

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.  
10 440.13, F.S.; providing for practice parameters  
11 and treatment protocols; revising provisions  
12 relating to provider reimbursement; requiring  
13 revision of specified reimbursement schedules;  
14 providing for release of information; providing  
15 additional criteria for independent medical  
16 examinations; providing a definition; providing  
17 standards for medical care under ch. 440, F.S.;  
18 providing penalties; amending s. 440.134, F.S.;  
19 revising provisions relating to managed care  
20 arrangements; revising definitions; providing  
21 for assignment of a medical care coordinator;  
22 amending s. 440.14, F.S.; revising provisions  
23 relating to calculation of average weekly wage  
24 for injured employees; conforming  
25 cross-references; amending s. 440.15, F.S.;  
26 providing additional limitations on  
27 compensation for permanent total disability;  
28 providing a definition; specifying impairment  
29 benefits and providing for partial reduction  
30 under certain circumstances; deleting  
31 provisions relating to supplemental benefits;

1 amending s. 440.151, F.S.; specifying  
2 compensability of occupational disease;  
3 providing a definition; amending s. 440.16,  
4 F.S.; increasing the limits on the amount of  
5 certain benefits paid as compensation for  
6 death; amending s. 440.185, F.S.; specifying  
7 duty of employer upon receipt of notice of  
8 injury or death; increasing penalties for  
9 noncompliance; amending s. 440.192, F.S.;  
10 revising procedure for resolving benefit  
11 disputes; requiring a petition for benefits to  
12 include all claims which are ripe, due, and  
13 owing; providing that the Chief Judge, rather  
14 than the Deputy Chief Judge, shall refer  
15 petitions for benefits; creating s. 440.1926,  
16 F.S.; providing for alternative dispute  
17 resolution and arbitration of claims; amending  
18 s. 440.20, F.S.; revising provisions relating  
19 to timely payment of compensation and medical  
20 bills and penalties for late payment;  
21 prohibiting the clerk of the circuit court from  
22 assessing certain fees or costs; amending s.  
23 440.25, F.S.; revising procedures for mediation  
24 and hearings; amending s. 440.34, F.S.;  
25 revising provisions relating to the award of  
26 attorney's fees; amending s. 440.38, F.S.;  
27 providing requirement for employers with  
28 coverage provided by insurers from outside the  
29 state; amending s. 440.381, F.S.; providing  
30 criminal penalty for unlawful applications;  
31 requiring on-site audits of employers under

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

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

28  
29       Be It Enacted by the Legislature of the State of Florida:  
30  
31

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

4           440.02 Definitions.--When used in this chapter, unless  
5 the context clearly requires otherwise, the following terms  
6 shall have the following meanings:

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

31

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

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

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

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

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

26  
27 Services are presumed to have been rendered to the corporation  
28 if the officer is compensated by other than dividends upon  
29 shares of stock of the corporation which the officer owns.

30           (c) ~~1.~~ "Employee" includes a sole proprietor or a  
31 partner who devotes full time to the proprietorship or

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

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

24 (d) "Employee" does not include:

25 1. An independent contractor, if:

26 a. The independent contractor maintains a separate  
27 business with his or her own work facility, truck, equipment,  
28 materials, or similar accommodations;

29 b. The independent contractor holds or has applied for  
30 a federal employer identification number, unless the  
31 independent contractor is a sole proprietor who is not



1 required to obtain a federal employer identification number  
2 under state or federal requirements;

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

7 d. The independent contractor incurs the principal  
8 expenses related to the service or work that he or she  
9 performs or agrees to perform;

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

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

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

19 h. The independent contractor has continuing or  
20 recurring business liabilities or obligations; and

21 i. The success or failure of the independent  
22 contractor's business depends on the relationship of business  
23 receipts to expenditures.

24

25 However, the determination as to whether an individual  
26 included in the Standard Industrial Classification Manual of  
27 1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,  
28 0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,  
29 2448, or 2449, or a newspaper delivery person, is an  
30 independent contractor is governed not by the criteria in this  
31 paragraph but by common-law principles, giving due

1 consideration to the business activity of the individual.  
2 ~~Notwithstanding the provisions of this paragraph or any other~~  
3 ~~provision of this chapter, with respect to any commercial~~  
4 ~~building project estimated to be valued at \$250,000 or~~  
5 ~~greater, a person who is actively engaged in the construction~~  
6 ~~industry is not an independent contractor and is either an~~  
7 ~~employer or an employee who may not be exempt from the~~  
8 ~~coverage requirements of this chapter.~~

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

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

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

28           5. A person whose employment is both casual and not in  
29 the course of the trade, business, profession, or occupation  
30 of the employer.

31

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

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

18           b. Volunteers participating in federal programs  
19 established under Pub. L. No. 93-113.

20           7. Any officer of a corporation who elects to be  
21 exempt from this chapter.

