



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



29 | evidence; amending s. 440.1051, F.S.; increasing criminal
30 | penalty for false reports; amending s. 440.107, F.S.;
31 | providing additional powers to the Department of Financial
32 | Services relating to compliance and enforcement; providing
33 | a definition; providing penalties; amending s. 440.11,
34 | F.S.; providing exclusiveness of liability; revising
35 | provisions relating to employer and safety consultant
36 | immunity from liability; amending s. 440.13, F.S.;
37 | providing for practice parameters and treatment protocols;
38 | revising provisions relating to provider reimbursement;
39 | requiring revision of specified reimbursement schedules;
40 | providing for release of information; providing additional
41 | criteria for independent medical examinations; providing a
42 | definition; providing standards for medical care under ch.
43 | 440, F.S.; providing penalties; amending s. 440.134, F.S.;
44 | revising provisions relating to managed care arrangements;
45 | revising definitions; providing for assignment of a
46 | medical care coordinator; amending s. 440.14, F.S.;
47 | revising provisions relating to calculation of average
48 | weekly wage for injured employees; conforming cross
49 | references; amending s. 440.15, F.S.; providing additional
50 | limitations on compensation for permanent total
51 | disability; providing a definition; specifying impairment
52 | benefits and providing for partial reduction under certain
53 | circumstances; deleting provisions relating to
54 | supplemental benefits; amending s. 440.151, F.S.;
55 | specifying compensability of occupational disease;
56 | providing a definition; amending s. 440.16, F.S.;



57 | increasing the limits on the amount of certain benefits
58 | paid as compensation for death; amending s. 440.185, F.S.;
59 | specifying duty of employer upon receipt of notice of
60 | injury or death; increasing penalties for noncompliance;
61 | amending s. 440.192, F.S.; revising procedure for
62 | resolving benefit disputes; requiring a petition for
63 | benefits to include all claims which are ripe, due, and
64 | owing; providing that the Chief Judge, rather than the
65 | Deputy Chief Judge, shall refer petitions for benefits;
66 | creating s. 440.1926, F.S.; providing for alternative
67 | dispute resolution and arbitration of claims; amending s.
68 | 440.20, F.S.; revising provisions relating to timely
69 | payment of compensation and medical bills and penalties
70 | for late payment; amending s. 440.25, F.S.; revising
71 | procedures for mediation and hearings; amending s. 440.34,
72 | F.S.; revising provisions relating to the award of
73 | attorney's fees; amending s. 440.38, F.S.; providing
74 | requirement for employers with coverage provided by
75 | insurers from outside the state; amending s. 440.381,
76 | F.S.; providing criminal penalty for unlawful
77 | applications; requiring on-site audits of employers under
78 | certain circumstances; amending s. 440.42, F.S.; revising
79 | provision relating to notice of cancellation of coverage;
80 | amending s. 440.49, F.S., to conform cross references;
81 | amending s. 440.491, F.S.; providing training and
82 | education requirements and benefits relating to
83 | reemployment of injured workers; providing for rules;
84 | amending s. 440.525, F.S.; providing for the Office of



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

110
111 Be It Enacted by the Legislature of the State of Florida:
112



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

116 440.02 Definitions.--When used in this chapter, unless the
117 context clearly requires otherwise, the following terms shall
118 have the following meanings:

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



140 exposed, can cause the injury or disease sustained by the
141 employee.

142 (15)(a) "Employee" means any person engaged in any
143 employment under any appointment or contract of hire or
144 apprenticeship, express or implied, oral or written, whether
145 lawfully or unlawfully employed, and includes, but is not
146 limited to, aliens and minors.

147 (b) "Employee" includes any person who is an officer of a
148 corporation and who performs services for remuneration for such
149 corporation within this state, whether or not such services are
150 continuous.

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

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

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

165



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

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

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

192 (d) "Employee" does not include:

193 1. An independent contractor, if:



- 194 a. The independent contractor maintains a separate
195 business with his or her own work facility, truck, equipment,
196 materials, or similar accommodations;
- 197 b. The independent contractor holds or has applied for a
198 federal employer identification number, unless the independent
199 contractor is a sole proprietor who is not required to obtain a
200 federal employer identification number under state or federal
201 requirements;
- 202 c. The independent contractor performs or agrees to
203 perform specific services or work for specific amounts of money
204 and controls the means of performing the services or work;
- 205 d. The independent contractor incurs the principal
206 expenses related to the service or work that he or she performs
207 or agrees to perform;
- 208 e. The independent contractor is responsible for the
209 satisfactory completion of work or services that he or she
210 performs or agrees to perform and is or could be held liable for
211 a failure to complete the work or services;
- 212 f. The independent contractor receives compensation for
213 work or services performed for a commission or on a per-job or
214 competitive-bid basis and not on any other basis;
- 215 g. The independent contractor may realize a profit or
216 suffer a loss in connection with performing work or services;
- 217 h. The independent contractor has continuing or recurring
218 business liabilities or obligations; and
- 219 i. The success or failure of the independent contractor's
220 business depends on the relationship of business receipts to
221 expenditures.



222
223 However, the determination as to whether an individual included
224 in the Standard Industrial Classification Manual of 1987,
225 Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782,
226 0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449,
227 or a newspaper delivery person, is an independent contractor is
228 governed not by the criteria in this paragraph but by common-law
229 principles, giving due consideration to the business activity of
230 the individual. ~~Notwithstanding the provisions of this paragraph~~
231 ~~or any other provision of this chapter, with respect to any~~
232 ~~commercial building project estimated to be valued at \$250,000~~
233 ~~or greater, a person who is actively engaged in the construction~~
234 ~~industry is not an independent contractor and is either an~~
235 ~~employer or an employee who may not be exempt from the coverage~~
236 ~~requirements of this chapter.~~

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

240 3. Bands, orchestras, and musical and theatrical
241 performers, including disk jockeys, performing in licensed
242 premises as defined in chapter 562, if a written contract
243 evidencing an independent contractor relationship is entered
244 into before the commencement of such entertainment.

245 4. An owner-operator of a motor vehicle who transports
246 property under a written contract with a motor carrier which
247 evidences a relationship by which the owner-operator assumes the
248 responsibility of an employer for the performance of the
249 contract, if the owner-operator is required to furnish the



250 necessary motor vehicle equipment and all costs incidental to
251 the performance of the contract, including, but not limited to,
252 fuel, taxes, licenses, repairs, and hired help; and the owner-
253 operator is paid a commission for transportation service and is
254 not paid by the hour or on some other time-measured basis.

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

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

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

274 b. Volunteers participating in federal programs
275 established under Pub. L. No. 93-113.

276 7. Any officer of a corporation who elects to be exempt
277 from this chapter.



278 8. A sole proprietor or officer of a corporation who
279 actively engages in the construction industry, and a partner in
280 a partnership that is actively engaged in the construction
281 industry, who elects to be exempt from the provisions of this
282 chapter. Such sole proprietor, officer, or partner is not an
283 employee for any reason until the notice of revocation of
284 election filed pursuant to s. 440.05 is effective.

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

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

297 11. A person who performs services as a sports official
298 for an entity sponsoring an interscholastic sports event or for
299 a public entity or private, nonprofit organization that sponsors
300 an amateur sports event. For purposes of this subparagraph, such
301 a person is an independent contractor. For purposes of this
302 subparagraph, the term "sports official" means any person who is
303 a neutral participant in a sports event, including, but not
304 limited to, umpires, referees, judges, linespersons,
305 scorekeepers, or timekeepers. This subparagraph does not apply



306 to any person employed by a district school board who serves as
307 a sports official as required by the employing school board or
308 who serves as a sports official as part of his or her
309 responsibilities during normal school hours.

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

320 (38) "Catastrophic injury" means a permanent impairment
321 constituted by the loss of both hands, both arms, both feet,
322 both legs, or both eyes, or any two thereof, or paraplegia or
323 quadriplegia.÷

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

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

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

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

330 ~~2. Severe communication disturbances;~~

331 ~~3. Severe complex integrated disturbances of cerebral~~
332 ~~function;~~

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



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

337 ~~(d) Second degree or third degree burns of 25 percent or~~
338 ~~more of the total body surface or third degree burns of 5~~
339 ~~percent or more to the face and hands;~~

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

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

348 (40) "Statement," for the purposes of ss. 440.105 and
349 440.106, shall include the exact fraud statement language in s.
350 440.105(7). This requirement includes, but is not limited to,
351 any notice, representation, statement, proof of injury, bill for
352 services, diagnosis, prescription, hospital or doctor record, X
353 ray, test result, or other evidence of loss, injury, or expense.

354 (41) "Specificity" means information on the petition for
355 benefits sufficient to put the employer or carrier on notice of
356 the exact statutory classification and outstanding time period
357 of benefits being requested and includes a detailed explanation
358 of any benefits received that should be increased, decreased,
359 changed, or otherwise modified. If the petition is for medical
360 benefits, the information shall include specific details as to
361 why such benefits are being requested, why such benefits are



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

379 ~~(42) "Residential building" means any building or~~
380 ~~structure intended for residential use containing four or fewer~~
381 ~~dwelling units and any structures intended as an accessory use~~
382 ~~to the residential structure.~~

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

386 440.02 Definitions.--When used in this chapter, unless the
387 context clearly requires otherwise, the following terms shall
388 have the following meanings:



389 (8) "Construction industry" means for-profit activities
390 involving ~~the carrying out of~~ any building, clearing, filling,
391 excavation, or substantial improvement in the size or use of any
392 structure or the appearance of any land. ~~When appropriate to the~~
393 ~~context, "construction" refers to the act of construction or the~~
394 ~~result of construction.~~ However, "construction" does ~~shall~~ not
395 mean a homeowner's ~~landowner's~~ act of construction or the result
396 of a construction upon his or her own premises, provided such
397 premises are not intended to be sold, ~~or~~ resold, or leased by
398 the owner within 1 year after the commencement of construction.
399 The division may, by rule, establish standard industrial
400 classification codes and definitions thereof which meet the
401 criteria of the term "construction industry" as set forth in
402 this section.

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

409 (b) "Employee" includes any person who is an officer of a
410 corporation and who performs services for remuneration for such
411 corporation within this state, whether or not such services are
412 continuous.

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



416 2. As to officers of a corporation who are ~~actively~~
417 engaged in the construction industry, no more than three
418 officers of a corporation or of any group of affiliated
419 corporations may elect to be exempt from this chapter by filing
420 written notice of the election with the department as provided
421 in s. 440.05. Officers must be shareholders, each owning at
422 least 10 percent of the stock of such corporation and listed as
423 an officer of such corporation with the Division of Corporations
424 of the Department of State, in order to elect exemptions under
425 this chapter. For purposes of this subparagraph, the term
426 "affiliated" means and includes one or more corporations or
427 entities, any one of which is a corporation engaged in the
428 construction industry, under the same or substantially the same
429 control of a group of business entities which are connected or
430 associated so that one entity controls or has the power to
431 control each of the other business entities. The term
432 "affiliated" includes, but is not limited to, the officers,
433 directors, executives, shareholders active in management,
434 employees, and agents of the affiliated corporation. The
435 ownership by one business entity of a controlling interest in
436 another business entity or a pooling of equipment or income
437 among business entities shall be prima facie evidence that one
438 business is affiliated with the other.

439 3. An officer of a corporation who elects to be exempt
440 from this chapter by filing a written notice of the election
441 with the department as provided in s. 440.05 is not an employee.
442



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

446 (c) "Employee" includes:

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

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



471 3. An independent contractor working or performing
472 services in the construction industry.

473 4. A sole proprietor who engages in the construction
474 industry and a partner or partnership that is engaged in the
475 construction industry.

476 (d) "Employee" does not include:

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

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

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

484 (II) The independent contractor holds or has applied for a
485 federal employer identification number, unless the independent
486 contractor is a sole proprietor who is not required to obtain a
487 federal employer identification number under state or federal
488 regulations;

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

492 (IV) The independent contractor holds one or more bank
493 accounts in the name of the business entity for purposes of
494 paying business expenses or other expenses related to services
495 rendered or work performed for compensation;

496 (V) The independent contractor performs work or is able to
497 perform work for any entity in addition to or besides the



498 employer at his or her own election without the necessity of
499 completing an employment application or process; or

500 (VI) The independent contractor receives compensation for
501 work or services rendered on a competitive-bid basis or
502 completion of a task or a set of tasks as defined by a
503 contractual agreement, unless such contractual agreement
504 expressly states that an employment relationship exists. The
505 ~~independent contractor maintains a separate business with his or~~
506 ~~her own work facility, truck, equipment, materials, or similar~~
507 ~~accommodations;~~

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

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

516 (II) The independent contractor incurs the principal
517 expenses related to the service or work that he or she performs
518 or agrees to perform.

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

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



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

527 (VI) The independent contractor has continuing or
528 recurring business liabilities or obligations.

529 (VII) The success or failure of the independent
530 contractor's business depends on the relationship of business
531 receipts to expenditures. The independent contractor holds or
532 has applied for a federal employer identification number, unless
533 the independent contractor is a sole proprietor who is not
534 required to obtain a federal employer identification number
535 under state or federal requirements;

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

543 d. ~~The independent contractor incurs the principal~~
544 ~~expenses related to the service or work that he or she performs~~
545 ~~or agrees to perform;~~

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

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



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

555 ~~h. The independent contractor has continuing or recurring~~
556 ~~business liabilities or obligations; and~~

557 ~~i. The success or failure of the independent contractor's~~
558 ~~business depends on the relationship of business receipts to~~
559 ~~expenditures.~~

560

561 ~~However, the determination as to whether an individual included~~
562 ~~in the Standard Industrial Classification Manual of 1987,~~
563 ~~Industry Numbers 0711, 0721, 0722, 0751, 0761, 0762, 0781, 0782,~~
564 ~~0783, 0811, 0831, 0851, 2411, 2421, 2435, 2436, 2448, or 2449,~~
565 ~~or a newspaper delivery person, is an independent contractor is~~
566 ~~governed not by the criteria in this paragraph but by common-law~~
567 ~~principles, giving due consideration to the business activity of~~
568 ~~the individual.~~

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

572 3. Bands, orchestras, and musical and theatrical
573 performers, including disk jockeys, performing in licensed
574 premises as defined in chapter 562, if a written contract
575 evidencing an independent contractor relationship is entered
576 into before the commencement of such entertainment.

577 4. An owner-operator of a motor vehicle who transports
578 property under a written contract with a motor carrier which
579 evidences a relationship by which the owner-operator assumes the
580 responsibility of an employer for the performance of the



581 contract, if the owner-operator is required to furnish the
582 necessary motor vehicle equipment and all costs incidental to
583 the performance of the contract, including, but not limited to,
584 fuel, taxes, licenses, repairs, and hired help; and the owner-
585 operator is paid a commission for transportation service and is
586 not paid by the hour or on some other time-measured basis.

