may issue assessable policies with
20 differing terms and conditions to different groups within
21 subplans "C" and "D"~~the plan~~ when a reasonable basis exists
22 for the differentiation.

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

25 Section 36. Paragraphs (c) and (e) of subsection (3)
26 of section 921.0022, Florida Statutes, are amended to read:

27 921.0022 Criminal Punishment Code; offense severity
28 ranking chart.--

29	Florida	Felony	
30	Statute	Degree	Description

31

1			(c) LEVEL 3
2	316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
3	316.1935(2)	3rd	Fleeing or attempting to elude
4			law enforcement officer in marked
5			patrol vehicle with siren and
6			lights activated.
7	319.30(4)	3rd	Possession by junkyard of motor
8			vehicle with identification
9			number plate removed.
10	319.33(1)(a)	3rd	Alter or forge any certificate of
11			title to a motor vehicle or
12			mobile home.
13	319.33(1)(c)	3rd	Procure or pass title on stolen
14			vehicle.
15	319.33(4)	3rd	With intent to defraud, possess,
16			sell, etc., a blank, forged, or
17			unlawfully obtained title or
18			registration.
19	327.35(2)(b)	3rd	Felony BUI.
20	328.05(2)	3rd	Possess, sell, or counterfeit
21			fictitious, stolen, or fraudulent
22			titles or bills of sale of
23			vessels.
24	328.07(4)	3rd	Manufacture, exchange, or possess
25			vessel with counterfeit or wrong
26			ID number.
27	376.302(5)	3rd	Fraud related to reimbursement
28			for cleanup expenses under the
29			Inland Protection Trust Fund.
30			
31			

1	<u>440.105(3)b.</u>	<u>3rd</u>	<u>Receipt of fee or consideration</u>
2			<u>without approval by judge of</u>
3			<u>compensation claims.</u>
4	<u>440.1051(3)</u>	<u>3rd</u>	<u>False report of workers'</u>
5			<u>compensation fraud or retaliation</u>
6			<u>for making such a report.</u>
7	501.001(2)(b)	2nd	Tampers with a consumer product
8			or the container using materially
9			false/misleading information.
10	697.08	3rd	Equity skimming.
11	790.15(3)	3rd	Person directs another to
12			discharge firearm from a vehicle.
13	796.05(1)	3rd	Live on earnings of a prostitute.
14	806.10(1)	3rd	Maliciously injure, destroy, or
15			interfere with vehicles or
16			equipment used in firefighting.
17	806.10(2)	3rd	Interferes with or assaults
18			firefighter in performance of
19			duty.
20	810.09(2)(c)	3rd	Trespass on property other than
21			structure or conveyance armed
22			with firearm or dangerous weapon.
23	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but
24			less than \$10,000.
25	812.0145(2)(c)	3rd	Theft from person 65 years of age
26			or older; \$300 or more but less
27			than \$10,000.
28	815.04(4)(b)	2nd	Computer offense devised to
29			defraud or obtain property.
30			
31			

1	817.034(4)(a)3.	3rd	Engages in scheme to defraud
2			(Florida Communications Fraud
3			Act), property valued at less
4			than \$20,000.
5	817.233	3rd	Burning to defraud insurer.
6	817.234(8)&(9)	3rd	Unlawful solicitation of persons
7			involved in motor vehicle
8			accidents.
9	817.234(11)(a)	3rd	Insurance fraud; property value
10			less than \$20,000.
11	817.505(4)	3rd	Patient brokering.
12	828.12(2)	3rd	Tortures any animal with intent
13			to inflict intense pain, serious
14			physical injury, or death.
15	831.28(2)(a)	3rd	Counterfeiting a payment
16			instrument with intent to defraud
17			or possessing a counterfeit
18			payment instrument.
19	831.29	2nd	Possession of instruments for
20			counterfeiting drivers' licenses
21			or identification cards.
22	838.021(3)(b)	3rd	Threatens unlawful harm to public
23			servant.
24	843.19	3rd	Injure, disable, or kill police
25			dog or horse.
26	870.01(2)	3rd	Riot; inciting or encouraging.
27			
28			
29			
30			
31			