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

29           9. An exercise rider who does not work for a single  
30 horse farm or breeder, and who is compensated for riding on a  
31 case-by-case basis, provided a written contract is entered

1 into prior to the commencement of such activity which  
2 evidences that an employee/employer relationship does not  
3 exist.

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

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

26 (29) "Weekly compensation rate" means and refers to  
27 the amount of compensation payable for a period of 7  
28 consecutive calendar days, including any Saturdays, Sundays,  
29 holidays, and other nonworking days which fall within such  
30 period of 7 consecutive calendar days. When Saturdays,  
31 Sundays, holidays, or other nonworking days immediately follow

1 the first 7 calendar days of disability or occur at the end of  
2 a period of disability as the last day or days of such period,  
3 such nonworking days constitute a part of the period of  
4 disability with respect to which compensation is payable.

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

9 ~~(a) Spinal cord injury involving severe paralysis of~~  
10 ~~an arm, a leg, or the trunk†~~

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

13 ~~(c) Severe brain or closed-head injury as evidenced~~  
14 ~~by†~~

15 ~~1. Severe sensory or motor disturbances†~~

16 ~~2. Severe communication disturbances†~~

17 ~~3. Severe complex integrated disturbances of cerebral~~  
18 ~~function†~~

19 ~~4. Severe episodic neurological disorders† or~~

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

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

26 ~~(e) Total or industrial blindness† or~~

27 ~~(f) Any other injury that would otherwise qualify under~~  
28 ~~this chapter of a nature and severity that would qualify an~~  
29 ~~employee to receive disability income benefits under Title II~~  
30 ~~or supplemental security income benefits under Title XVI of~~  
31 ~~the federal Social Security Act as the Social Security Act~~

1 ~~existed on July 1, 1992, without regard to any time~~  
2 ~~limitations provided under that act.~~

3 (40) "Statement," for the purposes of ss. 440.105 and  
4 440.106, shall include the exact fraud statement language in  
5 s. 440.105(7). This requirement includes, but is not limited  
6 to, any notice, representation, statement, proof of injury,  
7 bill for services, diagnosis, prescription, hospital or doctor  
8 record, X ray, test result, or other evidence of loss, injury,  
9 or expense.

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

1 ~~structures constructed in conjunction with the principal~~  
2 ~~structure. The term, "commercial building," does not include~~  
3 ~~the conversion of any existing residential building to a~~  
4 ~~commercial building.~~

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

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

12 440.02 Definitions.--When used in this chapter, unless  
13 the context clearly requires otherwise, the following terms  
14 shall have the following meanings:

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

30 (15)(a) "Employee" means any person who receives  
31 remuneration from an employer for the performance of any work

1 or service while engaged in any employment under any  
2 appointment or contract ~~for~~ ~~of~~ hire or apprenticeship, express  
3 or implied, oral or written, whether lawfully or unlawfully  
4 employed, and includes, but is not limited to, aliens and  
5 minors.

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

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

13 2. As to officers of a corporation who are ~~actively~~  
14 engaged in the construction industry, no more than three  
15 officers of a corporation or of any group of affiliated  
16 corporations may elect to be exempt from this chapter by  
17 filing written notice of the election with the department as  
18 provided in s. 440.05. Officers must be shareholders, each  
19 owning at least 10 percent of the stock of such corporation  
20 and listed as an officer of such corporation with the Division  
21 of Corporations of the Department of State, in order to elect  
22 exemptions under this chapter. For purposes of this  
23 subparagraph, the term "affiliated" means and includes one or  
24 more corporations or entities, any one of which is a  
25 corporation engaged in the construction industry, under the  
26 same or substantially the same control of a group of business  
27 entities which are connected or associated so that one entity  
28 controls or has the power to control each of the other  
29 business entities. The term "affiliated" includes, but is not  
30 limited to, the officers, directors, executives, shareholders  
31 active in management, employees, and agents of the affiliated



1 corporation. The ownership by one business entity of a  
2 controlling interest in another business entity or a pooling  
3 of equipment or income among business entities shall be prima  
4 facie evidence that one business is affiliated with the other.

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

9  
10 Services are presumed to have been rendered to the corporation  
11 if the officer is compensated by other than dividends upon  
12 shares of stock of the corporation which the officer owns.

13 (c) "Employee" includes:

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

23 ~~However, no more than three partners in a partnership that is~~  
24 ~~actively engaged in the construction industry may elect to be~~  
25 ~~excluded. A sole proprietor or partner who is actively engaged~~  
26 ~~in the construction industry and who elects to be exempt from~~  
27 ~~this chapter by filing a written notice of the election with~~  
28 ~~the department as provided in s. 440.05 is not an employee.~~

29 ~~For purposes of this chapter, an independent contractor is an~~  
30 ~~employee unless he or she meets all of the conditions set~~  
31 ~~forth in subparagraph (d)1.~~

1           2. All persons who are being paid by a construction  
2 contractor as a subcontractor, unless the subcontractor has  
3 validly elected an exemption as permitted by this chapter, or  
4 has otherwise secured the payment of compensation coverage as  
5 a subcontractor, consistent with s. 440.10, for work performed  
6 by or as a subcontractor.