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

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

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

606 b. Volunteers participating in federal programs
607 established under Pub. L. No. 93-113.



608 7. Unless otherwise prohibited by this chapter, any
609 officer of a corporation who elects to be exempt from this
610 chapter. Such officer is not an employee for any reason under
611 this chapter until the notice of revocation of election filed
612 pursuant to s. 440.05 is effective.

613 8. An ~~a sole proprietor or~~ officer of a corporation ~~who~~
614 ~~actively engages in the construction industry, and a partner in~~
615 ~~a partnership~~ that is ~~actively~~ engaged in the construction
616 industry, ~~who~~ elects to be exempt from the provisions of this
617 chapter, as otherwise permitted by this chapter. Such ~~sole~~
618 ~~proprietor, officer, or partner~~ is not an employee for any
619 reason until the notice of revocation of election filed pursuant
620 to s. 440.05 is effective.

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

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

633 11. A person who performs services as a sports official
634 for an entity sponsoring an interscholastic sports event or for
635 a public entity or private, nonprofit organization that sponsors



636 an amateur sports event. For purposes of this subparagraph, such
637 a person is an independent contractor. For purposes of this
638 subparagraph, the term "sports official" means any person who is
639 a neutral participant in a sports event, including, but not
640 limited to, umpires, referees, judges, linespersons,
641 scorekeepers, or timekeepers. This subparagraph does not apply
642 to any person employed by a district school board who serves as
643 a sports official as required by the employing school board or
644 who serves as a sports official as part of his or her
645 responsibilities during normal school hours.

646 12. Medicaid-enrolled clients under chapter 393 who are
647 excluded from the definition of employment under s.
648 443.036(21)(d)5. and served by Adult Day Training Services under
649 the Home and Community-Based Medicaid Waiver program in a
650 sheltered workshop setting licensed by the United States
651 Department of Labor for the purpose of training and earning less
652 than the federal hourly minimum wage.

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



664 considered the employer for the purposes of ss. 440.105, ~~and~~
665 440.106, and 440.107.

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

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

676 Section 3. Effective January 1, 2004, subsections (3),
677 (4), (6), (10), (11), and (12) of section 440.05, Florida
678 Statutes, are amended, present subsection (13) is renumbered as
679 subsection (11) and amended, and new subsections (12), (13),
680 (14), and (15) are added to said section, to read:

681 440.05 Election of exemption; revocation of election;
682 notice; certification.--

683 (3) Each ~~sole proprietor, partner, or~~ officer of a
684 corporation who is ~~actively~~ engaged in the construction industry
685 and who elects an exemption from this chapter or who, after
686 electing such exemption, revokes that exemption, must mail a
687 written notice to such effect to the department on a form
688 prescribed by the department. The notice of election to be
689 exempt from the provisions of this chapter must be notarized and
690 under oath. The notice of election to be exempt which is
691 submitted to the department by the ~~sole proprietor, partner, or~~



692 officer of a corporation who is allowed to claim an exemption as
693 provided by this chapter must list the name, federal tax
694 identification number, social security number, all certified or
695 registered licenses issued pursuant to chapter 489 held by the
696 person seeking the exemption, a copy of relevant documentation
697 as to employment status filed with the Internal Revenue Service
698 as specified by the department, a copy of the relevant
699 occupational license in the primary jurisdiction of the
700 business, and, ~~for corporate officers and partners,~~ the
701 registration number of the corporation ~~or partnership~~ filed with
702 the Division of Corporations of the Department of State along
703 with a copy of the stock certificate evidencing the required
704 ownership under this chapter. The notice of election to be
705 exempt must identify each ~~sole proprietorship, partnership, or~~
706 corporation that employs the person electing the exemption and
707 must list the social security number or federal tax
708 identification number of each such employer and the additional
709 documentation required by this section. In addition, the notice
710 of election to be exempt must provide that the ~~sole proprietor,~~
711 ~~partner, or~~ officer electing an exemption is not entitled to
712 benefits under this chapter, must provide that the election does
713 not exceed exemption limits for officers ~~and partnerships~~
714 provided in s. 440.02, and must certify that any employees of
715 the corporation whose ~~sole proprietor, partner, or~~ officer
716 elects ~~electing~~ an exemption are covered by workers'
717 compensation insurance. Upon receipt of the notice of the
718 election to be exempt, receipt of all application fees, and a
719 determination by the department that the notice meets the



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

743 (4) The notice of election to be exempt from the
744 provisions of this chapter must contain a notice that clearly
745 states in substance the following: "Any person who, knowingly
746 and with intent to injure, defraud, or deceive the department or
747 any employer or employee, insurance company, or any other person



748 ~~purposes program~~, files a notice of election to be exempt
749 containing any false or misleading information is guilty of a
750 felony of the third degree." Each person filing a notice of
751 election to be exempt shall personally sign the notice and
752 attest that he or she has reviewed, understands, and
753 acknowledges the foregoing notice.

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

774 (10) Each ~~sole proprietor, partner, or~~ officer of a
775 corporation who is actively engaged in the construction industry



776 and who elects an exemption from this chapter shall maintain
777 business records as specified by the division by rule, which
778 rules must include the provision that any corporation with
779 exempt officers ~~and any partnership actively~~ engaged in the
780 construction industry ~~with exempt partners~~ must maintain written
781 statements of those exempted persons affirmatively acknowledging
782 each such individual's exempt status.

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

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

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

795
796 ~~A sole proprietor or partner shall produce, upon request by the~~
797 ~~division, a copy of those documents together with a statement by~~
798 ~~the sole proprietor or partner that the tax records provided are~~
799 ~~true and accurate copies of what the sole proprietor or partner~~
800 ~~has filed with the federal Internal Revenue Service. The~~
801 ~~statement must be signed under oath by the sole proprietor or~~
802 ~~partner and must be notarized. The division shall issue a stop-~~
803 ~~work order under s. 440.107(5) to any sole proprietor or partner~~



804 who fails or refuses to produce a copy of the tax records and
805 affidavit required under this paragraph to the division within 3
806 business days after the request is made.

807 ~~(12)~~ For those sole proprietors or partners that have not
808 been in business long enough to provide the information required
809 of an established business, the division shall require such sole
810 proprietor or partner to provide copies of the most recently
811 filed Federal Income Tax Form 1040. The division shall establish
812 by rule such other criteria to show that the sole proprietor or
813 partner intends to engage in a legitimate enterprise within the
814 construction industry and is not otherwise attempting to evade
815 the requirements of this section. The division shall establish
816 by rule the form and format of financial information required to
817 be submitted by such employers.

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



832 claims to be exempt as a corporate officer but who fails or
833 refuses to produce the documents required under this subsection
834 to the division within 3 business days after the request is
835 made.

836 (12) Certificates of election to be exempt issued under
837 subsection (3) shall apply only to the corporate officer named
838 on the notice of election to be exempt and apply only within the
839 scope of the business or trade listed on the notice of election
840 to be exempt.

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

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

856 (15) Any corporate officer who is an affiliated person
857 of a person who is delinquent in paying a stop-work order and
858 penalty assessment order issued pursuant to s. 440.107, or owed
859 pursuant to a court order, is ineligible for an election of



860 exemption. The stop-work order and penalty assessment shall be
 861 in effect against any such affiliated person. As used in this
 862 subsection, the term "affiliated person" means:

- 863 (a) The spouse of such other person;
- 864 (b) Any person who directly or indirectly owns or
 865 controls, or holds with the power to vote, 10 percent or more of
 866 the outstanding voting securities of such other person;
- 867 (c) Any person who directly or indirectly owns 10 percent
 868 or more of the outstanding voting securities that are directly
 869 or indirectly owned, controlled, or held with the power to vote
 870 by such other person;
- 871 (d) Any person or group of persons who directly or
 872 indirectly control, are controlled by, or are under common
 873 control with such other person;
- 874 (e) Any person who directly or indirectly acquires all or
 875 substantially all of the other assets of such other person;
- 876 (f) Any officer, director, trustee, partner, owner,
 877 manager, joint venturer, or employee of such other person or a
 878 person performing duties similar to persons in such positions;
 879 or
- 880 (g) Any person who has an officer, director, trustee,
 881 partner, or joint venturer in common with such person.

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

884 440.06 Failure to secure compensation; effect.--Every
 885 employer who fails to secure the payment of compensation, as
 886 provided in s. 440.10, by failing to meet the requirements of
 887 ~~under this chapter as provided in s. 440.38~~ may not, in any suit



888 brought against him or her by an employee subject to this
889 chapter to recover damages for injury or death, defend such a
890 suit on the grounds that the injury was caused by the negligence
891 of a fellow servant, that the employee assumed the risk of his
892 or her employment, or that the injury was due to the comparative
893 negligence of the employee.

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

896 440.077 When a corporate sole proprietor, partner, or
897 officer rejects chapter, effect.--~~An A sole proprietor, partner,~~
898 ~~or~~ officer of a corporation who is permitted to elect an
899 exemption under this chapter actively engaged in the
900 ~~construction industry~~ and who elects to be exempt from the
901 provisions of this chapter may not recover benefits under this
902 chapter.

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

906 440.09 Coverage.--

907 (1) The employer must ~~shall~~ pay compensation or furnish
908 benefits required by this chapter if the employee suffers an
909 accidental compensable injury or death arising out of work
910 performed in the course and the scope of employment. The injury,
911 its occupational cause, and any resulting manifestations or
912 disability must ~~shall~~ be established to a reasonable degree of
913 medical certainty, based on and by objective relevant medical
914 findings, and the accidental compensable injury must be the
915 major contributing cause of any resulting injuries. For purposes



916 of this section, "major contributing cause" means the cause
917 which is more than 50 percent responsible for the injury as
918 compared to all other causes combined for which treatment or
919 benefits are sought. In cases involving occupational disease or
920 repetitive exposure, both causation and sufficient exposure to
921 support causation must be proven by clear and convincing
922 evidence. Pain or other subjective complaints alone, in the
923 absence of objective relevant medical findings, are not
924 compensable. For purposes of this section, "objective relevant
925 medical findings" are those objective findings that correlate to
926 the subjective complaints of the injured employee and are
927 confirmed by physical examination findings or diagnostic
928 testing. Establishment of the causal relationship between a
929 compensable accident and injuries for conditions that are not
930 readily observable must be by medical evidence only, as
931 demonstrated by physical examination findings or diagnostic
932 testing. Major contributing cause must be demonstrated by
933 medical evidence only. ~~Mental or nervous injuries occurring as a~~
934 ~~manifestation of an injury compensable under this section shall~~
935 ~~be demonstrated by clear and convincing evidence.~~

936 (a) This chapter does not require any compensation or
937 benefits for any subsequent injury the employee suffers as a
938 result of an original injury arising out of and in the course of
939 employment unless the original injury is the major contributing
940 cause of the subsequent injury. Major contributing cause must be
941 demonstrated by medical evidence only.

942 (b) If an injury arising out of and in the course of
943 employment combines with a preexisting disease or condition to



944 cause or prolong disability or need for treatment, the employer
945 must pay compensation or benefits required by this chapter only
946 to the extent that the injury arising out of and in the course
947 of employment is and remains more than 50 percent responsible
948 for the injury as compared to all other causes combined and
949 thereafter remains the major contributing cause of the
950 disability or need for treatment. Major contributing cause must
951 be demonstrated by medical evidence only.

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

957 (d) If an accident happens while the employee is employed
958 elsewhere than in this state, which would entitle the employee
959 or his or her dependents to compensation if it had happened in
960 this state, the employee or his or her dependents are entitled
961 to compensation if the contract of employment was made in this
962 state, or the employment was principally localized in this
963 state. However, if an employee receives compensation or damages
964 under the laws of any other state, the total compensation for
965 the injury may not be greater than is provided in this chapter.

966 (4)(a) An employee shall not be entitled to compensation
967 or benefits under this chapter if any judge of compensation
968 claims, administrative law judge, court, or jury convened in
969 this state determines that the employee has knowingly or
970 intentionally engaged in any of the acts described in s. 440.105
971 or any criminal act for the purpose of securing workers'



972 compensation benefits. For purposes of this section, the term
973 "intentional" shall include, but is not limited to, pleas of
974 guilty or nolo contendere in criminal matters. This section
975 shall apply to accidents, regardless of the date of the
976 accident. For injuries occurring prior to January 1, 1994, this
977 section shall pertain to the acts of the employee described in
978 s. 440.105 or criminal activities occurring subsequent to
979 January 1, 1994.

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

984 (c) Upon the denial of benefits in accordance with this
985 section, a judge of compensation claims shall have the
986 jurisdiction to order any benefits payable to the employee to be
987 paid into the court registry or an escrow account during the
988 pendency of an appeal or until such time as the time in which to
989 file an appeal has expired.

990 (7)

991 (e) As a part of rebutting any presumptions under
992 paragraph (b), the injured worker must prove the actual
993 quantitative amounts of the drug or its metabolites as measured
994 on the initial and confirmation post-accident drug tests of the
995 injured worker's urine sample and provide additional evidence
996 regarding the absence of drug influence other than the worker's
997 denial of being under the influence of a drug. No drug test
998 conducted on a urine sample shall be rejected as to its results



999 or the presumption imposed under paragraph (b) on the basis of
1000 the urine being bodily fluid tested.

1001 Section 7. Section 440.093, Florida Statutes, is created
1002 to read:

1003 440.093 Mental and nervous injuries.--

1004 (1) A mental or nervous injury due to stress, fright, or
1005 excitement only is not an injury by accident arising out of the
1006 employment. Nothing in this section shall be construed to allow
1007 for the payment of benefits under this chapter for mental or
1008 nervous injuries without an accompanying physical injury
1009 requiring medical treatment. A physical injury resulting from
1010 mental or nervous injuries unaccompanied by physical trauma
1011 requiring medical treatment shall not be compensable under this
1012 chapter.

1013 (2) Mental or nervous injuries occurring as a
1014 manifestation of an injury compensable under this chapter shall
1015 be demonstrated by clear and convincing medical evidence by a
1016 licensed psychiatrist meeting criteria established in the most
1017 recent edition of the diagnostic and statistical manual of
1018 mental disorders published by the American Psychiatric
1019 Association. The compensable physical injury must be and remain
1020 the major contributing cause of the mental or nervous condition
1021 and the compensable physical injury as determined by reasonable
1022 medical certainty must be at least 50 percent responsible for
1023 the mental or nervous condition as compared to all other
1024 contributing causes combined. Compensation is not payable for
1025 the mental, psychological, or emotional injury arising out of
1026 depression from being out of work or losing employment



1027 opportunities, resulting from a preexisting mental,
1028 psychological, or emotional condition or due to pain or other
1029 subjective complaints that cannot be substantiated by objective,
1030 relevant medical findings.