1	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver
2			cannabis (or other s.
3			893.03(1)(c), (2)(c)1., (2)(c)2.,
4			(2)(c)3., (2)(c)5., (2)(c)6.,
5			(2)(c)7., (2)(c)8., (2)(c)9.,
6			(3), or (4) drugs).
7	893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s.
8			893.03(1)(c), (2)(c)1., (2)(c)2.,
9			(2)(c)3., (2)(c)5., (2)(c)6.,
10			(2)(c)7., (2)(c)8., (2)(c)9.,
11			(3), or (4) drugs within 200 feet
12			of university or public park.
13	893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s.
14			893.03(1)(c), (2)(c)1., (2)(c)2.,
15			(2)(c)3., (2)(c)5., (2)(c)6.,
16			(2)(c)7., (2)(c)8., (2)(c)9.,
17			(3), or (4) drugs within 200 feet
18			of public housing facility.
19	893.13(6)(a)	3rd	Possession of any controlled
20			substance other than felony
21			possession of cannabis.
22	893.13(7)(a)8.	3rd	Withhold information from
23			practitioner regarding previous
24			receipt of or prescription for a
25			controlled substance.
26	893.13(7)(a)9.	3rd	Obtain or attempt to obtain
27			controlled substance by fraud,
28			forgery, misrepresentation, etc.
29	893.13(7)(a)10.	3rd	Affix false or forged label to
30			package of controlled substance.
31			

1	893.13(7)(a)11.	3rd	Furnish false or fraudulent
2			material information on any
3			document or record required by
4			chapter 893.
5	893.13(8)(a)1.	3rd	Knowingly assist a patient, other
6			person, or owner of an animal in
7			obtaining a controlled substance
8			through deceptive, untrue, or
9			fraudulent representations in or
10			related to the practitioner's
11			practice.
12	893.13(8)(a)2.	3rd	Employ a trick or scheme in the
13			practitioner's practice to assist
14			a patient, other person, or owner
15			of an animal in obtaining a
16			controlled substance.
17	893.13(8)(a)3.	3rd	Knowingly write a prescription
18			for a controlled substance for a
19			fictitious person.
20	893.13(8)(a)4.	3rd	Write a prescription for a
21			controlled substance for a
22			patient, other person, or an
23			animal if the sole purpose of
24			writing the prescription is a
25			monetary benefit for the
26			practitioner.
27	918.13(1)(a)	3rd	Alter, destroy, or conceal
28			investigation evidence.
29	944.47		
30	(1)(a)1.-2.	3rd	Introduce contraband to
31			correctional facility.

1	944.47(1)(c)	2nd	Possess contraband while upon the
2			grounds of a correctional
3			institution.
4	985.3141	3rd	Escapes from a juvenile facility
5			(secure detention or residential
6			commitment facility).
7			(e) LEVEL 5
8	316.027(1)(a)	3rd	Accidents involving personal
9			injuries, failure to stop;
10			leaving scene.
11	316.1935(4)	2nd	Aggravated fleeing or eluding.
12	322.34(6)	3rd	Careless operation of motor
13			vehicle with suspended license,
14			resulting in death or serious
15			bodily injury.
16	327.30(5)	3rd	Vessel accidents involving
17			personal injury; leaving scene.
18	381.0041		
19	(11)(b)	3rd	Donate blood, plasma, or organs
20			knowing HIV positive.
21	<u>440.10(1)(g)</u>	<u>2nd</u>	<u>Failure to obtain workers'</u>
22			<u>compensation coverage.</u>
23	<u>440.105(5)</u>	<u>2nd</u>	<u>Unlawful solicitation for the</u>
24			<u>purpose of making workers'</u>
25			<u>compensation claims.</u>
26	<u>440.381(2)</u>	<u>2nd</u>	<u>Submission of false, misleading,</u>
27			<u>or incomplete information with</u>
28			<u>the purpose of avoiding or</u>
29			<u>reducing workers' compensation</u>
30			<u>premiums.</u>
31	790.01(2)	3rd	Carrying a concealed firearm.