7           3. An independent contractor working or performing  
8 services in the construction industry.

9           4. A sole proprietor who engages in the construction  
10 industry and a partner or partnership that is engaged in the  
11 construction industry.

12           (d) "Employee" does not include:

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

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

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

21           (II) The independent contractor holds or has applied  
22 for a federal employer identification number, unless the  
23 independent contractor is a sole proprietor who is not  
24 required to obtain a federal employer identification number  
25 under state or federal regulations;

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

29           (IV) The independent contractor holds one or more bank  
30 accounts in the name of the business entity for purposes of  
31

1 paying business expenses or other expenses related to services  
2 rendered or work performed for compensation;

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

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

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

20 (I) The independent contractor performs or agrees to  
21 perform specific services or work for a specific amount of  
22 money and controls the means of performing the services or  
23 work.

24 (II) The independent contractor incurs the principal  
25 expenses related to the service or work that he or she  
26 performs or agrees to perform.

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

30  
31

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

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

6           (VI) The independent contractor has continuing or  
7 recurring business liabilities or obligations.

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

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

22           d. ~~The independent contractor incurs the principal~~  
23 ~~expenses related to the service or work that he or she~~  
24 ~~performs or agrees to perform;~~

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

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

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

3 ~~h. The independent contractor has continuing or~~  
4 ~~recurring business liabilities or obligations; and~~

5 ~~i. The success or failure of the independent~~  
6 ~~contractor's business depends on the relationship of business~~  
7 ~~receipts to expenditures.~~

8  
9 ~~However, the determination as to whether an individual~~  
10 ~~included in the Standard Industrial Classification Manual of~~  
11 ~~1987, Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762,~~  
12 ~~0781, 0782, 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436,~~  
13 ~~2448, or 2449, or a newspaper delivery person, is an~~  
14 ~~independent contractor is governed not by the criteria in this~~  
15 ~~paragraph but by common-law principles, giving due~~  
16 ~~consideration to the business activity of the individual.~~

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

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

25 4. An owner-operator of a motor vehicle who transports  
26 property under a written contract with a motor carrier which  
27 evidences a relationship by which the owner-operator assumes  
28 the responsibility of an employer for the performance of the  
29 contract, if the owner-operator is required to furnish the  
30 necessary motor vehicle equipment and all costs incidental to  
31 the performance of the contract, including, but not limited

1 to, fuel, taxes, licenses, repairs, and hired help; and the  
2 owner-operator is paid a commission for transportation service  
3 and is not paid by the hour or on some other time-measured  
4 basis.

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

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

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

25           b. Volunteers participating in federal programs  
26 established under Pub. L. No. 93-113.

27           7. Unless otherwise prohibited by this chapter, any  
28 officer of a corporation who elects to be exempt from this  
29 chapter. Such officer is not an employee for any reason under  
30 this chapter until the notice of revocation of election filed  
31 pursuant to s. 440.05 is effective.

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

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

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

23           11. A person who performs services as a sports  
24 official for an entity sponsoring an interscholastic sports  
25 event or for a public entity or private, nonprofit  
26 organization that sponsors an amateur sports event. For  
27 purposes of this subparagraph, such a person is an independent  
28 contractor. For purposes of this subparagraph, the term  
29 "sports official" means any person who is a neutral  
30 participant in a sports event, including, but not limited to,  
31 umpires, referees, judges, linespersons, scorekeepers, or

1 timekeepers. This subparagraph does not apply to any person  
2 employed by a district school board who serves as a sports  
3 official as required by the employing school board or who  
4 serves as a sports official as part of his or her  
5 responsibilities during normal school hours.

6 12. Medicaid-enrolled clients under chapter 393 who  
7 are excluded from the definition of employment under s.  
8 443.036(21)(d)5. and served by Adult Day Training Services  
9 under the Home and Community-Based Medicaid Waiver program in  
10 a sheltered workshop setting licensed by the United States  
11 Department of Labor for the purpose of training and earning  
12 less than the federal hourly minimum wage.

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

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

30 (c) Facilities serving individuals under subparagraph  
31 (15)(d)12. shall be considered agents of the Agency for Health



1 Care Administration as it relates to providing Adult Day  
2 Training Services under the Home and Community-Based Medicaid  
3 Waiver program and not employers or third parties for the  
4 purpose of limiting or denying Medicaid benefits.

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

10 440.05 Election of exemption; revocation of election;  
11 notice; certification.--

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

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

1 the certificate of election. A copy of the certificate of  
2 election must be sent to each workers' compensation carrier  
3 identified in the request for exemption. Upon filing a notice  
4 of revocation of election, ~~an a sole proprietor, partner, or~~  
5 officer who is a subcontractor or an officer of a corporate  
6 subcontractor must notify her or his contractor. Upon  
7 revocation of a certificate of election of exemption by the  
8 department, the department shall notify the workers'  
9 compensation carriers identified in the request for exemption.