1031 (3) Subject to the payment of permanent benefits under s.
1032 440.15, in no event shall benefits for a compensable mental or
1033 nervous injury be paid for more than 3 months after the date of
1034 maximum medical improvement for the injured employee's physical
1035 injury or injuries, which shall be included in the period of 104
1036 weeks as provided in s. 440.15(2) and (4). Mental or nervous
1037 injuries are compensable only in accordance with the terms of
1038 this section.

1039 Section 8. Effective January 1, 2004, subsection (1) of
1040 section 440.10, Florida Statutes, is amended to read:

1041 440.10 Liability for compensation.--

1042 (1)(a) Every employer coming within the provisions of this
1043 ~~chapter, including any brought within the chapter by waiver of~~
1044 ~~exclusion or of exemption,~~ shall be liable for, and shall
1045 secure, the payment to his or her employees, or any physician,
1046 surgeon, or pharmacist providing services under the provisions
1047 of s. 440.13, of the compensation payable under ss. 440.13,
1048 440.15, and 440.16. Any contractor or subcontractor who engages
1049 in any public or private construction in the state shall secure
1050 and maintain compensation for his or her employees under this
1051 chapter as provided in s. 440.38.

1052 (b) In case a contractor sublets any part or parts of his
1053 or her contract work to a subcontractor or subcontractors, all
1054 of the employees of such contractor and subcontractor or



1055 subcontractors engaged on such contract work shall be deemed to
1056 be employed in one and the same business or establishment, and
1057 the contractor shall be liable for, and shall secure, the
1058 payment of compensation to all such employees, except to
1059 employees of a subcontractor who has secured such payment.

1060 (c) A contractor shall ~~may~~ require a subcontractor to
1061 provide evidence of workers' compensation insurance ~~or a copy of~~
1062 ~~his or her certificate of election~~. A subcontractor who is a
1063 corporation and has an officer who elects ~~electing~~ to be exempt
1064 as permitted under this chapter ~~a sole proprietor, partner, or~~
1065 ~~officer of a corporation~~ shall provide a copy of his or her
1066 certificate of exemption ~~election~~ to the contractor.

1067 (d)1. If a contractor becomes liable for the payment of
1068 compensation to the employees of a subcontractor who has failed
1069 to secure such payment in violation of s. 440.38, the contractor
1070 or other third-party payor shall be entitled to recover from the
1071 subcontractor all benefits paid or payable plus interest unless
1072 the contractor and subcontractor have agreed in writing that the
1073 contractor will provide coverage.

1074 2. If a contractor or third-party payor becomes liable for
1075 the payment of compensation to the corporate officer ~~employee~~ of
1076 a subcontractor who is ~~actively~~ engaged in the construction
1077 industry and has elected to be exempt from the provisions of
1078 this chapter, but whose election is invalid, the contractor or
1079 third-party payor may recover from the claimant, ~~partnership,~~ or
1080 corporation all benefits paid or payable plus interest, unless
1081 the contractor and the subcontractor have agreed in writing that
1082 the contractor will provide coverage.



1083 (e) A subcontractor providing services in conjunction with
1084 a contractor on the same project or contract work is not liable
1085 for the payment of compensation to the employees of another
1086 subcontractor or the contractor on such contract work and is ~~not~~
1087 protected by the exclusiveness-of-liability provisions of s.
1088 440.11 from any action at law or in admiralty on account of
1089 injury to an ~~of such~~ employee of another subcontractor, or of
1090 the contractor, provided that:

1091 1. The subcontractor has secured workers' compensation
1092 insurance for its employees or the contractor has secured such
1093 insurance on behalf of the subcontractor and its employees in
1094 accordance with paragraph (b); and

1095 2. The subcontractor's own gross negligence was not the
1096 major contributing cause of the injury.

1097 (f) If an employer fails to secure compensation as
1098 required by this chapter, the department shall ~~may~~ assess
1099 against the employer a penalty not to exceed \$5,000 for each
1100 employee of that employer who is classified by the employer as
1101 an independent contractor but who is found by the department to
1102 not meet the criteria for an independent contractor that are set
1103 forth in s. 440.02. The division shall adopt rules to administer
1104 the provisions of this paragraph.

1105 (g) Subject to s. 440.38, any employer who has employees
1106 engaged in work in this state shall obtain a Florida policy or
1107 endorsement for such employees which utilizes Florida class
1108 codes, rates, rules, and manuals that are in compliance with and
1109 approved under the provisions of this chapter and the Florida
1110 Insurance Code. Failure to comply with this paragraph is a



1111 felony of the second degree, punishable as provided in s.
1112 775.082, s. 775.083, or s. 775.084. The department shall adopt
1113 rules for construction industry and nonconstruction-industry
1114 employers with regard to the activities that define what
1115 constitutes being "engaged in work" in this state, using the
1116 following standards:

1117 1. For employees of nonconstruction-industry employers who
1118 have their headquarters outside of Florida and also operate in
1119 Florida and who are routinely crossing state lines, but usually
1120 return to their homes each night, the employee shall be assigned
1121 to the headquarters' state. However, the construction industry
1122 employees performing new construction or alterations in Florida
1123 shall be assigned to Florida even if the employees return to
1124 their home state each night.

1125 2. The payroll of executive supervisors who may visit a
1126 Florida location but who are not in direct charge of a Florida
1127 location shall be assigned to the state in which the
1128 headquarters is located.

1129 3. For construction contractors who maintain a permanent
1130 staff of employees and superintendents, if any of these
1131 employees or superintendents are assigned to a job that is
1132 located in Florida, either for the duration of the job or any
1133 portion thereof, their payroll shall be assigned to Florida
1134 rather than headquarters' state.

1135 4. Employees who are hired for a specific project in
1136 Florida shall be assigned to Florida. ~~For purposes of this~~
1137 ~~section, a person is conclusively presumed to be an independent~~
1138 ~~contractor if:~~



1139 ~~1. The independent contractor provides the general~~
1140 ~~contractor with an affidavit stating that he or she meets all~~
1141 ~~the requirements of s. 440.02; and~~

1142 ~~2. The independent contractor provides the general~~
1143 ~~contractor with a valid certificate of workers' compensation~~
1144 ~~insurance or a valid certificate of exemption issued by the~~
1145 ~~department.~~

1146

1147 ~~A sole proprietor, partner, or officer of a corporation who~~
1148 ~~elects exemption from this chapter by filing a certificate of~~
1149 ~~election under s. 440.05 may not recover benefits or~~
1150 ~~compensation under this chapter. An independent contractor who~~
1151 ~~provides the general contractor with both an affidavit stating~~
1152 ~~that he or she meets the requirements of s. 440.02 and a~~
1153 ~~certificate of exemption is not an employee under s. 440.02 and~~
1154 ~~may not recover benefits under this chapter. For purposes of~~
1155 ~~determining the appropriate premium for workers' compensation~~
1156 ~~coverage, carriers may not consider any person who meets the~~
1157 ~~requirements of this paragraph to be an employee.~~

1158 Section 9. Section 440.1025, Florida Statutes, is amended
1159 to read:

1160 440.1025 ~~Consideration of public~~ Employer workplace safety
1161 program in rate-setting; program requirements; rulemaking.—

1162 (1) For a public or private employer to be eligible for
1163 receipt of specific identifiable consideration under s. 627.0915
1164 for a workplace safety program in the setting of rates, the
1165 ~~public~~ employer must have a workplace safety program. At a
1166 minimum, the program must include a written safety policy and



1167 safety rules, and make provision for safety inspections,
1168 preventative maintenance, safety training, first-aid, accident
1169 investigation, and necessary recordkeeping. ~~For purposes of this~~
1170 ~~section, "public employer" means any agency within state,~~
1171 ~~county, or municipal government employing individuals for~~
1172 ~~salary, wages, or other remuneration.~~ The division may adopt
1173 promulgate rules for insurers to utilize in determining public
1174 employer compliance with the requirements of this section.

1175 (2) The division shall publicize on the Internet, and
1176 shall encourage insurers to publicize, the availability of free
1177 safety consultation services and safety program resources.

1178 Section 10. Section 440.103, Florida Statutes, is amended
1179 to read:

1180 440.103 Building permits; identification of minimum
1181 premium policy. ~~---Except as otherwise provided in this chapter,~~
1182 Every employer shall, as a condition to applying for and
1183 receiving a building permit, show proof and certify to the
1184 permit issuer that it has secured compensation for its employees
1185 under this chapter as provided in ss. 440.10 and 440.38. Such
1186 proof of compensation must be evidenced by a certificate of
1187 coverage issued by the carrier, a valid exemption certificate
1188 approved by the department ~~or the former Division of Workers'~~
1189 ~~Compensation of the Department of Labor and Employment Security,~~
1190 or a copy of the employer's authority to self-insure and shall
1191 be presented each time the employer applies for a building
1192 permit. As provided in s. 627.413(5), each certificate of
1193 coverage must show, on its face, whether or not coverage is
1194 secured under the minimum premium provisions of rules adopted by



1195 rating organizations licensed by the department. The words
1196 "minimum premium policy" or equivalent language shall be typed,
1197 printed, stamped, or legibly handwritten.

1198 Section 11. Section 440.105, Florida Statutes, is amended
1199 to read:

1200 440.105 Prohibited activities; reports; penalties;
1201 limitations.--

1202 (1)(a) Any insurance carrier, any individual self-insured,
1203 any commercial or group self-insurance fund, any professional
1204 practitioner licensed or regulated by the Department of Health
1205 ~~Business and Professional Regulation~~, except as otherwise
1206 provided by law, any medical review committee as defined in s.
1207 766.101, any private medical review committee, and any insurer,
1208 agent, or other person licensed under the insurance code, or any
1209 employee thereof, having knowledge or who believes that a
1210 fraudulent act or any other act or practice which, upon
1211 conviction, constitutes a felony or misdemeanor under this
1212 chapter is being or has been committed shall send to the
1213 Division of Insurance Fraud, Bureau of Workers' Compensation
1214 Fraud, a report or information pertinent to such knowledge or
1215 belief and such additional information relative thereto as the
1216 bureau may require. The bureau shall review such information or
1217 reports and select such information or reports as, in its
1218 judgment, may require further investigation. It shall then cause
1219 an independent examination of the facts surrounding such
1220 information or report to be made to determine the extent, if
1221 any, to which a fraudulent act or any other act or practice
1222 which, upon conviction, constitutes a felony or a misdemeanor



1223 under this chapter is being committed. The bureau shall report
1224 any alleged violations of law which its investigations disclose
1225 to the appropriate licensing agency and state attorney or other
1226 prosecuting agency having jurisdiction with respect to any such
1227 violations of this chapter. If prosecution by the state attorney
1228 or other prosecuting agency having jurisdiction with respect to
1229 such violation is not begun within 60 days of the bureau's
1230 report, the state attorney or other prosecuting agency having
1231 jurisdiction with respect to such violation shall inform the
1232 bureau of the reasons for the lack of prosecution.

1233 (b) In the absence of fraud or bad faith, a person is not
1234 subject to civil liability for libel, slander, or any other
1235 relevant tort by virtue of filing reports, without malice, or
1236 furnishing other information, without malice, required by this
1237 section or required by the bureau, and no civil cause of action
1238 of any nature shall arise against such person:

1239 1. For any information relating to suspected fraudulent
1240 acts furnished to or received from law enforcement officials,
1241 their agents, or employees;

1242 2. For any information relating to suspected fraudulent
1243 acts furnished to or received from other persons subject to the
1244 provisions of this chapter; or

1245 3. For any such information relating to suspected
1246 fraudulent acts furnished in reports to the bureau, or the
1247 National Association of Insurance Commissioners.

1248 (2) Whoever violates any provision of this subsection
1249 commits a misdemeanor of the first ~~second~~ degree, punishable as
1250 provided in s. 775.082 or s. 775.083.



1251 (a) It shall be unlawful for any employer to knowingly:
 1252 1. Coerce or attempt to coerce, as a precondition to
 1253 employment or otherwise, an employee to obtain a certificate of
 1254 election of exemption pursuant to s. 440.05.
 1255 2. Discharge or refuse to hire an employee or job
 1256 applicant because the employee or applicant has filed a claim
 1257 for benefits under this chapter.
 1258 3. Discharge, discipline, or take any other adverse
 1259 personnel action against any employee for disclosing information
 1260 to the department or any law enforcement agency relating to any
 1261 violation or suspected violation of any of the provisions of
 1262 this chapter or rules promulgated hereunder.
 1263 4. Violate a stop-work order issued by the department
 1264 pursuant to s. 440.107.
 1265 (b) It shall be unlawful for any insurance entity to
 1266 revoke or cancel a workers' compensation insurance policy or
 1267 membership because an employer has returned an employee to work
 1268 or hired an employee who has filed a workers' compensation
 1269 claim.
 1270 (3) Whoever violates any provision of this subsection
 1271 commits a misdemeanor of the first degree, punishable as
 1272 provided in s. 775.082 or s. 775.083.
 1273 (a) It shall be unlawful for any employer to knowingly
 1274 fail to update applications for coverage as required by s.
 1275 440.381(1) and department ~~of Insurance~~ rules within 7 days after
 1276 the reporting date for any change in the required information,
 1277 or to post notice of coverage pursuant to s. 440.40.



1278 (b) It is unlawful for any attorney or other person, in
1279 his or her individual capacity or in his or her capacity as a
1280 public or private employee, or for any firm, corporation,
1281 partnership, or association to receive any fee or other
1282 consideration or any gratuity from a person on account of
1283 services rendered for a person in connection with any
1284 proceedings arising under this chapter, unless such fee,
1285 consideration, or gratuity is approved by a judge of
1286 compensation claims or by the Deputy Chief Judge of Compensation
1287 Claims.

1288 (4) Whoever violates any provision of this subsection
1289 commits insurance fraud, punishable as provided in paragraph
1290 (f).

1291 (a) It shall be unlawful for any employer to knowingly:

1292 1. Present or cause to be presented any false, fraudulent,
1293 or misleading oral or written statement to any person as
1294 evidence of compliance with s. 440.38.

1295 2. Make a deduction from the pay of any employee entitled
1296 to the benefits of this chapter for the purpose of requiring the
1297 employee to pay any portion of premium paid by the employer to a
1298 carrier or to contribute to a benefit fund or department
1299 maintained by such employer for the purpose of providing
1300 compensation or medical services and supplies as required by
1301 this chapter.

1302 3. Fail to secure payment of compensation if required to
1303 do so by this chapter.

1304 (b) It shall be unlawful for any person:



1305 1. To knowingly make, or cause to be made, any false,
1306 fraudulent, or misleading oral or written statement for the
1307 purpose of obtaining or denying any benefit or payment under
1308 this chapter.