1	790.162	2nd	Threat to throw or discharge
2			destructive device.
3	790.163(1)	2nd	False report of deadly explosive
4			or weapon of mass destruction.
5	790.221(1)	2nd	Possession of short-barreled
6			shotgun or machine gun.
7	790.23	2nd	Felons in possession of firearms
8			or electronic weapons or devices.
9	800.04(6)(c)	3rd	Lewd or lascivious conduct;
10			offender less than 18 years.
11	800.04(7)(c)	2nd	Lewd or lascivious exhibition;
12			offender 18 years or older.
13	806.111(1)	3rd	Possess, manufacture, or dispense
14			fire bomb with intent to damage
15			any structure or property.
16	812.0145(2)(b)	2nd	Theft from person 65 years of age
17			or older; \$10,000 or more but
18			less than \$50,000.
19	812.015(8)	3rd	Retail theft; property stolen is
20			valued at \$300 or more and one or
21			more specified acts.
22	812.019(1)	2nd	Stolen property; dealing in or
23			trafficking in.
24	812.131(2)(b)	3rd	Robbery by sudden snatching.
25	812.16(2)	3rd	Owning, operating, or conducting
26			a chop shop.
27	817.034(4)(a)2.	2nd	Communications fraud, value
28			\$20,000 to \$50,000.
29	817.234(11)(b)	2nd	Insurance fraud; property value
30			\$20,000 or more but less than
31			\$100,000.

1	817.568(2)(b)	2nd	Fraudulent use of personal
2			identification information; value
3			of benefit, services received,
4			payment avoided, or amount of
5			injury or fraud, \$75,000 or more.
6	817.625(2)(b)	2nd	Second or subsequent fraudulent
7			use of scanning device or
8			reencoder.
9	825.1025(4)	3rd	Lewd or lascivious exhibition in
10			the presence of an elderly person
11			or disabled adult.
12	827.071(4)	2nd	Possess with intent to promote
13			any photographic material, motion
14			picture, etc., which includes
15			sexual conduct by a child.
16	839.13(2)(b)	2nd	Falsifying records of an
17			individual in the care and
18			custody of a state agency
19			involving great bodily harm or
20			death.
21	843.01	3rd	Resist officer with violence to
22			person; resist arrest with
23			violence.
24	874.05(2)	2nd	Encouraging or recruiting another
25			to join a criminal street gang;
26			second or subsequent offense.
27	893.13(1)(a)1.	2nd	Sell, manufacture, or deliver
28			cocaine (or other s.
29			893.03(1)(a), (1)(b), (1)(d),
30			(2)(a), (2)(b), or (2)(c)4.
31			drugs).

1	893.13(1)(c)2.	2nd	Sell, manufacture, or deliver
2			cannabis (or other s.
3			893.03(1)(c), (2)(c)1., (2)(c)2.,
4			(2)(c)3., (2)(c)5., (2)(c)6.,
5			(2)(c)7., (2)(c)8., (2)(c)9.,
6			(3), or (4) drugs) within 1,000
7			feet of a child care facility or
8			school.
9	893.13(1)(d)1.	1st	Sell, manufacture, or deliver
10			cocaine (or other s.
11			893.03(1)(a), (1)(b), (1)(d),
12			(2)(a), (2)(b), or (2)(c)4.
13			drugs) within 200 feet of
14			university or public park.
15	893.13(1)(e)2.	2nd	Sell, manufacture, or deliver
16			cannabis or other drug prohibited
17			under s. 893.03(1)(c), (2)(c)1.,
18			(2)(c)2., (2)(c)3., (2)(c)5.,
19			(2)(c)6., (2)(c)7., (2)(c)8.,
20			(2)(c)9., (3), or (4) within
21			1,000 feet of property used for
22			religious services or a specified
23			business site.
24	893.13(1)(f)1.	1st	Sell, manufacture, or deliver
25			cocaine (or other s.
26			893.03(1)(a), (1)(b), (1)(d), or
27			(2)(a), (2)(b), or (2)(c)4.
28			drugs) within 200 feet of public
29			housing facility.
30			
31			