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

21 (6) A construction industry certificate of election to  
22 be exempt which is issued in accordance with this section  
23 shall be valid for 2 years after the effective date stated  
24 thereon. Both the effective date and the expiration date must  
25 be listed on the face of the certificate by the department.  
26 The construction industry certificate must expire at midnight,  
27 2 years from its issue date, as noted on the face of the  
28 exemption certificate. Any person who has received from the  
29 division a construction industry certificate of election to be  
30 exempt which is in effect on December 31, 1998, shall file a  
31 new notice of election to be exempt by the last day in his or

1 her birth month following December 1, 1998. A construction  
2 industry certificate of election to be exempt may be revoked  
3 before its expiration by the ~~sole proprietor, partner, or~~  
4 officer for whom it was issued or by the department for the  
5 reasons stated in this section. At least 60 days prior to the  
6 expiration date of a construction industry certificate of  
7 exemption issued after December 1, 1998, the department shall  
8 send notice of the expiration date and an application for  
9 renewal to the certificateholder at the address on the  
10 certificate.

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

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

28 ~~(a) For sole proprietors, a copy of Federal Income Tax~~  
29 ~~Form 1040 and its accompanying Schedule C;~~  
30  
31

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

4  
5 ~~A sole proprietor or partner shall produce, upon request by~~  
6 ~~the division, a copy of those documents together with a~~  
7 ~~statement by the sole proprietor or partner that the tax~~  
8 ~~records provided are true and accurate copies of what the sole~~  
9 ~~proprietor or partner has filed with the federal Internal~~  
10 ~~Revenue Service. The statement must be signed under oath by~~  
11 ~~the sole proprietor or partner and must be notarized. The~~  
12 ~~division shall issue a stop-work order under s. 440.107(5) to~~  
13 ~~any sole proprietor or partner who fails or refuses to produce~~  
14 ~~a copy of the tax records and affidavit required under this~~  
15 ~~paragraph to the division within 3 business days after the~~  
16 ~~request is made.~~

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

29           ~~(11)(13)~~ Any corporate officer permitted by this  
30 chapter to claim ~~claiming~~ an exemption under this section must  
31 be listed on the records of this state's Secretary of State,

1 Division of Corporations, as a corporate officer. ~~If the~~  
2 ~~person who claims an exemption as a corporate officer is not~~  
3 ~~so listed on the records of the Secretary of State, the~~  
4 ~~individual must provide to the division, upon request by the~~  
5 ~~division, a notarized affidavit stating that the individual is~~  
6 ~~a bona fide officer of the corporation and stating the date~~  
7 ~~his or her appointment or election as a corporate officer~~  
8 ~~became or will become effective. The statement must be signed~~  
9 ~~under oath by both the officer and the president or chief~~  
10 ~~operating officer of the corporation and must be notarized.~~  
11 The division shall issue a stop-work order under s. 440.107(1)  
12 to any corporation who employs a person who claims to be  
13 exempt as a corporate officer but who fails or refuses to  
14 produce the documents required under this subsection to the  
15 division within 3 business days after the request is made.

16 (12) Certificates of election to be exempt issued  
17 under subsection (3) shall apply only to the corporate officer  
18 named on the notice of election to be exempt and apply only  
19 within the scope of the business or trade listed on the notice  
20 of election to be exempt.

21 (13) Notices of election to be exempt and certificates  
22 of election to be exempt shall be subject to revocation if, at  
23 any time after the filing of the notice or the issuance of the  
24 certificate, the person named on the notice or certificate no  
25 longer meets the requirements of this section for issuance of  
26 a certificate. The department shall revoke a certificate at  
27 any time for failure of the person named on the certificate to  
28 meet the requirements of this section.

29 (14) An officer of a corporation who elects exemption  
30 from this chapter by filing a certificate of election under  
31 this section may not recover benefits or compensation under

1 this chapter. For purposes of determining the appropriate  
2 premium for workers' compensation coverage, carriers may not  
3 consider any officer of a corporation who validly meets the  
4 requirements of this section to be an employee.

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

12 (a) The spouse of such other person;

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

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

20 (d) Any person or group of persons who directly or  
21 indirectly control, are controlled by, or are under common  
22 control with such other person;

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

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

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

31

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

3           440.06 Failure to secure compensation; effect.--Every  
4 employer who fails to secure the payment of compensation, as  
5 provided in s. 440.10, by failing to meet the requirements of  
6 ~~under this chapter as provided in s. 440.38~~ may not, in any  
7 suit brought against him or her by an employee subject to this  
8 chapter to recover damages for injury or death, defend such a  
9 suit on the grounds that the injury was caused by the  
10 negligence of a fellow servant, that the employee assumed the  
11 risk of his or her employment, or that the injury was due to  
12 the comparative negligence of the employee.