1309 2. To present or cause to be presented any written or oral
1310 statement as part of, or in support of, a claim for payment or
1311 other benefit pursuant to any provision of this chapter, knowing
1312 that such statement contains any false, incomplete, or
1313 misleading information concerning any fact or thing material to
1314 such claim.

1315 3. To prepare or cause to be prepared any written or oral
1316 statement that is intended to be presented to any employer,
1317 insurance company, or self-insured program in connection with,
1318 or in support of, any claim for payment or other benefit
1319 pursuant to any provision of this chapter, knowing that such
1320 statement contains any false, incomplete, or misleading
1321 information concerning any fact or thing material to such claim.

1322 4. To knowingly assist, conspire with, or urge any person
1323 to engage in activity prohibited by this section.

1324 5. To knowingly make any false, fraudulent, or misleading
1325 oral or written statement, or to knowingly omit or conceal
1326 material information, required by s. 440.185 or s. 440.381, for
1327 the purpose of obtaining workers' compensation coverage or for
1328 the purpose of avoiding, delaying, or diminishing the amount of
1329 payment of any workers' compensation premiums.

1330 6. To knowingly misrepresent or conceal payroll,
1331 classification of workers, or information regarding an
1332 employer's loss history which would be material to the



1333 computation and application of an experience rating modification
1334 factor for the purpose of avoiding or diminishing the amount of
1335 payment of any workers' compensation premiums.

1336 7. To knowingly present or cause to be presented any
1337 false, fraudulent, or misleading oral or written statement to
1338 any person as evidence of compliance with s. 440.38, as evidence
1339 of eligibility for a certificate of exemption under s. 440.05.

1340 8. To knowingly violate a stop-work order issued by the
1341 department pursuant to s. 440.107.

1342 9. To knowingly present or cause to be presented any
1343 false, fraudulent, or misleading oral or written statement to
1344 any person as evidence of identity for the purpose of obtaining
1345 employment or filing or supporting a claim for workers'
1346 compensation benefits.

1347 (c) It shall be unlawful for any physician licensed under
1348 chapter 458, osteopathic physician licensed under chapter 459,
1349 chiropractic physician licensed under chapter 460, podiatric
1350 physician licensed under chapter 461, optometric physician
1351 licensed under chapter 463, or any other practitioner licensed
1352 under the laws of this state to knowingly and willfully assist,
1353 conspire with, or urge any person to fraudulently violate any of
1354 the provisions of this chapter.

1355 (d) It shall be unlawful for any person or governmental
1356 entity licensed under chapter 395 to maintain or operate a
1357 hospital in such a manner so that such person or governmental
1358 entity knowingly and willfully allows the use of the facilities
1359 of such hospital by any person, in a scheme or conspiracy to
1360 fraudulently violate any of the provisions of this chapter.



1361 (e) It shall be unlawful for any attorney or other person,
1362 in his or her individual capacity or in his or her capacity as a
1363 public or private employee, or any firm, corporation,
1364 partnership, or association, to knowingly assist, conspire with,
1365 or urge any person to fraudulently violate any of the provisions
1366 of this chapter.

1367 (f) If the monetary value ~~amount~~ of any ~~claim or workers'~~
1368 ~~compensation insurance premium involved in any~~ violation of this
1369 subsection:

1370 1. Is less than \$20,000, the offender commits a felony of
1371 the third degree, punishable as provided in s. 775.082, s.
1372 775.083, or s. 775.084.

1373 2. Is \$20,000 or more, but less than \$100,000, the
1374 offender commits a felony of the second degree, punishable as
1375 provided in s. 775.082, . 775.083, or s. 775.084.

1376 3. Is \$100,000 or more, the offender commits a felony of
1377 the first degree, punishable as provided in s. 775.082, s.
1378 775.083, or s. 775.084.

1379 (5) It shall be unlawful for any attorney or other person,
1380 in his or her individual capacity or in his or her capacity as a
1381 public or private employee or for any firm, corporation,
1382 partnership, or association, to unlawfully solicit any business
1383 in and about city or county hospitals, courts, or any public
1384 institution or public place; in and about private hospitals or
1385 sanitariums; in and about any private institution; or upon
1386 private property of any character whatsoever for the purpose of
1387 making workers' compensation claims. Whoever violates any
1388 provision of this subsection commits a felony of the second



1389 ~~third~~ degree, punishable as provided in s. 775.082, s. 775.083,
1390 or s. 775.085.

1391 (6) This section shall not be construed to preclude the
1392 applicability of any other provision of criminal law that
1393 applies or may apply to any transaction.

1394 ~~(7) For the purpose of the section, the term "statement"~~
1395 ~~includes, but is not limited to, any notice, representation,~~
1396 ~~statement, proof of injury, bill for services, diagnosis,~~
1397 ~~prescription, hospital or doctor records, X ray, test result, or~~
1398 ~~other evidence of loss, injury, or expense.~~

1399 (7)(8) An injured employee or any other party making a
1400 claim under this chapter shall provide his or her personal
1401 signature attesting that he or she has reviewed, understands,
1402 and acknowledges ~~All claim forms as provided for in this chapter~~
1403 ~~shall contain a notice that clearly states in substance the~~
1404 ~~following~~ statement: "Any person who, knowingly and with intent
1405 to injure, defraud, or deceive any employer or employee,
1406 insurance company, or self-insured program, files a statement of
1407 claim containing any false or misleading information commits
1408 insurance fraud, punishable as provided in s. 817.234." If the
1409 injured employee or other party refuses to sign the document
1410 attesting ~~Each claimant shall personally sign the claim form and~~
1411 ~~attest~~ that he or she has reviewed, understands, and
1412 acknowledges the statement, benefits or payments under this
1413 chapter shall be suspended until such signature is obtained
1414 ~~foregoing notice.~~

1415 Section 12. Subsection (3) of section 440.1051, Florida
1416 Statutes, is amended to read:



1417 440.1051 Fraud reports; civil immunity; criminal
 1418 penalties.--

1419 (2) Any person who reports workers' compensation fraud to
 1420 the division under subsection (1) is immune from civil liability
 1421 for doing so, and the person or entity alleged to have committed
 1422 the fraud may not retaliate against him or her for providing
 1423 such report, unless the person making the report knows it to be
 1424 false.

1425 (3) A person who calls and, knowingly and falsely, reports
 1426 workers' compensation fraud or who, in violation of subsection
 1427 (2) retaliates against a person for making such report, commits
 1428 ~~is guilty of a felony misdemeanor~~ of the third ~~first~~ degree,
 1429 punishable as provided in s. 775.082, ~~or~~ s. 775.083, or s.
 1430 775.084 ~~both~~.

1431 Section 13. Section 440.107, Florida Statutes, is amended
 1432 to read:

1433 440.107 Department powers to enforce employer compliance
 1434 with coverage requirements.--

1435 (1) The Legislature finds that the failure of an employer
 1436 to comply with the workers' compensation coverage requirements
 1437 under this chapter poses an immediate danger to public health,
 1438 safety, and welfare. ~~The Legislature authorizes the department~~
 1439 ~~to secure employer compliance with the workers' compensation~~
 1440 ~~coverage requirements and authorizes the department to conduct~~
 1441 ~~investigations for the purpose of ensuring employer compliance.~~

1442 (2) For the purposes of this section, "securing the
 1443 payment of workers' compensation" means obtaining coverage that
 1444 meets the requirements of this chapter and the Florida Insurance



1445 Code. However, if at any time an employer materially understates
1446 or conceals payroll, materially misrepresents or conceals
1447 employee duties so as to avoid proper classification for premium
1448 calculations, or materially misrepresents or conceals
1449 information pertinent to the computation and application of an
1450 experience rating modification factor, such employer shall be
1451 deemed to have failed to secure payment of workers' compensation
1452 and shall be subject to the sanctions set forth in this section.
1453 A stop-work order issued because an employer is deemed to have
1454 failed to secure the payment of workers' compensation required
1455 under this chapter because the employer has materially
1456 understated or concealed payroll, materially misrepresented or
1457 concealed employee duties so as to avoid proper classification
1458 for premium calculations, or materially misrepresented or
1459 concealed information pertinent to the computation and
1460 application of an experience rating modification factor shall
1461 have no effect upon an employer's or carrier's duty to provide
1462 benefits under this chapter or upon any of the employer's or
1463 carrier's rights and defenses under this chapter, including
1464 exclusive remedy. The department and its authorized
1465 representatives may enter and inspect any place of business at
1466 any reasonable time for the limited purpose of investigating
1467 compliance with workers' compensation coverage requirements
1468 under this chapter. Each employer shall keep true and accurate
1469 business records that contain such information as the department
1470 prescribes by rule. The business records must contain
1471 information necessary for the department to determine compliance
1472 with workers' compensation coverage requirements and must be



1473 ~~maintained within this state by the business, in such a manner~~
1474 ~~as to be accessible within a reasonable time upon request by the~~
1475 ~~department. The business records must be open to inspection and~~
1476 ~~be available for copying by the department at any reasonable~~
1477 ~~time and place and as often as necessary. The department may~~
1478 ~~require from any employer any sworn or unsworn reports,~~
1479 ~~pertaining to persons employed by that employer, deemed~~
1480 ~~necessary for the effective administration of the workers'~~
1481 ~~compensation coverage requirements.~~

1482 (3) The department shall enforce workers' compensation
1483 coverage requirements, including the requirement that the
1484 employer secure the payment of workers' compensation, and the
1485 requirement that the employer provide the carrier with
1486 information to accurately determine payroll and correctly assign
1487 classification codes. In addition to any other powers under this
1488 chapter, the department shall have the power to:

1489 (a) Conduct investigations for the purpose of ensuring
1490 employer compliance.

1491 (b) Enter and inspect any place of business at any
1492 reasonable time for the purpose of investigating employer
1493 compliance.

1494 (c) Examine and copy business records.

1495 (d) Administer oaths and affirmations.

1496 (e) Certify to official acts.

1497 (f) Issue and serve subpoenas for attendance of witnesses
1498 or production of business records, books, papers,
1499 correspondence, memoranda, and other records.



1500 (g) Issue stop-work orders, penalty assessment orders, and
1501 any other orders necessary for the administration of this
1502 section.

1503 (h) Enforce the terms of a stop-work order.

1504 (i) Levy and pursue actions to recover penalties.

1505 (j) Seek injunctions and other appropriate relief. In
1506 ~~discharging its duties, the department may administer oaths and~~
1507 ~~affirmations, certify to official acts, issue subpoenas to~~
1508 ~~compel the attendance of witnesses and the production of books,~~
1509 ~~papers, correspondence, memoranda, and other records deemed~~
1510 ~~necessary by the department as evidence in order to ensure~~
1511 ~~proper compliance with the coverage provisions of this chapter.~~

1512 (4) The department shall designate representatives who may
1513 serve subpoenas and other process of the department issued under
1514 this section.

1515 (5) The department shall specify by rule the business
1516 records that employers must maintain and produce to comply with
1517 this section.

1518 (6)~~(4)~~ If a person has refused to obey a subpoena to
1519 appear before the department or its authorized representative or
1520 ~~and~~ produce evidence requested by the department or to give
1521 testimony about the matter that is under investigation, a court
1522 has jurisdiction to issue an order requiring compliance with the
1523 subpoena if the court has jurisdiction in the geographical area
1524 where the inquiry is being carried on or in the area where the
1525 person who has refused the subpoena is found, resides, or
1526 transacts business. Failure to obey such a court order may be
1527 punished by the court as contempt, either civilly or criminally.



1528 Costs, including reasonable attorney's fees, incurred by the
1529 department to obtain an order granting, in whole or in part, a
1530 petition to enforce a subpoena or a subpoena duces tecum shall
1531 be taxed against the subpoenaed party.

1532 (7)(a)(5) Whenever the department determines that an
1533 employer who is required to secure the payment to his or her
1534 employees of the compensation provided for by this chapter has
1535 failed to secure the payment of workers' compensation required
1536 by this chapter or produce the required business records under
1537 subsection (5) within 5 business days after receipt of the
1538 written request of the department ~~do so~~, such failure shall be
1539 deemed an immediate serious danger to public health, safety, or
1540 welfare sufficient to justify service by the department of a
1541 stop-work order on the employer, requiring the cessation of all
1542 business operations ~~at the place of employment or job site~~. If
1543 the department ~~division~~ makes such a determination, the
1544 department ~~division~~ shall issue a stop-work order within 72
1545 hours. The order shall take effect when served upon the ~~date of~~
1546 service upon the employer or, for a particular employer
1547 worksite, when served at that worksite. In addition to serving a
1548 stop-work order, which shall be effective immediately, at a
1549 particular worksite, the department shall immediately proceed
1550 with service upon the employer which shall be effective upon all
1551 employer worksites in the state. A stop-work order may be served
1552 with regard to an employer's worksite by posting a copy of the
1553 stop-work order in a conspicuous location at such site. The
1554 order shall remain in effect until the department issues an
1555 order releasing the stop-work order upon a finding that the



1556 employer has come into compliance with the coverage requirements
1557 of this chapter and has paid any penalty assessed under this
1558 section. The department may require an employer who is found to
1559 have failed to comply with the coverage requirements of s.
1560 440.38 to file with the department, as a condition of release
1561 from a stop-work order, periodic reports that demonstrate the
1562 employer's continued compliance with this chapter for a
1563 probationary period that shall not exceed 2 years. The
1564 department shall by rule specify the reports required and the
1565 time for filing under this subsection, unless the employer
1566 ~~provides evidence satisfactory to the department of having~~
1567 ~~secured any necessary insurance or self-insurance and pays a~~
1568 ~~civil penalty to the department, to be deposited by the~~
1569 ~~department into the Workers' Compensation Administration Trust~~
1570 ~~Fund, in the amount of \$100 per day for each day the employer~~
1571 ~~was not in compliance with this chapter.~~

1572 (b) Stop-work orders and penalty assessment orders issued
1573 under this section against a corporation, partnership, or sole
1574 proprietorship shall be in effect against any successor
1575 corporation or business entity that has one or more of the same
1576 principals or officers as the corporation or partnership against
1577 which the stop-work order was issued and is engaged in the same
1578 or related enterprise.

1579 (c) The department shall assess a penalty of \$1,000 per
1580 day against an employer for each day that the employer conducts
1581 business operations that are in violation of a stop-work order.

1582 (d)1. In addition to any penalty, stop-work order, or
1583 injunction, the department shall assess against any employer who



1584 has failed to secure the payment of compensation as required by
1585 this chapter a penalty equal to 1.5 times the amount the
1586 employer would have paid in premium when applying approved
1587 manual rates to the employer's payroll during periods for which
1588 it failed to secure the payment of workers' compensation
1589 required by this chapter within the preceding 3-year period or
1590 \$1,000, whichever is greater.