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

6 Section 37. Report to the Legislature regarding
7 outstanding enforcement issues.--The Department of Financial
8 Services shall, no later than January 1, 2004, provide a
9 report to the President of the Senate, the Speaker of the
10 House of Representatives, the minority leaders of the Senate
11 and the House of Representatives, and the chairs of the
12 standing committees of the Senate and the House of
13 Representatives having jurisdiction over insurance issues,
14 containing the following information:

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

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

22 (3) Any other impediment to enforcement of chapter
23 440, Florida Statutes, resulting from the transfer of
24 activities from the former Department of Labor and Employment
25 Security to the department or the reorganization of the former
26 Department of Insurance into the department.

27 Section 38. Subsection (2) of section 946.523, Florida
28 Statutes, is amended to read:

29 946.523 Prison industry enhancement (PIE) programs.--

30 (2) Notwithstanding any other law to the contrary,
31 including s. 440.15(8)(9), private sector employers shall

1 provide workers' compensation coverage to inmates who
2 participate in prison industry enhancement (PIE) programs
3 under subsection (1). However, inmates are not entitled to
4 unemployment compensation.

5 Section 39. Paragraph (c) of subsection (5) of section
6 985.315, Florida Statutes, is amended to read:

7 985.315 Educational/technical and vocational
8 work-related programs.--

9 (5)

10 (c) Notwithstanding any other law to the contrary,
11 including s. 440.15~~(8)(9)~~, private sector employers shall
12 provide juveniles participating in juvenile work programs
13 under paragraph (b) with workers' compensation coverage, and
14 juveniles shall be entitled to the benefits of such coverage.
15 Nothing in this subsection shall be construed to allow
16 juveniles to participate in unemployment compensation
17 benefits.

18 Section 40. (1) There is established a Joint Select
19 Committee on Workers Compensation Rating Reform. The committee
20 shall study the merits of requiring each workers' compensation
21 insurer to individually file its expense and profit portion of
22 a rate filing, while permitting each insurer to use a lost
23 cost filing made by a licensed rating organization. The
24 committee shall also study options for the current prior
25 approval system for workers compensation rate filings,
26 including, but not limited to, rate filing procedures that
27 would promote greater competition and would encourage insurers
28 to write workers' compensation coverage in the state while
29 protecting employers from rates that are excessive,
30 inadequate, or unfairly discriminatory.

31

1 (2) The committee shall be composed of three Senators
2 appointed by the President of the Senate and three
3 Representatives appointed by the Speaker of the House of
4 Representatives. The appointed members of the committee shall
5 elect a chair and vice chair. The Department of Financial
6 Services shall provide information and assistance as requested
7 by the committee.

8 (3) The committee shall issue its final report and
9 recommendations to the President of the Senate and the Speaker
10 of the House of Representatives by December 1, 2003. The
11 committee shall terminate on December 1, 2003.

12 Section 41. The board of governors of the joint
13 underwriting plan for workers' compensation insurance created
14 by section 627.311(4), Florida Statutes, shall, by January 1,
15 2005, submit a report to the President of the Senate, the
16 Speaker of the House of Representatives, the minority party
17 leaders of the Senate and the House of Representatives, and
18 the chairs of the standing committees of the Senate and the
19 House of Representatives having jurisdiction over matters
20 relating to workers' compensation. The report shall include
21 the board's findings and recommendations on the following
22 issues:

23 (1) The number of policies and the aggregate premium
24 of the workers' compensation joint underwriting plan, before
25 and after enactment of this act, and projections for future
26 policy and premium growth.

27 (2) Increases or decreases in availability of workers'
28 compensation coverage in the voluntary market and the
29 effectiveness of this act in improving the availability of
30 workers' compensation coverage in the state.

31

1 (3) The board's efforts to depopulate the plan and the
2 willingness of insurers in the voluntary market to avail
3 themselves of depopulation incentives.

4 (4) Further actions that could be taken by the
5 Legislature to improve availability of workers' compensation
6 coverage in the voluntary and residual markets.

7 (5) Actions that the board has taken to restructure
8 the joint underwriting plan and recommendations for
9 legislative action to restructure the plan.