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

15           440.077 When a corporate ~~sole proprietor, partner, or~~  
16 ~~officer~~ rejects chapter, effect.--~~An A sole proprietor,~~  
17 ~~partner, or officer of a corporation who is permitted to elect~~  
18 an exemption under this chapter ~~actively engaged in the~~  
19 ~~construction industry~~ and who elects to be exempt from the  
20 provisions of this chapter may not recover benefits under this  
21 chapter.

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

25           440.09 Coverage.--

26           (1) The employer must ~~shall~~ pay compensation or  
27 furnish benefits required by this chapter if the employee  
28 suffers an accidental compensable injury or death arising out  
29 of work performed in the course and the scope of employment.  
30 The injury, its occupational cause, and any resulting  
31 manifestations or disability must ~~shall~~ be established to a



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

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

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

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

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

27 (4)(a) An employee shall not be entitled to  
28 compensation or benefits under this chapter if any judge of  
29 compensation claims, administrative law judge, court, or jury  
30 convened in this state determines that the employee has  
31 knowingly or intentionally engaged in any of the acts

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

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

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

20 (7)

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

1           Section 7. Section 440.093, Florida Statutes, is  
2 created to read:

3           440.093 Mental and nervous injuries.--

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

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

31

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

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

11           440.10 Liability for compensation.--

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

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

30           (c) A contractor shall ~~may~~ require a subcontractor to  
31 provide evidence of workers' compensation insurance ~~or a copy~~

1 ~~of his or her certificate of election.~~ A subcontractor who is  
2 a corporation and has an officer who elects ~~electing~~ to be  
3 exempt as permitted under this chapter ~~a sole proprietor,~~  
4 ~~partner, or officer of a corporation~~ shall provide a copy of  
5 his or her certificate of exemption ~~election~~ to the  
6 contractor.

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

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

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

31

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

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

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

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

27           1. For employees of nonconstruction-industry employers  
28 who have their headquarters outside of Florida and also  
29 operate in Florida and who are routinely crossing state lines,  
30 but usually return to their homes each night, the employee  
31 shall be assigned to the headquarters' state. However, the

1 construction industry employees performing new construction or  
2 alterations in Florida shall be assigned to Florida even if  
3 the employees return to their home state each night.

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

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

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

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

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

25  
26 ~~A sole proprietor, partner, or officer of a corporation who~~  
27 ~~elects exemption from this chapter by filing a certificate of~~  
28 ~~election under s. 440.05 may not recover benefits or~~  
29 ~~compensation under this chapter. An independent contractor who~~  
30 ~~provides the general contractor with both an affidavit stating~~  
31 ~~that he or she meets the requirements of s. 440.02 and a~~



1 ~~certificate of exemption is not an employee under s. 440.02~~  
2 ~~and may not recover benefits under this chapter. For purposes~~  
3 ~~of determining the appropriate premium for workers'~~  
4 ~~compensation coverage, carriers may not consider any person~~  
5 ~~who meets the requirements of this paragraph to be an~~  
6 ~~employee.~~

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

9 440.1025 ~~Consideration of public~~ Employer workplace  
10 safety program in rate-setting; program requirements;  
11 rulemaking.--

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

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

30 Section 10. Section 440.103, Florida Statutes, is  
31 amended to read:

1           440.103 Building permits; identification of minimum  
2 premium policy.--~~Except as otherwise provided in this chapter,~~  
3 Every employer shall, as a condition to applying for and  
4 receiving a building permit, show proof and certify to the  
5 permit issuer that it has secured compensation for its  
6 employees under this chapter as provided in ss. 440.10 and  
7 440.38. Such proof of compensation must be evidenced by a  
8 certificate of coverage issued by the carrier, a valid  
9 exemption certificate approved by the department ~~or the former~~  
10 ~~Division of Workers' Compensation of the Department of Labor~~  
11 ~~and Employment Security~~, or a copy of the employer's authority  
12 to self-insure and shall be presented each time the employer  
13 applies for a building permit. As provided in s. 627.413(5),  
14 each certificate of coverage must show, on its face, whether  
15 or not coverage is secured under the minimum premium  
16 provisions of rules adopted by rating organizations licensed  
17 by the department. The words "minimum premium policy" or  
18 equivalent language shall be typed, printed, stamped, or  
19 legibly handwritten.

20           Section 11. Section 440.105, Florida Statutes, is  
21 amended to read:

22           440.105 Prohibited activities; reports; penalties;  
23 limitations.--

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

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

26 (b) In the absence of fraud or bad faith, a person is  
27 not subject to civil liability for libel, slander, or any  
28 other relevant tort by virtue of filing reports, without  
29 malice, or furnishing other information, without malice,  
30 required by this section or required by the bureau, and no  
31

1 civil cause of action of any nature shall arise against such  
2 person:

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

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

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

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

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

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

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

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

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

30 (b) It shall be unlawful for any insurance entity to  
31 revoke or cancel a workers' compensation insurance policy or

1 membership because an employer has returned an employee to  
2 work or hired an employee who has filed a workers'  
3 compensation claim.