1591 2. Any subsequent violation within 5 years after the most
1592 recent violation shall, in addition to the penalties set forth
1593 in this subsection, be deemed a knowing act within the meaning
1594 of s. 440.105.

1595 (e) When an employer fails to provide business records
1596 sufficient to enable the department to determine the employer's
1597 payroll for the period requested for the calculation of the
1598 penalty provided in paragraph (d), for penalty calculation
1599 purposes, the imputed weekly payroll for each employee,
1600 corporate officer, sole proprietor, or partner shall be the
1601 statewide average weekly wage as defined in s. 440.12(2)
1602 multiplied by 1.5.

1603 (f) In addition to any other penalties provided for in
1604 this chapter, the department may assess against the employer a
1605 penalty of \$5,000 for each employee of that employer who the
1606 employer represents to the department or carrier as an
1607 independent contractor but who is determined by the department
1608 not to be an independent contractor as defined in s. 440.02.

1609 (8)(6) In addition to the issuance of a stop-work order
1610 under subsection (7), the department may file a complaint in the
1611 circuit court in and for Leon County to enjoin any employer, who



1612 has failed to secure the payment of workers' compensation as
1613 required by this chapter, from employing individuals and from
1614 conducting business until the employer presents evidence
1615 satisfactory to the department of having secured the payment of
1616 workers' for compensation required by this chapter and pays a
1617 civil penalty assessed by ~~to~~ the department under this section,
1618 ~~to be deposited by the department into the Workers' Compensation~~
1619 ~~Administration Trust Fund, in the amount of \$100 per day for~~
1620 ~~each day the employer was not in compliance with this chapter.~~

1621 ~~(9)(7) In addition to any penalty, stop work order, or~~
1622 ~~injunction, the department shall assess against any employer,~~
1623 ~~who has failed to secure the payment of compensation as required~~
1624 ~~by this chapter, a penalty in the following amount:~~

1625 ~~(a) An amount equal to at least the amount that the~~
1626 ~~employer would have paid or up to twice the amount the employer~~
1627 ~~would have paid during periods it illegally failed to secure~~
1628 ~~payment of compensation in the preceding 3-year period based on~~
1629 ~~the employer's payroll during the preceding 3-year period; or~~

1630 ~~(b) One thousand dollars, whichever is greater. Any~~
1631 ~~penalty assessed under this subsection is due within 30 days~~
1632 ~~after the date on which the employer is notified, except that,~~
1633 ~~if the department has posted a stop work order or obtained~~
1634 ~~injunctive relief against the employer, payment is due, in~~
1635 ~~addition to those conditions set forth in this section, as a~~
1636 ~~condition to relief from a stop work order or an injunction.~~
1637 ~~Interest shall accrue on amounts not paid when due at the rate~~
1638 ~~of 1 percent per month. The department division shall adopt~~
1639 ~~rules to administer this section.~~



1640 (10)~~(8)~~ The department may bring an action in circuit
1641 court to recover penalties assessed under this section,
1642 including any interest owed to the department pursuant to this
1643 section. In any action brought by the department pursuant to
1644 this section in which it prevails, the circuit court shall award
1645 costs, including the reasonable costs of investigation and a
1646 reasonable attorney's fee.

1647 (11)~~(9)~~ Any judgment obtained by the department and any
1648 penalty due pursuant to the service of a stop-work order or
1649 otherwise due under this section shall, until collected,
1650 constitute a lien upon the entire interest of the employer,
1651 legal or equitable, in any property, real or personal, tangible
1652 or intangible; however, such lien is subordinate to claims for
1653 unpaid wages and any prior recorded liens, and a lien created by
1654 this section is not valid against any person who, subsequent to
1655 such lien and in good faith and for value, purchases real or
1656 personal property from such employer or becomes the mortgagee on
1657 real or personal property of such employer, or against a
1658 subsequent attaching creditor, unless, with respect to real
1659 estate of the employer, a notice of the lien is recorded in the
1660 public records of the county where the real estate is located,
1661 and with respect to personal property of the employer, the
1662 notice is recorded with the Secretary of State.

1663 (12)~~(10)~~ Any law enforcement agency in the state may, at
1664 the request of the department, render any assistance necessary
1665 to carry out the provisions of this section, including, but not
1666 limited to, preventing any employee or other person from



1667 remaining at a place of employment or job site after a stop-work
1668 order or injunction has taken effect.

1669 ~~(13)(11)~~ Agency action ~~Actions~~ by the department under
1670 this section, if contested, must be contested as provided in
1671 chapter 120. All ~~civil~~ penalties assessed by the department must
1672 be paid into the Workers' Compensation Administration Trust
1673 Fund. ~~The department shall return any sums previously paid, upon~~
1674 ~~conclusion of an action, if the department fails to prevail and~~
1675 ~~if so directed by an order of court or an administrative hearing~~
1676 ~~officer. The requirements of this subsection may be met by~~
1677 ~~posting a bond in an amount equal to twice the penalty and in a~~
1678 ~~form approved by the department.~~

1679 ~~(14)(12)~~ If the department ~~division~~ finds that an employer
1680 who is certified or registered under part I or part II of
1681 chapter 489 and who is required to secure the payment of
1682 workers' ~~the~~ compensation under ~~provided for by~~ this chapter to
1683 his or her employees has failed to do so, the department
1684 ~~division~~ shall immediately notify the Department of Business and
1685 Professional Regulation.

1686 Section 14. Subsections (1) and (3) of section 440.11,
1687 Florida Statutes, are amended to read:

1688 440.11 Exclusiveness of liability.--

1689 (1) The liability of an employer prescribed in s. 440.10
1690 shall be exclusive and in place of all other liability,
1691 including vicarious liability, of such employer to any third-
1692 party tortfeasor and to the employee, the legal representative
1693 thereof, husband or wife, parents, dependents, next of kin, and
1694 anyone otherwise entitled to recover damages from such employer



1695 at law or in admiralty on account of such injury or death,
1696 except as follows: ~~that~~

1697 (a) If an employer fails to secure payment of compensation
1698 as required by this chapter, an injured employee, or the legal
1699 representative thereof in case death results from the injury,
1700 may elect to claim compensation under this chapter or to
1701 maintain an action at law or in admiralty for damages on account
1702 of such injury or death. In such action the defendant may not
1703 plead as a defense that the injury was caused by negligence of a
1704 fellow employee, that the employee assumed the risk of the
1705 employment, or that the injury was due to the comparative
1706 negligence of the employee.

1707 (b) When an employer commits an intentional tort that
1708 causes the injury or death of the employee. For purposes of this
1709 paragraph, an employer's actions shall be deemed to constitute
1710 an intentional tort and not an accident only when the employee
1711 proves, by clear and convincing evidence, that:

1712 1. The employer deliberately intended to injure the
1713 employee; or

1714 2. The employer engaged in conduct that the employer knew,
1715 based on prior similar accidents or on explicit warnings
1716 specifically identifying a known danger, was certain to result
1717 in injury or death to the employee, and the employee was not
1718 aware of the risk because the danger was not apparent and the
1719 employer deliberately concealed or misrepresented the danger so
1720 as to prevent the employee from exercising informed judgment
1721 about whether to perform the work.

1722



1723 The same immunities from liability enjoyed by an employer shall
1724 extend as well to each employee of the employer when such
1725 employee is acting in furtherance of the employer's business and
1726 the injured employee is entitled to receive benefits under this
1727 chapter. Such fellow-employee immunities shall not be applicable
1728 to an employee who acts, with respect to a fellow employee, with
1729 willful and wanton disregard or unprovoked physical aggression
1730 or with gross negligence when such acts result in injury or
1731 death or such acts proximately cause such injury or death, nor
1732 shall such immunities be applicable to employees of the same
1733 employer when each is operating in the furtherance of the
1734 employer's business but they are assigned primarily to unrelated
1735 works within private or public employment. The same immunity
1736 provisions enjoyed by an employer shall also apply to any sole
1737 proprietor, partner, corporate officer or director, supervisor,
1738 or other person who in the course and scope of his or her duties
1739 acts in a managerial or policymaking capacity and the conduct
1740 which caused the alleged injury arose within the course and
1741 scope of said managerial or policymaking duties and was not a
1742 violation of a law, whether or not a violation was charged, for
1743 which the maximum penalty which may be imposed does not exceed
1744 60 days' imprisonment as set forth in s. 775.082. The immunity
1745 from liability provided in this subsection extends to county
1746 governments with respect to employees of county constitutional
1747 officers whose offices are funded by the board of county
1748 commissioners.

1749 (3) An employer's workers' compensation carrier, service
1750 agent, or safety consultant shall not be liable as a third-party



1751 tortfeasor to employees of the employer or employees of its
1752 subcontractors for assisting the employer and its
1753 subcontractors, if any, in carrying out the employer's rights
1754 and responsibilities under this chapter by furnishing any safety
1755 inspection, safety consultative service, or other safety service
1756 incidental to the workers' compensation or employers' liability
1757 coverage or to the workers' compensation or employer's liability
1758 servicing contract. Without limitation, a safety consultant may
1759 include an owner, as defined in chapter 713, or an owner's
1760 related, affiliated, or subsidiary companies and the employees
1761 of each. The exclusion from liability under this subsection
1762 shall not apply in any case in which injury or death is
1763 proximately caused by the willful and unprovoked physical
1764 aggression, or by the negligent operation of a motor vehicle, by
1765 employees, officers, or directors of the employer's workers'
1766 compensation carrier, service agent, or safety consultant.

1767 Section 15. Section 440.13, Florida Statutes, is amended
1768 to read:

1769 440.13 Medical services and supplies; penalty for
1770 violations; limitations.--

1771 (1) DEFINITIONS.--As used in this section, the term:

1772 (a) "Alternate medical care" means a change in treatment
1773 or health care provider.

1774 (b) "Attendant care" means care rendered by trained
1775 professional attendants which is beyond the scope of household
1776 duties. Family members may provide nonprofessional attendant
1777 care, but may not be compensated under this chapter for care
1778 that falls within the scope of household duties and other



1779 services normally and gratuitously provided by family members.
1780 "Family member" means a spouse, father, mother, brother, sister,
1781 child, grandchild, father-in-law, mother-in-law, aunt, or uncle.

1782 (c) "Carrier" means, for purposes of this section,
1783 insurance carrier, self-insurance fund or individually self-
1784 insured employer, or assessable mutual insurer.

1785 (d) "Catastrophic injury" means an injury as defined in s.
1786 440.02.

1787 (e) "Certified health care provider" means a health care
1788 provider who has been certified by the agency or who has entered
1789 an agreement with a licensed managed care organization to
1790 provide treatment to injured workers under this section.

1791 Certification of such health care provider must include
1792 documentation that the health care provider has read and is
1793 familiar with the portions of the statute, impairment guides,
1794 practice parameters, protocols of treatment, and rules which
1795 govern the provision of remedial treatment, care, and
1796 attendance.

1797 (f) "Compensable" means a determination by a carrier or
1798 judge of compensation claims that a condition suffered by an
1799 employee results from an injury arising out of and in the course
1800 of employment.

1801 (g) "Emergency services and care" means emergency services
1802 and care as defined in s. 395.002.

1803 (h) "Health care facility" means any hospital licensed
1804 under chapter 395 and any health care institution licensed under
1805 chapter 400.



1806 (i) "Health care provider" means a physician or any
1807 recognized practitioner who provides skilled services pursuant
1808 to a prescription or under the supervision or direction of a
1809 physician and who has been certified by the agency as a health
1810 care provider. The term "health care provider" includes a health
1811 care facility.

1812 (j) "Independent medical examiner" means a physician
1813 selected by either an employee or a carrier to render one or
1814 more independent medical examinations in connection with a
1815 dispute arising under this chapter.

1816 (k) "Independent medical examination" means an objective
1817 evaluation of the injured employee's medical condition,
1818 including, but not limited to, impairment or work status,
1819 performed by a physician or an expert medical advisor at the
1820 request of a party, a judge of compensation claims, or the
1821 agency to assist in the resolution of a dispute arising under
1822 this chapter.

1823 (l) "Instance of overutilization" means a specific
1824 inappropriate service or level of service provided to an injured
1825 employee that includes the provision of treatment in excess of
1826 established practice parameters and protocols of treatment
1827 established in accordance with this chapter.

1828 (m) "Medically necessary" or "medical necessity" means any
1829 medical service or medical supply which is used to identify or
1830 treat an illness or injury, is appropriate to the patient's
1831 diagnosis and status of recovery, and is consistent with the
1832 location of service, the level of care provided, and applicable
1833 practice parameters. The service should be widely accepted among



1834 practicing health care providers, based on scientific criteria,
1835 and determined to be reasonably safe. The service must not be of
1836 an experimental, investigative, or research nature, ~~except in~~
1837 ~~those instances in which prior approval of the Agency for Health~~
1838 ~~Care Administration has been obtained. The Agency for Health~~
1839 ~~Care Administration shall adopt rules providing for such~~
1840 ~~approval on a case-by-case basis when the service or supply is~~
1841 ~~shown to have significant benefits to the recovery and well-~~
1842 ~~being of the patient.~~

1843 (n) "Medicine" means a drug prescribed by an authorized
1844 health care provider and includes only generic drugs or single-
1845 source patented drugs for which there is no generic equivalent,
1846 unless the authorized health care provider writes or states that
1847 the brand-name drug as defined in s. 465.025 is medically
1848 necessary, or is a drug appearing on the schedule of drugs
1849 created pursuant to s. 465.025(6), or is available at a cost
1850 lower than its generic equivalent.

1851 (o) "Palliative care" means noncurative medical services
1852 that mitigate the conditions, effects, or pain of an injury.

1853 (p) "Pattern or practice of overutilization" means
1854 repetition of instances of overutilization within a specific
1855 medical case or multiple cases by a single health care provider.

1856 (q) "Peer review" means an evaluation by two or more
1857 physicians licensed under the same authority and with the same
1858 or similar specialty as the physician under review, of the
1859 appropriateness, quality, and cost of health care and health
1860 services provided to a patient, based on medically accepted
1861 standards.



1862 (r) "Physician" or "doctor" means a physician licensed
1863 under chapter 458, an osteopathic physician licensed under
1864 chapter 459, a chiropractic physician licensed under chapter
1865 460, a podiatric physician licensed under chapter 461, an
1866 optometrist licensed under chapter 463, or a dentist licensed
1867 under chapter 466, each of whom must be certified by the agency
1868 as a health care provider.

1869 (s) "Reimbursement dispute" means any disagreement between
1870 a health care provider or health care facility and carrier
1871 concerning payment for medical treatment.

1872 (t) "Utilization control" means a systematic process of
1873 implementing measures that assure overall management and cost
1874 containment of services delivered, including compliance with
1875 practice parameters and protocols of treatment as provided for
1876 in this chapter.