10 (6) Projected surpluses or deficits and possible means
11 of providing funding to ensure the continued solvency of the
12 plan.

13 (7) An independent actuarial review of all rates under
14 the plan. The costs of the independent actuarial review shall
15 be paid from the Workers' Compensation Administration Trust
16 Fund, pursuant to a budget amendment approved by the
17 Legislative Budget Commission. The board shall submit a plan
18 for such review to the Legislative Budget Commission by
19 October 1, 2003.

20 (8) Such other issues as the board determines are
21 worthy of the Legislature's consideration.

22 Section 42. Subsections (1) and (2) of section
23 443.1715, Florida Statutes, are amended to read:

24 443.1715 Disclosure of information; confidentiality.--

25 (1) RECORDS AND REPORTS.--Information revealing the
26 employing unit's or individual's identity obtained from the
27 employing unit or from any individual pursuant to the
28 administration of this chapter, and any determination
29 revealing such information, except to the extent necessary for
30 the proper presentation of a claim or upon written
31 authorization of the claimant who has a workers' compensation

1 claim pending or is receiving compensation benefits, must be
2 held confidential and exempt from the provisions of s.
3 119.07(1) and s. 24(a), Art. I of the State Constitution. Such
4 information may be made available only to public employees in
5 the performance of their public duties, including employees of
6 the Department of Education in obtaining information for the
7 Florida Education and Training Placement Information Program
8 and the Office of Tourism, Trade, and Economic Development in
9 its administration of the qualified defense contractor tax
10 refund program authorized by s. 288.1045 and the qualified
11 target industry tax refund program authorized by s. 288.106.
12 Except as otherwise provided by law, public employees
13 receiving such information must retain the confidentiality of
14 such information. Any claimant, or the claimant's legal
15 representative, at a hearing before an appeals referee or the
16 commission shall be supplied with information from such
17 records to the extent necessary for the proper presentation of
18 her or his claim. Any employee or member of the commission or
19 any employee of the division, or any other person receiving
20 confidential information, who violates any provision of this
21 subsection commits a misdemeanor of the second degree,
22 punishable as provided in s. 775.082 or s. 775.083. However,
23 the division may furnish to any employer copies of any report
24 previously submitted by such employer, upon the request of
25 such employer, and may furnish to any claimant copies of any
26 report previously submitted by such claimant, upon the request
27 of such claimant, and the division is authorized to charge
28 therefor such reasonable fee as the division may by rule
29 prescribe not to exceed the actual reasonable cost of the
30 preparation of such copies. Fees received by the division for
31

1 copies as provided in this subsection must be deposited to the
2 credit of the Employment Security Administration Trust Fund.

3 (2) DISCLOSURE OF INFORMATION.--

4 (a) Subject to such restrictions as the division
5 prescribes by rule, information declared confidential under
6 this section may be made available to any agency of this or
7 any other state, or any federal agency, charged with the
8 administration of any unemployment compensation law or the
9 maintenance of a system of public employment offices, or the
10 Bureau of Internal Revenue of the United States Department of
11 the Treasury, or the Florida Department of Revenue and
12 information obtained in connection with the administration of
13 the employment service may be made available to persons or
14 agencies for purposes appropriate to the operation of a public
15 employment service or a job-preparatory or career education or
16 training program. The division shall on a quarterly basis,
17 furnish the National Directory of New Hires with information
18 concerning the wages and unemployment compensation paid to
19 individuals, by such dates, in such format and containing such
20 information as the Secretary of Health and Human Services
21 shall specify in regulations. Upon request therefor, the
22 division shall furnish any agency of the United States charged
23 with the administration of public works or assistance through
24 public employment, and may furnish to any state agency
25 similarly charged, the name, address, ordinary occupation, and
26 employment status of each recipient of benefits and such
27 recipient's rights to further benefits under this chapter.
28 Except as otherwise provided by law, the receiving agency must
29 retain the confidentiality of such information as provided in
30 this section. The division may request the Comptroller of the
31 Currency of the United States to cause an examination of the

1 correctness of any return or report of any national banking
2 association rendered pursuant to the provisions of this
3 chapter and may in connection with such request transmit any
4 such report or return to the Comptroller of the Currency of
5 the United States as provided in s. 3305(c) of the federal
6 Internal Revenue Code.