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

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

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

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

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

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

31

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

8           3. Fail to secure payment of compensation if required  
9 to do so by this chapter.

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

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

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

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

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

31

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

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

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

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

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

26           (c) It shall be unlawful for any physician licensed  
27 under chapter 458, osteopathic physician licensed under  
28 chapter 459, chiropractic physician licensed under chapter  
29 460, podiatric physician licensed under chapter 461,  
30 optometric physician licensed under chapter 463, or any other  
31 practitioner licensed under the laws of this state to

1 knowingly and willfully assist, conspire with, or urge any  
2 person to fraudulently violate any of the provisions of this  
3 chapter.

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

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

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

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

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

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

29 (5) It shall be unlawful for any attorney or other  
30 person, in his or her individual capacity or in his or her  
31 capacity as a public or private employee or for any firm,



1 corporation, partnership, or association, to unlawfully  
 2 solicit any business in and about city or county hospitals,  
 3 courts, or any public institution or public place; in and  
 4 about private hospitals or sanitariums; in and about any  
 5 private institution; or upon private property of any character  
 6 whatsoever for the purpose of making workers' compensation  
 7 claims. Whoever violates any provision of this subsection  
 8 commits a felony of the second ~~third~~ degree, punishable as  
 9 provided in s. 775.082, s. 775.083, or s. 775.085.

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

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

18 (7)(8) An injured employee or any other party making a  
 19 claim under this chapter shall provide his or her personal  
 20 signature attesting that he or she has reviewed, understands,  
 21 and acknowledges ~~All claim forms as provided for in this~~  
 22 ~~chapter shall contain a notice that clearly states in~~  
 23 ~~substance the following statement:~~ "Any person who, knowingly  
 24 and with intent to injure, defraud, or deceive any employer or  
 25 employee, insurance company, or self-insured program, files a  
 26 statement of claim containing any false or misleading  
 27 information commits insurance fraud, punishable as provided in  
 28 s. 817.234." If the injured employee or other party refuses to  
 29 sign the document attesting ~~Each claimant shall personally~~  
 30 ~~sign the claim form and attest~~ that he or she has reviewed,  
 31 understands, and acknowledges the statement, benefits or

1 payments under this chapter shall be suspended until such  
2 signature is obtained foregoing notice.

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

5 440.1051 Fraud reports; civil immunity; criminal  
6 penalties.--

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

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

19 Section 13. Section 440.107, Florida Statutes, is  
20 amended to read:

21 440.107 Department powers to enforce employer  
22 compliance with coverage requirements.--

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

31

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

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

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

18 (a) Conduct investigations for the purpose of ensuring  
19 employer compliance.

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

23 (c) Examine and copy business records.

24 (d) Administer oaths and affirmations.

25 (e) Certify to official acts.

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

29 (g) Issue stop-work orders, penalty assessment orders,  
30 and any other orders necessary for the administration of this  
31 section.

- 1           (h) Enforce the terms of a stop-work order.  
2           (i) Levy and pursue actions to recover penalties.  
3           (j) Seek injunctions and other appropriate relief. In  
4 ~~discharging its duties, the department may administer oaths~~  
5 ~~and affirmations, certify to official acts, issue subpoenas to~~  
6 ~~compel the attendance of witnesses and the production of~~  
7 ~~books, papers, correspondence, memoranda, and other records~~  
8 ~~deemed necessary by the department as evidence in order to~~  
9 ~~ensure proper compliance with the coverage provisions of this~~  
10 ~~chapter.~~
- 11           (4) The department shall designate representatives who  
12 may serve subpoenas and other process of the department issued  
13 under this section.
- 14           (5) The department shall specify by rule the business  
15 records that employers must maintain and produce to comply  
16 with this section.
- 17           (6)(4) If a person has refused to obey a subpoena to  
18 appear before the department or its authorized representative  
19 or and produce evidence requested by the department or to give  
20 testimony about the matter that is under investigation, a  
21 court has jurisdiction to issue an order requiring compliance  
22 with the subpoena if the court has jurisdiction in the  
23 geographical area where the inquiry is being carried on or in  
24 the area where the person who has refused the subpoena is  
25 found, resides, or transacts business. Failure to obey such a  
26 court order may be punished by the court as contempt, either  
27 civilly or criminally. Costs, including reasonable attorney's  
28 fees, incurred by the department to obtain an order granting,  
29 in whole or in part, a petition to enforce a subpoena or a  
30 subpoena duces tecum shall be taxed against the subpoenaed  
31 party.

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

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

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

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

23 (d)1. In addition to any penalty, stop-work order, or  
24 injunction, the department shall assess against any employer  
25 who has failed to secure the payment of compensation as  
26 required by this chapter a penalty equal to 1.5 times the  
27 amount the employer would have paid in premium when applying  
28 approved manual rates to the employer's payroll during periods  
29 for which it failed to secure the payment of workers'  
30 compensation required by this chapter within the preceding  
31 3-year period or \$1,000, whichever is greater.