1877 (u) "Utilization review" means the evaluation of the
1878 appropriateness of both the level and the quality of health care
1879 and health services provided to a patient, including, but not
1880 limited to, evaluation of the appropriateness of treatment,
1881 hospitalization, or office visits based on medically accepted
1882 standards. Such evaluation must be accomplished by means of a
1883 system that identifies the utilization of medical services based
1884 on practice parameters and protocols of treatment as provided
1885 for in this chapter ~~medically accepted standards as established~~
1886 ~~by medical consultants with qualifications similar to those~~
1887 ~~providing the care under review, and that refers patterns and~~
1888 ~~practices of overutilization to the agency.~~

1889 (2) MEDICAL TREATMENT; DUTY OF EMPLOYER TO FURNISH.--



1890 (a) Subject to the limitations specified elsewhere in this
1891 chapter, the employer shall furnish to the employee such
1892 medically necessary remedial treatment, care, and attendance for
1893 such period as the nature of the injury or the process of
1894 recovery may require, which is in accordance with established
1895 practice parameters and protocols of treatment as provided for
1896 in this chapter, including medicines, medical supplies, durable
1897 medical equipment, orthoses, prostheses, and other medically
1898 necessary apparatus. Remedial treatment, care, and attendance,
1899 including work-hardening programs or pain-management programs
1900 accredited by the Commission on Accreditation of Rehabilitation
1901 Facilities or Joint Commission on the Accreditation of Health
1902 Organizations or pain-management programs affiliated with
1903 medical schools, shall be considered as covered treatment only
1904 when such care is given based on a referral by a physician as
1905 defined in this chapter. ~~Each facility shall maintain outcome~~
1906 ~~data, including work status at discharges, total program~~
1907 ~~charges, total number of visits, and length of stay. The~~
1908 ~~department shall utilize such data and report to the President~~
1909 ~~of the Senate and the Speaker of the House of Representatives~~
1910 ~~regarding the efficacy and cost-effectiveness of such program,~~
1911 ~~no later than October 1, 1994.~~ Medically necessary treatment,
1912 care, and attendance does not include chiropractic services in
1913 excess of 24 ~~18~~ treatments or rendered 12 ~~8~~ weeks beyond the
1914 date of the initial chiropractic treatment, whichever comes
1915 first, unless the carrier authorizes additional treatment or the
1916 employee is catastrophically injured.



1917 (b) The employer shall provide appropriate professional or
1918 nonprofessional attendant care performed only at the direction
1919 and control of a physician when such care is medically
1920 necessary. The physician shall prescribe such care in writing.
1921 The employer or carrier shall not be responsible for such care
1922 until the prescription for attendant care is received by the
1923 employer and carrier, which shall specify the time periods for
1924 such care, the level of care required, and the type of
1925 assistance required. A prescription for attendant care shall not
1926 prescribe such care retroactively. The value of nonprofessional
1927 attendant care provided by a family member must be determined as
1928 follows:

1929 1. If the family member is not employed or if the family
1930 member is employed and is providing attendant care services
1931 during hours that he or she is not engaged in employment, the
1932 per-hour value equals the federal minimum hourly wage.

1933 2. If the family member is employed and elects to leave
1934 that employment to provide attendant or custodial care, the per-
1935 hour value of that care equals the per-hour value of the family
1936 member's former employment, not to exceed the per-hour value of
1937 such care available in the community at large. A family member
1938 or a combination of family members providing nonprofessional
1939 attendant care under this paragraph may not be compensated for
1940 more than a total of 12 hours per day.

1941 3. If the family member remains employed while providing
1942 attendant or custodial care, the per-hour value of that care
1943 equals the per-hour value of the family member's employment, not



1944 | to exceed the per-hour value of such care available in the
1945 | community at large.

1946 | (c) If the employer fails to provide initial treatment or
1947 | care required by this section after request by the injured
1948 | employee, the employee may obtain such initial treatment at the
1949 | expense of the employer, if the initial treatment or care is
1950 | compensable and medically necessary and is in accordance with
1951 | established practice parameters and protocols of treatment as
1952 | provided for in this chapter. There must be a specific request
1953 | for the initial treatment or care, and the employer or carrier
1954 | must be given a reasonable time period within which to provide
1955 | the initial treatment or care. However, the employee is not
1956 | entitled to recover any amount personally expended for the
1957 | initial treatment or care ~~service~~ unless he or she has requested
1958 | the employer to furnish that initial treatment or service and
1959 | the employer has failed, refused, or neglected to do so within a
1960 | reasonable time or unless the nature of the injury requires such
1961 | initial treatment, nursing, and services and the employer or his
1962 | or her superintendent or foreman, having knowledge of the
1963 | injury, has neglected to provide the initial treatment or care
1964 | ~~service~~.

1965 | (d) The carrier has the right to transfer the care of an
1966 | injured employee from the attending health care provider if an
1967 | independent medical examination determines that the employee is
1968 | not making appropriate progress in recuperation.

1969 | (e) Except in emergency situations and for treatment
1970 | rendered by a managed care arrangement, after any initial
1971 | examination and diagnosis by a physician providing remedial



1972 treatment, care, and attendance, and before a proposed course of
1973 medical treatment begins, each insurer shall review, in
1974 accordance with the requirements of this chapter, the proposed
1975 course of treatment, to determine whether such treatment would
1976 be recognized as reasonably prudent. The review must be in
1977 accordance with all applicable workers' compensation practice
1978 parameters and protocols of treatment established in accordance
1979 with this chapter. The insurer must accept any such proposed
1980 course of treatment unless the insurer notifies the physician of
1981 its specific objections to the proposed course of treatment by
1982 the close of the tenth business day after notification by the
1983 physician, or a supervised designee of the physician, of the
1984 proposed course of treatment.

1985 (f) Upon the written request of the employee, the carrier
1986 shall give the employee the opportunity for one change of
1987 physician during the course of treatment for any one accident.
1988 Upon the granting of a change of physician, the originally
1989 authorized physician in the same specialty as the changed
1990 physician shall become deauthorized upon written notification by
1991 the employer or carrier. The carrier shall authorize an
1992 alternative physician who shall not be professionally affiliated
1993 with the previous physician within 5 days after receipt of the
1994 request. If the carrier fails to provide a change of physician
1995 as requested by the employee, the employee may select the
1996 physician and such physician shall be considered authorized if
1997 the treatment being provided is compensable and medically
1998 necessary.

1999



2000 Failure of the carrier to timely comply with this subsection
2001 shall be a violation of this chapter and the carrier shall be
2002 subject to penalties as provided for in s. 440.525. The employee
2003 ~~shall be entitled to select another physician from among not~~
2004 ~~fewer than three carrier-authorized physicians who are not~~
2005 ~~professionally affiliated.~~

2006 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.--

2007 (a) As a condition to eligibility for payment under this
2008 chapter, a health care provider who renders services must be a
2009 certified health care provider and must receive authorization
2010 from the carrier before providing treatment. This paragraph does
2011 not apply to emergency care. The agency shall adopt rules to
2012 implement the certification of health care providers.

2013 (b) A health care provider who renders emergency care must
2014 notify the carrier by the close of the third business day after
2015 it has rendered such care. If the emergency care results in
2016 admission of the employee to a health care facility, the health
2017 care provider must notify the carrier by telephone within 24
2018 hours after initial treatment. Emergency care is not compensable
2019 under this chapter unless the injury requiring emergency care
2020 arose as a result of a work-related accident. Pursuant to
2021 chapter 395, all licensed physicians and health care providers
2022 in this state shall be required to make their services available
2023 for emergency treatment of any employee eligible for workers'
2024 compensation benefits. To refuse to make such treatment
2025 available is cause for revocation of a license.

2026 (c) A health care provider may not refer the employee to
2027 another health care provider, diagnostic facility, therapy



2028 center, or other facility without prior authorization from the
2029 carrier, except when emergency care is rendered. Any referral
2030 must be to a health care provider that has been certified by the
2031 agency, unless the referral is for emergency treatment, and the
2032 referral must be made in accordance with practice parameters and
2033 protocols of treatment as provided for in this chapter.

2034 (d) A carrier must respond, by telephone or in writing, to
2035 a request for authorization from an authorized health care
2036 provider by the close of the third business day after receipt of
2037 the request. A carrier who fails to respond to a written request
2038 for authorization for referral for medical treatment by the
2039 close of the third business day after receipt of the request
2040 consents to the medical necessity for such treatment. All such
2041 requests must be made to the carrier. Notice to the carrier does
2042 not include notice to the employer.

2043 (e) Carriers shall adopt procedures for receiving,
2044 reviewing, documenting, and responding to requests for
2045 authorization. Such procedures shall be for a health care
2046 provider certified under this section.

2047 (f) By accepting payment under this chapter for treatment
2048 rendered to an injured employee, a health care provider consents
2049 to the jurisdiction of the agency as set forth in subsection
2050 (11) and to the submission of all records and other information
2051 concerning such treatment to the agency in connection with a
2052 reimbursement dispute, audit, or review as provided by this
2053 section. The health care provider must further agree to comply
2054 with any decision of the agency rendered under this section.



2055 (g) The employee is not liable for payment for medical
2056 treatment or services provided pursuant to this section except
2057 as otherwise provided in this section.

2058 (h) The provisions of s. 456.053 are applicable to
2059 referrals among health care providers, as defined in subsection
2060 (1), treating injured workers.

2061 (i) Notwithstanding paragraph (d), a claim for specialist
2062 consultations, surgical operations, physiotherapeutic or
2063 occupational therapy procedures, X-ray examinations, or special
2064 diagnostic laboratory tests that cost more than \$1,000 and other
2065 specialty services that the agency identifies by rule is not
2066 valid and reimbursable unless the services have been expressly
2067 authorized by the carrier, or unless the carrier has failed to
2068 respond within 10 days to a written request for authorization,
2069 or unless emergency care is required. The insurer shall ~~not~~
2070 ~~refuse to~~ authorize such consultation or procedure unless the
2071 health care provider or facility is not authorized or certified,
2072 unless such treatment is not in accordance with practice
2073 parameters and protocols of treatment established in this
2074 chapter, or unless a judge of compensation claims an expert
2075 medical adviser has determined that the consultation or
2076 procedure is not medically necessary, not in accordance with the
2077 practice parameters and protocols of treatment established in
2078 this chapter, or otherwise not compensable under this chapter.
2079 Authorization of a treatment plan does not constitute express
2080 authorization for purposes of this section, except to the extent
2081 the carrier provides otherwise in its authorization procedures.



2082 This paragraph does not limit the carrier's obligation to
2083 identify and disallow overutilization or billing errors.

2084 ~~(j) Notwithstanding anything in this chapter to the~~
2085 ~~contrary, a sick or injured employee shall be entitled, at all~~
2086 ~~times, to free, full, and absolute choice in the selection of~~
2087 ~~the pharmacy or pharmacist dispensing and filling prescriptions~~
2088 ~~for medicines required under this chapter. It is expressly~~
2089 ~~forbidden for the agency, an employer, or a carrier, or any~~
2090 ~~agent or representative of the agency, an employer, or a~~
2091 ~~carrier to select the pharmacy or pharmacist which the sick or~~
2092 ~~injured employee must use; condition coverage or payment on the~~
2093 ~~basis of the pharmacy or pharmacist utilized; or to otherwise~~
2094 ~~interfere in the selection by the sick or injured employee of a~~
2095 ~~pharmacy or pharmacist.~~

2096 (4) NOTICE OF TREATMENT TO CARRIER; FILING WITH
2097 DEPARTMENT.--

2098 (a) Any health care provider providing necessary remedial
2099 treatment, care, or attendance to any injured worker shall
2100 submit treatment reports to the carrier in a format prescribed
2101 by the department ~~in consultation with the agency~~. A claim for
2102 medical or surgical treatment is not valid or enforceable
2103 against such employer or employee, unless, by the close of the
2104 third business day following the first treatment, the physician
2105 providing the treatment furnishes to the employer or carrier a
2106 preliminary notice of the injury and treatment in a format on
2107 ~~forms~~ prescribed by the department ~~in consultation with the~~
2108 ~~agency~~ and, within 15 days thereafter, furnishes to the employer
2109 or carrier a complete report, and subsequent thereto furnishes



2110 progress reports, if requested by the employer or insurance
2111 carrier, at intervals of not less than 3 weeks apart or at less
2112 frequent intervals if requested in a format ~~on forms~~ prescribed
2113 by the department ~~in consultation with the agency~~.

2114 (b) Upon the request of the department ~~or agency~~, each
2115 medical report or bill obtained or received by the employer, the
2116 carrier, or the injured employee, or the attorney for the
2117 employer, carrier, or injured employee, with respect to the
2118 remedial treatment, care, and attendance of the injured
2119 employee, including any report of an examination, diagnosis, or
2120 disability evaluation, must be produced by the health care
2121 provider to filed with the department ~~or agency~~ pursuant to
2122 rules adopted by the department ~~in consultation with the agency~~.
2123 The health care provider shall also furnish to the injured
2124 employee or ~~to~~ his or her attorney and the employer or carrier
2125 or its attorney, on demand, a copy of his or her office chart,
2126 records, and reports, and may charge the injured employee no
2127 more than 50 cents per page for copying the records and the
2128 actual direct cost to the health care provider or health care
2129 facility for X rays, microfilm, or other nonpaper records ~~an~~
2130 ~~amount authorized by the department for the copies~~. Each such
2131 health care provider shall provide to the ~~agency or~~ department
2132 information about the remedial treatment, care, and attendance
2133 which the ~~agency or~~ department reasonably requests.

2134 (c) It is the policy for the administration of the
2135 workers' compensation system that there shall be reasonable
2136 access to medical information by all parties to facilitate the
2137 self-executing features of the law. An employee who reports an



2138 injury or illness alleged to be work-related waives any
2139 physician-patient privilege with respect to any condition or
2140 complaint reasonably related to the condition for which the
2141 employee claims compensation. Notwithstanding the limitations in
2142 s. 456.057 and subject to the limitations in s. 381.004, upon
2143 the request of the employer, the carrier, an authorized
2144 qualified rehabilitation provider, or the attorney for the
2145 employer or carrier, the medical records, reports, and
2146 information of an injured employee relevant to the particular
2147 injury or illness for which compensation is sought must be
2148 furnished to those persons and the medical condition of the
2149 injured employee must be discussed with those persons, if the
2150 records and the discussions are restricted to conditions
2151 relating to the workplace injury. Release of medical information
2152 by the health care provider or other physician does not require
2153 the authorization of the injured employee. If medical records,
2154 reports, and information of an injured employee are sought from
2155 health care providers who are not subject to the jurisdiction of
2156 the state, the injured employee shall sign an authorization
2157 allowing for the employer or carrier to obtain the medical
2158 records, reports, or information. Any such discussions or
2159 release of information may be held before or after the filing of
2160 a claim or petition for benefits without the knowledge, consent,
2161 or presence of any other party or his or her agent or
2162 representative. A health care provider who willfully refuses to
2163 provide medical records or to discuss the medical condition of
2164 the injured employee, after a reasonable request is made for
2165 such information pursuant to this subsection, shall be subject



2166 by the department ~~agency~~ to one or more of the penalties set
2167 forth in paragraph (8)(b). The department may adopt rules to
2168 carry out this subsection.