7 (b)1. The employer or the employer's workers'
8 compensation carrier against whom a claim for benefits under
9 chapter 440 has been made, or a representative of either, may
10 request from the division records of wages of the employee
11 reported to the division by any employer for the quarter that
12 includes the date of the accident that is the subject of such
13 claim and for subsequent quarters. The request must be made
14 with the authorization or consent of the employee or any
15 employer who paid wages to the employee subsequent to the date
16 of the accident.

17 2. The employer or carrier shall make the request on a
18 form prescribed by rule for such purpose by the division. Such
19 form shall contain a certification by the requesting party
20 that it is a party entitled to the information requested as
21 authorized by this paragraph.

22 3. The division shall provide the most current
23 information readily available within 15 days after receiving
24 the request.

25 Section 43. Subsection (9) of section 626.989, Florida
26 Statutes, is amended to read:

27 626.989 Investigation by department or Division of
28 Insurance Fraud; compliance; immunity; confidential
29 information; reports to division; division investigator's
30 power of arrest.--

31

1 (9) In recognition of the complementary roles of
2 investigating instances of workers' compensation fraud and
3 enforcing compliance with the workers' compensation coverage
4 requirements under chapter 440, the Department of Financial
5 Services shall ~~insurance is directed to~~ prepare and submit a
6 joint performance report to the President of the Senate and
7 the Speaker of the House of Representatives by November 1,
8 2003, and then by January 1 of each year ~~November 1 every 3~~
9 ~~years thereafter, describing the results obtained in achieving~~
10 ~~compliance with the workers' compensation coverage~~
11 ~~requirements and reducing the incidence of workers'~~
12 ~~compensation fraud.~~ The annual report must include, but need
13 not be limited to:

14 (a) The total number of initial referrals received,
15 cases opened, cases presented for prosecution, cases closed,
16 and convictions resulting from cases presented for prosecution
17 by the Bureau of Workers' Compensation Insurance Fraud by type
18 of workers' compensation fraud and circuit.

19 (b) The number of referrals received from insurers and
20 the Division of Workers' Compensation and the outcome of those
21 referrals.

22 (c) The number of investigations undertaken by the
23 office which were not the result of a referral from an insurer
24 or the Division of Workers' Compensation.

25 (d) The number of investigations that resulted in a
26 referral to a regulatory agency and the disposition of those
27 referrals.

28 (e) The number and reasons provided by local
29 prosecutors or the statewide prosecutor for declining
30 prosecution of a case presented by the office by circuit.

31

1 (f) The total number of employees assigned to the
2 office and the Division of Workers' Compliance unit delineated
3 by location of staff assigned and the number and location of
4 employees assigned to the office who were assigned to work
5 other types of fraud cases.

6 (g) The average caseload and turnaround time by type
7 of case for each investigator and division compliance
8 employee.

9 (h) The training provided during the year to workers'
10 compensation fraud investigators and the division's compliance
11 employees.

12 Section 44. Section 626.9891, Florida Statutes, is
13 amended to read:

14 626.9891 Insurer anti-fraud investigative units;
15 reporting requirements; penalties for noncompliance.--

16 (1) Every insurer admitted to do business in this
17 state who in the previous calendar year, at any time during
18 that year, had \$10 million or more in direct premiums written
19 shall:

20 (a) Establish and maintain a unit or division within
21 the company to investigate possible fraudulent claims by
22 insureds or by persons making claims for services or repairs
23 against policies held by insureds; or

24 (b) Contract with others to investigate possible
25 fraudulent claims for services or repairs against policies
26 held by insureds.

27
28 An insurer subject to this subsection shall file with the
29 Division of Insurance Fraud of the department on or before
30 July 1, 1996, a detailed description of the unit or division
31

1 established pursuant to paragraph (a) or a copy of the
2 contract and related documents required by paragraph (b).