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

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

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

19           (8)(6) In addition to the issuance of a stop-work  
20 order under subsection (7), the department may file a  
21 complaint in the circuit court in and for Leon County to  
22 enjoin any employer, who has failed to secure the payment of  
23 workers' compensation as required by this chapter, from  
24 employing individuals and from conducting business until the  
25 employer presents evidence satisfactory to the department of  
26 having secured the payment of workers' for compensation  
27 required by this chapter and pays a civil penalty assessed by  
28 to the department under this section, to be deposited by the  
29 department into the Workers' Compensation Administration Trust  
30 Fund, in the amount of \$100 per day for each day the employer  
31 was not in compliance with this chapter.



1           ~~(9)(7)~~ In addition to any penalty, stop-work order, or  
2 injunction, the department shall assess against any employer,  
3 who has failed to secure the payment of compensation as  
4 required by this chapter, a penalty in the following amount:

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

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

21           ~~(10)(8)~~ The department may bring an action in circuit  
22 court to recover penalties assessed under this section,  
23 including any interest owed to the department pursuant to this  
24 section. In any action brought by the department pursuant to  
25 this section in which it prevails, the circuit court shall  
26 award costs, including the reasonable costs of investigation  
27 and a reasonable attorney's fee.

28           ~~(11)(9)~~ Any judgment obtained by the department and  
29 any penalty due pursuant to the service of a stop-work order  
30 or otherwise due under this section shall, until collected,  
31 constitute a lien upon the entire interest of the employer,

1 legal or equitable, in any property, real or personal,  
2 tangible or intangible; however, such lien is subordinate to  
3 claims for unpaid wages and any prior recorded liens, and a  
4 lien created by this section is not valid against any person  
5 who, subsequent to such lien and in good faith and for value,  
6 purchases real or personal property from such employer or  
7 becomes the mortgagee on real or personal property of such  
8 employer, or against a subsequent attaching creditor, unless,  
9 with respect to real estate of the employer, a notice of the  
10 lien is recorded in the public records of the county where the  
11 real estate is located, and with respect to personal property  
12 of the employer, the notice is recorded with the Secretary of  
13 State.

14 (12)~~(10)~~ Any law enforcement agency in the state may,  
15 at the request of the department, render any assistance  
16 necessary to carry out the provisions of this section,  
17 including, but not limited to, preventing any employee or  
18 other person from remaining at a place of employment or job  
19 site after a stop-work order or injunction has taken effect.

20 (13)~~(11)~~ Agency action ~~Actions~~ by the department under  
21 this section, if contested, must be contested as provided in  
22 chapter 120. All ~~civil~~ penalties assessed by the department  
23 must be paid into the Workers' Compensation Administration  
24 Trust Fund. ~~The department shall return any sums previously~~  
25 ~~paid, upon conclusion of an action, if the department fails to~~  
26 ~~prevail and if so directed by an order of court or an~~  
27 ~~administrative hearing officer. The requirements of this~~  
28 ~~subsection may be met by posting a bond in an amount equal to~~  
29 ~~twice the penalty and in a form approved by the department.~~

30 (14)~~(12)~~ If the department ~~division~~ finds that an  
31 employer who is certified or registered under part I or part

1 II of chapter 489 and who is required to secure the payment of  
2 workers'~~the~~ compensation under ~~provided for by~~ this chapter  
3 to his or her employees has failed to do so, the department  
4 ~~division~~ shall immediately notify the Department of Business  
5 and Professional Regulation.

6 Section 14. Section 440.13, Florida Statutes, is  
7 amended to read:

8 440.13 Medical services and supplies; penalty for  
9 violations; limitations.--

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

11 (a) "Alternate medical care" means a change in  
12 treatment or health care provider.

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

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

25 (d) "Catastrophic injury" means an injury as defined  
26 in s. 440.02.

27 (e) "Certified health care provider" means a health  
28 care provider who has been certified by the agency or who has  
29 entered an agreement with a licensed managed care organization  
30 to provide treatment to injured workers under this section.  
31 Certification of such health care provider must include

1 documentation that the health care provider has read and is  
2 familiar with the portions of the statute, impairment guides,  
3 practice parameters, protocols of treatment,and rules which  
4 govern the provision of remedial treatment, care, and  
5 attendance.

6 (f) "Compensable" means a determination by a carrier  
7 or judge of compensation claims that a condition suffered by  
8 an employee results from an injury arising out of and in the  
9 course of employment.

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

12 (h) "Health care facility" means any hospital licensed  
13 under chapter 395 and any health care institution licensed  
14 under chapter 400.

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

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

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

1           (1) "Instance of overutilization" means a specific  
2 inappropriate service or level of service provided to an  
3 injured employee that includes the provision of treatment in  
4 excess of established practice parameters and protocols of  
5 treatment established in accordance with this chapter.