2169 (5) INDEPENDENT MEDICAL EXAMINATIONS.--

2170 (a) In any dispute concerning overutilization, medical
2171 benefits, compensability, or disability under this chapter, the
2172 carrier or the employee may select an independent medical
2173 examiner. If the parties agree, the examiner may be a health
2174 care provider treating or providing other care to the employee.
2175 An independent medical examiner may not render an opinion
2176 outside his or her area of expertise, as demonstrated by
2177 licensure and applicable practice parameters. The employer and
2178 employee shall be entitled to only one independent medical
2179 examination per accident and not one independent medical
2180 examination per medical specialty. The party requesting and
2181 selecting the independent medical examination shall be
2182 responsible for all expenses associated with said examination,
2183 including, but not limited to, medically necessary diagnostic
2184 testing performed and physician or medical care provider fees
2185 for the evaluation. The party selecting the independent medical
2186 examination shall identify the choice of the independent medical
2187 examiner to all other parties within 15 days after the date the
2188 independent medical examination is to take place. Failure to
2189 timely provide such notification shall preclude the requesting
2190 party from submitting the findings of such independent medical
2191 examiner in a proceeding before a judge of compensation claims.
2192 The independent medical examiner may not provide followup care
2193 if such recommendation for care is found to be medically



2194 necessary. If the employee prevails in a medical dispute as
2195 determined in an order by a judge of compensation claims or if
2196 benefits are paid or treatment provided after the employee has
2197 obtained an independent medical examination based upon the
2198 examiner's findings, the costs of such examination shall be paid
2199 by the employer or carrier.

2200 (b) Each party is bound by his or her selection of an
2201 independent medical examiner, including the selection of the
2202 independent medical examiner in accordance with s. 440.134 and
2203 the opinions of such independent medical examiner. Each party
2204 ~~and~~ is entitled to an alternate examiner only if:

2205 1. The examiner is not qualified to render an opinion upon
2206 an aspect of the employee's illness or injury which is material
2207 to the claim or petition for benefits;

2208 2. The examiner ceases to practice in the specialty
2209 relevant to the employee's condition;

2210 3. The examiner is unavailable due to injury, death, or
2211 relocation outside a reasonably accessible geographic area; or

2212 4. The parties agree to an alternate examiner.

2213

2214 ~~Any party may request, or a judge of compensation claims may~~
2215 ~~require, designation of an agency medical advisor as an~~
2216 ~~independent medical examiner. The opinion of the advisors acting~~
2217 ~~as examiners shall not be afforded the presumption set forth in~~
2218 ~~paragraph (9)(c).~~

2219 (c) The carrier may, at its election, contact the claimant
2220 directly to schedule a reasonable time for an independent
2221 medical examination. The carrier must confirm the scheduling



2222 agreement in writing with the claimant and the ~~within 5 days and~~
2223 ~~notify~~ claimant's counsel, if any, at least 7 days before the
2224 date upon which the independent medical examination is scheduled
2225 to occur. An attorney representing a claimant is not authorized
2226 to schedule the self-insured employer's or carrier's independent
2227 medical evaluations under this subsection. Neither the self-
2228 insured employer nor the carrier shall be responsible for
2229 scheduling any independent medical examination other than an
2230 employer or carrier independent medical examination.

2231 (d) If the employee fails to appear for the independent
2232 medical examination scheduled by the employer or carrier without
2233 good cause and fails to advise the physician at least 24 hours
2234 before the scheduled date for the examination that he or she
2235 cannot appear, the employee is barred from recovering
2236 compensation for any period during which he or she has refused
2237 to submit to such examination. Further, the employee shall
2238 reimburse the employer or carrier 50 percent of the physician's
2239 cancellation or no-show fee unless the employer or carrier that
2240 schedules the examination fails to timely provide to the
2241 employee a written confirmation of the date of the examination
2242 pursuant to paragraph (c) which includes an explanation of why
2243 he or she failed to appear. The employee may appeal to a judge
2244 of compensation claims for reimbursement when the employer or
2245 carrier withholds payment in excess of the authority granted by
2246 this section.

2247 (e) No medical opinion other than the opinion of a medical
2248 advisor appointed by the judge of compensation claims or the
2249 department ~~agency~~, an independent medical examiner, or an



2250 authorized treating provider is admissible in proceedings before
2251 the judges of compensation claims.

2252 (f) Attorney's fees incurred by an injured employee in
2253 connection with delay of or opposition to an independent medical
2254 examination, including, but not limited to, motions for
2255 protective orders, are not recoverable under this chapter.

2256 (g) When a medical dispute arises, the parties may
2257 mutually agree to refer the employee to a licensed physician
2258 specializing in the diagnosis and treatment of the medical
2259 condition at issue for an independent medical examination and
2260 report. Such medical examination shall be referred to as a
2261 "consensus independent medical examination." The findings and
2262 conclusions of such mutually agreed upon consensus independent
2263 medical examination shall be binding on the parties and shall
2264 constitute resolution of the medical dispute addressed in the
2265 independent consensus medical examination and in any proceeding.
2266 Agreement by the parties to a consensus independent medical
2267 examination shall not affect the employer's, carrier's, or
2268 employee's entitlement to one independent medical examination
2269 per accident as provided for in this subsection.

2270 (6) UTILIZATION REVIEW.--Carriers shall review all bills,
2271 invoices, and other claims for payment submitted by health care
2272 providers in order to identify overutilization and billing
2273 errors, including compliance with practice parameters and
2274 protocols of treatment established in accordance with this
2275 chapter, and may hire peer review consultants or conduct
2276 independent medical evaluations. Such consultants, including
2277 peer review organizations, are immune from liability in the



2278 execution of their functions under this subsection to the extent
2279 provided in s. 766.101. If a carrier finds that overutilization
2280 of medical services or a billing error has occurred, or there is
2281 a violation of the practice parameters and protocols of
2282 treatment established in accordance with this chapter, it must
2283 disallow or adjust payment for such services or error without
2284 order of a judge of compensation claims or the agency, if the
2285 carrier, in making its determination, has complied with this
2286 section and rules adopted by the agency.

2287 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.--

2288 (a) Any health care provider, carrier, or employer who
2289 elects to contest the disallowance or adjustment of payment by a
2290 carrier under subsection (6) must, within 30 days after receipt
2291 of notice of disallowance or adjustment of payment, petition the
2292 agency to resolve the dispute. The petitioner must serve a copy
2293 of the petition on the carrier and on all affected parties by
2294 certified mail. The petition must be accompanied by all
2295 documents and records that support the allegations contained in
2296 the petition. Failure of a petitioner to submit such
2297 documentation to the agency results in dismissal of the
2298 petition.

2299 (b) The carrier must submit to the agency within 10 days
2300 after receipt of the petition all documentation substantiating
2301 the carrier's disallowance or adjustment. Failure of the carrier
2302 to timely submit the requested documentation to the agency
2303 within 10 days constitutes a waiver of all objections to the
2304 petition.



2305 (c) Within 60 days after receipt of all documentation, the
2306 agency must provide to the petitioner, the carrier, and the
2307 affected parties a written determination of whether the carrier
2308 properly adjusted or disallowed payment. The agency must be
2309 guided by standards and policies set forth in this chapter,
2310 including all applicable reimbursement schedules, practice
2311 parameters, and protocols of treatment, in rendering its
2312 determination.

2313 (d) If the agency finds an improper disallowance or
2314 improper adjustment of payment by an insurer, the insurer shall
2315 reimburse the health care provider, facility, insurer, or
2316 employer within 30 days, subject to the penalties provided in
2317 this subsection.

2318 (e) The agency shall adopt rules to carry out this
2319 subsection. The rules may include provisions for consolidating
2320 petitions filed by a petitioner and expanding the timetable for
2321 rendering a determination upon a consolidated petition.

2322 (f) Any carrier that engages in a pattern or practice of
2323 arbitrarily or unreasonably disallowing or reducing payments to
2324 health care providers may be subject to one or more of the
2325 following penalties imposed by the agency:

2326 1. Repayment of the appropriate amount to the health care
2327 provider.

2328 2. An administrative fine assessed by the agency in an
2329 amount not to exceed \$5,000 per instance of improperly
2330 disallowing or reducing payments.

2331 3. Award of the health care provider's costs, including a
2332 reasonable attorney's fee, for prosecuting the petition.



2333 (8) PATTERN OR PRACTICE OF OVERUTILIZATION.--

2334 (a) Carriers must report to the agency all instances of
2335 overutilization including, but not limited to, all instances in
2336 which the carrier disallows or adjusts payment or a
2337 determination has been made that the provided or recommended
2338 treatment is in excess of the practice parameters and protocols
2339 of treatment established in this chapter. The agency shall
2340 determine whether a pattern or practice of overutilization
2341 exists.

2342 (b) If the agency determines that a health care provider
2343 has engaged in a pattern or practice of overutilization or a
2344 violation of this chapter or rules adopted by the agency,
2345 including a pattern or practice of providing treatment in excess
2346 of the practice parameters or protocols of treatment, it may
2347 impose one or more of the following penalties:

- 2348 1. An order of the agency barring the provider from
2349 payment under this chapter;
- 2350 2. Deauthorization of care under review;
- 2351 3. Denial of payment for care rendered in the future;
- 2352 4. Decertification of a health care provider certified as
2353 an expert medical advisor under subsection (9) or of a
2354 rehabilitation provider certified under s. 440.49;
- 2355 5. An administrative fine assessed by the agency in an
2356 amount not to exceed \$5,000 per instance of overutilization or
2357 violation; and
- 2358 6. Notification of and review by the appropriate licensing
2359 authority pursuant to s. 440.106(3).

2360 (9) EXPERT MEDICAL ADVISORS.--



2361 (a) The agency shall certify expert medical advisors in
2362 each specialty to assist the agency and the judges of
2363 compensation claims within the advisor's area of expertise as
2364 provided in this section. The agency shall, in a manner
2365 prescribed by rule, in certifying, recertifying, or decertifying
2366 an expert medical advisor, consider the qualifications,
2367 training, impartiality, and commitment of the health care
2368 provider to the provision of quality medical care at a
2369 reasonable cost. As a prerequisite for certification or
2370 recertification, the agency shall require, at a minimum, that
2371 an expert medical advisor have specialized workers' compensation
2372 training or experience under the workers' compensation system of
2373 this state and board certification or board eligibility.

2374 (b) The agency shall contract with one or more entities
2375 that employ, contract with, or otherwise secure ~~or employ~~ expert
2376 medical advisors to provide peer review or expert medical
2377 consultation, opinions, and testimony to the agency or to a
2378 judge of compensation claims in connection with resolving
2379 disputes relating to reimbursement, differing opinions of health
2380 care providers, and health care and physician services rendered
2381 under this chapter, including utilization issues. The agency
2382 shall by rule establish the qualifications of expert medical
2383 advisors, including training and experience in the workers'
2384 compensation system in the state and the expert medical
2385 advisor's knowledge of and commitment to the standards of care,
2386 practice parameters, and protocols established pursuant to this
2387 chapter. Expert medical advisors contracting with the agency
2388 shall, as a term of such contract, agree to provide consultation



2389 or services in accordance with the timetables set forth in this
2390 chapter and to abide by rules adopted by the agency, including,
2391 but not limited to, rules pertaining to procedures for review of
2392 the services rendered by health care providers and preparation
2393 of reports and testimony or recommendations for submission to
2394 the agency or the judge of compensation claims.

2395 (c) If there is disagreement in the opinions of the health
2396 care providers, if two health care providers disagree on medical
2397 evidence supporting the employee's complaints or the need for
2398 additional medical treatment, or if two health care providers
2399 disagree that the employee is able to return to work, the agency
2400 may, and the judge of compensation claims shall, upon his or her
2401 own motion or within 15 days after receipt of a written request
2402 by either the injured employee, the employer, or the carrier,
2403 order the injured employee to be evaluated by an expert medical
2404 advisor. The opinion of the expert medical advisor is presumed
2405 to be correct unless there is clear and convincing evidence to
2406 the contrary as determined by the judge of compensation claims.
2407 The expert medical advisor appointed to conduct the evaluation
2408 shall have free and complete access to the medical records of
2409 the employee. An employee who fails to report to and cooperate
2410 with such evaluation forfeits entitlement to compensation during
2411 the period of failure to report or cooperate.

2412 (d) The expert medical advisor must complete his or her
2413 evaluation and issue his or her report to the agency or to the
2414 judge of compensation claims within 15 ~~45~~ days after receipt of
2415 all medical records. The expert medical advisor must furnish a
2416 copy of the report to the carrier and to the employee.



2417 (e) An expert medical advisor is not liable under any
2418 theory of recovery for evaluations performed under this section
2419 without a showing of fraud or malice. The protections of s.
2420 766.101 apply to any officer, employee, or agent of the agency
2421 and to any officer, employee, or agent of any entity with which
2422 the agency has contracted under this subsection.

2423 (f) If the agency or a judge of compensation claims orders
2424 ~~determines that~~ the services of a certified expert medical
2425 advisor ~~are required~~ to resolve a dispute under this section,
2426 the party requesting such examination carrier must compensate
2427 the advisor for his or her time in accordance with a schedule
2428 adopted by the agency. If the employee prevails in a dispute as
2429 determined in an order by a judge of compensation claims based
2430 upon the expert medical advisor's findings, the employer or
2431 carrier shall pay for the costs of such expert medical advisor.
2432 If a judge of compensation claims, upon his or her motion, finds
2433 that an expert medical advisor is needed to resolve the dispute,
2434 the carrier must compensate the advisor for his or her time in
2435 accordance with a schedule adopted by the agency. The agency may
2436 assess a penalty not to exceed \$500 against any carrier that
2437 fails to timely compensate an advisor in accordance with this
2438 section.

2439 (10) WITNESS FEES.--Any health care provider who gives a
2440 deposition shall be allowed a witness fee. The amount charged by
2441 the witness may not exceed \$200 per hour. An expert witness who
2442 has never provided direct professional services to a party but
2443 has merely reviewed medical records and provided an expert
2444 opinion or has provided only direct professional services that



2445 were unrelated to the workers' compensation case may not be
2446 allowed a witness fee in excess of \$200 per day.