3 (2) Every insurer admitted to do business in this
4 state, which in the previous calendar year had less than \$10
5 million in direct premiums written, must adopt an anti-fraud
6 plan and file it with the Division of Insurance Fraud of the
7 department on or before July 1, 1996. An insurer may, in lieu
8 of adopting and filing an anti-fraud plan, comply with the
9 provisions of subsection (1).

10 (3) Each insurers anti-fraud plans shall include:

11 (a) A description of the insurer's procedures for
12 detecting and investigating possible fraudulent insurance
13 acts;

14 (b) A description of the insurer's procedures for the
15 mandatory reporting of possible fraudulent insurance acts to
16 the Division of Insurance Fraud of the department;

17 (c) A description of the insurer's plan for anti-fraud
18 education and training of its claims adjusters or other
19 personnel; and

20 (d) A written description or chart outlining the
21 organizational arrangement of the insurer's anti-fraud
22 personnel who are responsible for the investigation and
23 reporting of possible fraudulent insurance acts.

24 (4) Any insurer who obtains a certificate of authority
25 after July 1, 1995, shall have 18 months in which to comply
26 with the requirements of this section.

27 (5) For purposes of this section, the term "unit or
28 division" includes the assignment of fraud investigation to
29 employees whose principal responsibilities are the
30 investigation and disposition of claims. If an insurer creates
31 a distinct unit or division, hires additional employees, or

1 contracts with another entity to fulfill the requirements of
2 this section, the additional cost incurred must be included as
3 an administrative expense for ratemaking purposes.

4 (6) Each insurer writing workers' compensation
5 insurance shall report to the department, on or before August
6 1 of each year, on its experience in implementing and
7 maintaining an anti-fraud investigative unit or an anti-fraud
8 plan. The report must include, at a minimum:

9 (a) The dollar amount of recoveries and losses
10 attributable to workers' compensation fraud delineated by the
11 type of fraud: claimant, employer, provider, agent, or other.

12 (b) The number of referrals to the Bureau of Workers'
13 Compensation Fraud for the prior year.

14 (c) A description of the organization of the
15 anti-fraud investigative unit, if applicable, including the
16 position titles and descriptions of staffing.

17 (d) The rationale for the level of staffing and
18 resources being provided for the anti-fraud investigative
19 unit, which may include objective criteria such as number of
20 policies written, number of claims received on an annual
21 basis, volume of suspected fraudulent claims currently being
22 detected, other factors, and an assessment of optimal caseload
23 that can be handled by an investigator on an annual basis.

24 (e) The in-service education and training provided to
25 underwriting and claims personnel to assist in identifying and
26 evaluating instances of suspected fraudulent activity in
27 underwriting or claims activities.

28 (f) A description of a public awareness program
29 focused on the costs and frequency of insurance fraud and
30 methods by which the public can prevent it.

31

1 (7) If an insurer fails to submit a final anti-fraud
2 plan or otherwise fails to submit a plan, fails to implement
3 the provisions of a plan or an anti-fraud investigative unit,
4 or otherwise refuses to comply with the provisions of this
5 section, the department may:

6 (a) Impose an administrative fine of not more than
7 \$2,000 per day for such failure by an insurer, until the
8 department deems the insurer to be in compliance;

9 (b) Impose upon the insurer a fraud detection and
10 prevention plan that is deemed to be appropriate by the
11 department and that must be implemented by the insurer; or

12 (c) Impose the provisions of both paragraphs (a) and
13 (b).

14 (8) The department may adopt rules to administer this
15 section.

16 Section 45. Section 440.1925, Florida Statutes, is
17 repealed.

18 Section 46. The amendments to sections 440.02 and
19 440.15, Florida Statutes, which are made by this act shall not
20 be construed to affect any determination of disability under
21 section 112.18, section 112.181, or section 112.19, Florida
22 Statutes.

23 Section 47. If any law amended by this act was also
24 amended by a law enacted at the 2003 Regular Session of the
25 Legislature, such laws shall be construed as if they had been
26 enacted at the same session of the Legislature, and full
27 effect shall be given to each if possible.

28 Section 48. Except as otherwise provided herein, this
29 act shall take effect October 1, 2003.

30
31