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

21           (n) "Medicine" means a drug prescribed by an  
22 authorized health care provider and includes only generic  
23 drugs or single-source patented drugs for which there is no  
24 generic equivalent, unless the authorized health care provider  
25 writes or states that the brand-name drug as defined in s.  
26 465.025 is medically necessary, or is a drug appearing on the  
27 schedule of drugs created pursuant to s. 465.025(6), or is  
28 available at a cost lower than its generic equivalent.

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

1 (p) "Pattern or practice of overutilization" means  
2 repetition of instances of overutilization within a specific  
3 medical case or multiple cases by a single health care  
4 provider.

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

11 (r) "Physician" or "doctor" means a physician licensed  
12 under chapter 458, an osteopathic physician licensed under  
13 chapter 459, a chiropractic physician licensed under chapter  
14 460, a podiatric physician licensed under chapter 461, an  
15 optometrist licensed under chapter 463, or a dentist licensed  
16 under chapter 466, each of whom must be certified by the  
17 agency as a health care provider.

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

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

26 (u) "Utilization review" means the evaluation of the  
27 appropriateness of both the level and the quality of health  
28 care and health services provided to a patient, including, but  
29 not limited to, evaluation of the appropriateness of  
30 treatment, hospitalization, or office visits based on  
31 medically accepted standards. Such evaluation must be

1 accomplished by means of a system that identifies the  
2 utilization of medical services based on practice parameters  
3 and protocols of treatment as provided for in this chapter  
4 ~~medically accepted standards as established by medical~~  
5 ~~consultants with qualifications similar to those providing the~~  
6 ~~care under review, and that refers patterns and practices of~~  
7 ~~overutilization to the agency.~~

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

9 (a) Subject to the limitations specified elsewhere in  
10 this chapter, the employer shall furnish to the employee such  
11 medically necessary remedial treatment, care, and attendance  
12 for such period as the nature of the injury or the process of  
13 recovery may require, which is in accordance with established  
14 practice parameters and protocols of treatment as provided for  
15 in this chapter, including medicines, medical supplies,  
16 durable medical equipment, orthoses, prostheses, and other  
17 medically necessary apparatus. Remedial treatment, care, and  
18 attendance, including work-hardening programs or  
19 pain-management programs accredited by the Commission on  
20 Accreditation of Rehabilitation Facilities or Joint Commission  
21 on the Accreditation of Health Organizations or  
22 pain-management programs affiliated with medical schools,  
23 shall be considered as covered treatment only when such care  
24 is given based on a referral by a physician as defined in this  
25 chapter. ~~Each facility shall maintain outcome data, including~~  
26 ~~work status at discharges, total program charges, total number~~  
27 ~~of visits, and length of stay. The department shall utilize~~  
28 ~~such data and report to the President of the Senate and the~~  
29 ~~Speaker of the House of Representatives regarding the efficacy~~  
30 ~~and cost-effectiveness of such program, no later than October~~  
31 ~~1, 1994.~~ Medically necessary treatment, care, and attendance

1 does not include chiropractic services in excess of 24 ~~18~~  
2 treatments or rendered 12 ~~8~~ weeks beyond the date of the  
3 initial chiropractic treatment, whichever comes first, unless  
4 the carrier authorizes additional treatment or the employee is  
5 catastrophically injured.

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

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

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



1           3. If the family member remains employed while  
2 providing attendant or custodial care, the per-hour value of  
3 that care equals the per-hour value of the family member's  
4 employment, not to exceed the per-hour value of such care  
5 available in the community at large.

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

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

30           (e) Except in emergency situations and for treatment  
31 rendered by a managed care arrangement, after any initial

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

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

29  
30 Failure of the carrier to timely comply with this subsection  
31 shall be a violation of this chapter and the carrier shall be

1 subject to penalties as provided for in s. 440.525. The  
2 ~~employee shall be entitled to select another physician from~~  
3 ~~among not fewer than three carrier-authorized physicians who~~  
4 ~~are not professionally affiliated.~~

5 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

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

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

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

1 and the referral must be made in accordance with practice  
2 parameters and protocols of treatment as provided for in this  
3 chapter.

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

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

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

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

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

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

31

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;

30  
31

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.

30  
31

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 15. 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.

30  
31



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 16. 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 17. 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 18. 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 19. 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 20. 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 21. 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 22. 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 23. 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 24. 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 25. 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 26. 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 27. 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 28. 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 29. 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 30. 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 31. 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 finer 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 32. 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~~<sup>\$10</sup> 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 33. 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 34. 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 35. 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 36. 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 37. 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 38. 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 39. (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 40. 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 41. 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 42. 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 43. 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 44. Section 440.1925, Florida Statutes, is  
17 repealed.

18           Section 45. 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 46. 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 47. Except as otherwise provided herein, this  
29 act shall take effect October 1, 2003.  
30  
31