2447 (11) AUDITS BY AGENCY FOR HEALTH CARE ADMINISTRATION AND
2448 THE DEPARTMENT OF INSURANCE; JURISDICTION.--

2449 (a) The Agency for Health Care Administration may
2450 investigate health care providers to determine whether providers
2451 are complying with this chapter and with rules adopted by the
2452 agency, whether the providers are engaging in overutilization,
2453 ~~and~~ whether providers are engaging in improper billing
2454 practices, and whether providers are adhering to practice
2455 parameters and protocols established in accordance with this
2456 chapter. If the agency finds that a health care provider has
2457 improperly billed, overutilized, or failed to comply with agency
2458 rules or the requirements of this chapter, including, but not
2459 limited to, practice parameters and protocols established in
2460 accordance with this chapter, it must notify the provider of its
2461 findings and may determine that the health care provider may not
2462 receive payment from the carrier or may impose penalties as set
2463 forth in subsection (8) or other sections of this chapter. If
2464 the health care provider has received payment from a carrier for
2465 services that were improperly billed, that constitute
2466 overutilization, or that were outside practice parameters or
2467 protocols established in accordance with this chapter ~~or for~~
2468 ~~overutilization~~, it must return those payments to the carrier.
2469 The agency may assess a penalty not to exceed \$500 for each
2470 overpayment that is not refunded within 30 days after
2471 notification of overpayment by the agency or carrier.



2472 (b) The department shall monitor and audit carriers as
2473 provided in s. 624.3161, to determine if medical bills are paid
2474 in accordance with this section and department rules. Any
2475 employer, if self-insured, or carrier found by the division not
2476 to be within 90 percent compliance as to the payment of medical
2477 bills after July 1, 1994, must be assessed a fine not to exceed
2478 1 percent of the prior year's assessment levied against such
2479 entity under s. 440.51 for every quarter in which the entity
2480 fails to attain 90-percent compliance. The department shall fine
2481 or otherwise discipline an employer or carrier, pursuant to this
2482 chapter, the insurance code, or rules adopted by the department,
2483 for each late payment of compensation that is below the minimum
2484 95-percent ~~90-percent~~ performance standard. Any carrier that is
2485 found to be not in compliance in subsequent consecutive quarters
2486 must implement a medical-bill review program approved by the
2487 division, and the carrier is subject to disciplinary action by
2488 the Department of Insurance.

2489 (c) The agency has exclusive jurisdiction to decide any
2490 matters concerning reimbursement, to resolve any overutilization
2491 dispute under subsection (7), and to decide any question
2492 concerning overutilization under subsection (8), which question
2493 or dispute arises after January 1, 1994.

2494 (d) The following agency actions do not constitute agency
2495 action subject to review under ss. 120.569 and 120.57 and do not
2496 constitute actions subject to s. 120.56: referral by the entity
2497 responsible for utilization review; a decision by the agency to
2498 refer a matter to a peer review committee; establishment by a
2499 health care provider or entity of procedures by which a peer



2500 review committee reviews the rendering of health care services;
2501 and the review proceedings, report, and recommendation of the
2502 peer review committee.

2503 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
2504 REIMBURSEMENT ALLOWANCES.--

2505 (a) A three-member panel is created, consisting of the
2506 Insurance Commissioner, or the Insurance Commissioner's
2507 designee, and two members to be appointed by the Governor,
2508 subject to confirmation by the Senate, one member who, on
2509 account of present or previous vocation, employment, or
2510 affiliation, shall be classified as a representative of
2511 employers, the other member who, on account of previous
2512 vocation, employment, or affiliation, shall be classified as a
2513 representative of employees. The panel shall determine statewide
2514 schedules of maximum reimbursement allowances for medically
2515 necessary treatment, care, and attendance provided by
2516 physicians, hospitals, ambulatory surgical centers, work-
2517 hardening programs, pain programs, and durable medical
2518 equipment. The maximum reimbursement allowances for inpatient
2519 hospital care shall be based on a schedule of per diem rates, to
2520 be approved by the three-member panel no later than March 1,
2521 1994, to be used in conjunction with a precertification manual
2522 as determined by the department, including maximum hours in
2523 which an outpatient may remain in observation status, which
2524 shall not exceed 23 hours agency. All compensable charges for
2525 hospital outpatient care shall be reimbursed at 75 percent of
2526 usual and customary charges, except as otherwise provided by
2527 this subsection. ~~Until the three-member panel approves a~~



2528 ~~schedule of per diem rates for inpatient hospital care and it~~
2529 ~~becomes effective, all compensable charges for hospital~~
2530 ~~inpatient care must be reimbursed at 75 percent of their usual~~
2531 ~~and customary charges. Annually, the three-member panel shall~~
2532 ~~adopt schedules of maximum reimbursement allowances for~~
2533 ~~physicians, hospital inpatient care, hospital outpatient care,~~
2534 ~~ambulatory surgical centers, work-hardening programs, and pain~~
2535 ~~programs. However, the maximum percentage of increase in the~~
2536 ~~individual reimbursement allowance may not exceed the percentage~~
2537 ~~of increase in the Consumer Price Index for the previous year.~~
2538 An individual physician, hospital, ambulatory surgical center,
2539 pain program, or work-hardening program shall be reimbursed
2540 either ~~the usual and customary charge for treatment, care, and~~
2541 ~~attendance,~~ the agreed-upon contract price, or the maximum
2542 reimbursement allowance in the appropriate schedule, ~~whichever~~
2543 ~~is less.~~

2544 (b) It is the intent of the Legislature to increase the
2545 schedule of maximum reimbursement allowances for selected
2546 physicians effective January 1, 2004, and to pay for the
2547 increases through reductions in payments to hospitals. Revisions
2548 developed pursuant to this subsection are limited to the
2549 following:

2550 1. Payments for outpatient physical, occupational, and
2551 speech therapy provided by hospitals shall be reduced to the
2552 schedule of maximum reimbursement allowances for these services
2553 which applies to nonhospital providers.

2554 2. Payments for scheduled outpatient nonemergency
2555 radiological and clinical laboratory services that are not



2556 provided in conjunction with a surgical procedure shall be
2557 reduced to the schedule of maximum reimbursement allowances for
2558 these services which applies to nonhospital providers.

2559 3. Outpatient reimbursement for scheduled surgeries shall
2560 be reduced from 75 percent of charges to 60 percent of charges.

2561 4. Maximum reimbursement for a physician licensed under
2562 chapter 458 or chapter 459 shall be increased to 110 percent of
2563 the reimbursement allowed by Medicare, using appropriate codes
2564 and modifiers or the medical reimbursement level adopted by the
2565 three-member panel as of January 1, 2003, whichever is greater.

2566 5. Maximum reimbursement for surgical procedures shall be
2567 increased to 140 percent of the reimbursement allowed by
2568 Medicare or the medical reimbursement level adopted by the
2569 three-member panel as of January 1, 2003, whichever is greater.

2570 (c)(b) As to reimbursement for a prescription medication,
2571 the reimbursement amount for a prescription shall be the average
2572 wholesale price ~~times 1.2~~ plus \$2 ~~\$4.18~~ for the dispensing fee,
2573 except where the carrier has contracted for a lower amount. Fees
2574 for pharmaceuticals and pharmaceutical services shall be
2575 reimbursable at the applicable fee schedule amount. Where the
2576 employer or carrier has contracted for such services and the
2577 employee elects to obtain them through a provider not a party to
2578 the contract, the carrier shall reimburse at the schedule,
2579 negotiated, or contract price, whichever is lower. No such
2580 contract shall rely on a provider that is not reasonably
2581 accessible to the employee.

2582 (d)(e) Reimbursement for all fees and other charges for
2583 such treatment, care, and attendance, including treatment, care,



2584 and attendance provided by any hospital or other health care
2585 provider, ambulatory surgical center, work-hardening program, or
2586 pain program, must not exceed the amounts provided by the
2587 uniform schedule of maximum reimbursement allowances as
2588 determined by the panel or as otherwise provided in this
2589 section. This subsection also applies to independent medical
2590 examinations performed by health care providers under this
2591 chapter. ~~Until the three-member panel approves a uniform~~
2592 ~~schedule of maximum reimbursement allowances and it becomes~~
2593 ~~effective, all compensable charges for treatment, care, and~~
2594 ~~attendance provided by physicians, ambulatory surgical centers,~~
2595 ~~work-hardening programs, or pain programs shall be reimbursed at~~
2596 ~~the lowest maximum reimbursement allowance across all 1992~~
2597 ~~schedules of maximum reimbursement allowances for the services~~
2598 ~~provided regardless of the place of service.~~ In determining the
2599 uniform schedule, the panel shall first approve the data which
2600 it finds representative of prevailing charges in the state for
2601 similar treatment, care, and attendance of injured persons. Each
2602 health care provider, health care facility, ambulatory surgical
2603 center, work-hardening program, or pain program receiving
2604 workers' compensation payments shall maintain records verifying
2605 their usual charges. In establishing the uniform schedule of
2606 maximum reimbursement allowances, the panel must consider:

- 2607 1. The levels of reimbursement for similar treatment,
2608 care, and attendance made by other health care programs or
2609 third-party providers;
- 2610 2. The impact upon cost to employers for providing a level
2611 of reimbursement for treatment, care, and attendance which will



2612 ensure the availability of treatment, care, and attendance
2613 required by injured workers;

2614 3. The financial impact of the reimbursement allowances
2615 upon health care providers and health care facilities, including
2616 trauma centers as defined in s. 395.4001, and its effect upon
2617 their ability to make available to injured workers such
2618 medically necessary remedial treatment, care, and attendance.
2619 The uniform schedule of maximum reimbursement allowances must be
2620 reasonable, must promote health care cost containment and
2621 efficiency with respect to the workers' compensation health care
2622 delivery system, and must be sufficient to ensure availability
2623 of such medically necessary remedial treatment, care, and
2624 attendance to injured workers; and

2625 4. The most recent average maximum allowable rate of
2626 increase for hospitals determined by the Health Care Board under
2627 chapter 408.

2628 (e)~~(d)~~ In addition to establishing the uniform schedule of
2629 maximum reimbursement allowances, the panel shall:

2630 1. Take testimony, receive records, and collect data to
2631 evaluate the adequacy of the workers' compensation fee schedule,
2632 nationally recognized fee schedules and alternative methods of
2633 reimbursement to certified health care providers and health care
2634 facilities for inpatient and outpatient treatment and care.

2635 2. Survey certified health care providers and health care
2636 facilities to determine the availability and accessibility of
2637 workers' compensation health care delivery systems for injured
2638 workers.



2639 3. Survey carriers to determine the estimated impact on
2640 carrier costs and workers' compensation premium rates by
2641 implementing changes to the carrier reimbursement schedule or
2642 implementing alternative reimbursement methods.

2643 4. Submit recommendations on or before January 1, 2003,
2644 and biennially thereafter, to the President of the Senate and
2645 the Speaker of the House of Representatives on methods to
2646 improve the workers' compensation health care delivery system.

2647
2648 The division shall provide data to the panel, including but not
2649 limited to, utilization trends in the workers' compensation
2650 health care delivery system. The division shall provide the
2651 panel with an annual report regarding the resolution of medical
2652 reimbursement disputes and any actions pursuant to s. 440.13(8).
2653 The division shall provide administrative support and service to
2654 the panel to the extent requested by the panel.

2655 (13) REMOVAL OF PHYSICIANS FROM LISTS OF THOSE AUTHORIZED
2656 TO RENDER MEDICAL CARE.--The agency shall remove from the list
2657 of physicians or facilities authorized to provide remedial
2658 treatment, care, and attendance under this chapter the name of
2659 any physician or facility found after reasonable investigation
2660 to have:

2661 (a) Engaged in professional or other misconduct or
2662 incompetency in connection with medical services rendered under
2663 this chapter;

2664 (b) Exceeded the limits of his or her or its professional
2665 competence in rendering medical care under this chapter, or to



2666 have made materially false statements regarding his or her or
2667 its qualifications in his or her application;

2668 (c) Failed to transmit copies of medical reports to the
2669 employer or carrier, or failed to submit full and truthful
2670 medical reports of all his or her or its findings to the
2671 employer or carrier as required under this chapter;

2672 (d) Solicited, or employed another to solicit for himself
2673 or herself or itself or for another, professional treatment,
2674 examination, or care of an injured employee in connection with
2675 any claim under this chapter;

2676 (e) Refused to appear before, or to answer upon request
2677 of, the agency or any duly authorized officer of the state, any
2678 legal question, or to produce any relevant book or paper
2679 concerning his or her conduct under any authorization granted to
2680 him or her under this chapter;

2681 (f) Self-referred in violation of this chapter or other
2682 laws of this state; or

2683 (g) Engaged in a pattern of practice of overutilization or
2684 a violation of this chapter or rules adopted by the agency,
2685 including failure to adhere to practice parameters and protocols
2686 established in accordance with this chapter.

2687 (14) PAYMENT OF MEDICAL FEES.--

2688 (a) Except for emergency care treatment, fees for medical
2689 services are payable only to a health care provider certified
2690 and authorized to render remedial treatment, care, or attendance
2691 under this chapter. Carriers shall pay, disallow, or deny
2692 payment to health care providers in the manner and at times set
2693 forth in this chapter. A health care provider may not collect or



2694 receive a fee from an injured employee within this state, except
2695 as otherwise provided by this chapter. Such providers have
2696 recourse against the employer or carrier for payment for
2697 services rendered in accordance with this chapter. Payment to
2698 health care providers or physicians shall be subject to the
2699 medical fee schedule and applicable practice parameters and
2700 protocols, regardless of whether the health care provider or
2701 claimant is asserting that the payment should be made.

2702 (b) Fees charged for remedial treatment, care, and
2703 attendance, except for independent medical examinations and
2704 consensus independent medical examinations, may not exceed the
2705 applicable fee schedules adopted under this chapter and
2706 department rule. Notwithstanding any other provision in this
2707 chapter, if a physician or health care provider specifically
2708 agrees in writing to follow identified procedures aimed at
2709 providing quality medical care to injured workers at reasonable
2710 costs, deviations from established fee schedules shall be
2711 permitted. Written agreements warranting deviations may include,
2712 but are not limited to, the timely scheduling of appointments
2713 for injured workers, participating in return-to-work programs
2714 with injured workers' employers, expediting the reporting of
2715 treatments provided to injured workers, and agreeing to
2716 continuing education, utilization review, quality assurance,
2717 precertification, and case management systems that are designed
2718 to provide needed treatment for injured workers.

2719 (c) Notwithstanding any other provision of this chapter,
2720 following overall maximum medical improvement from an injury
2721 compensable under this chapter, the employee is obligated to pay



2722 a copayment of \$10 per visit for medical services. The copayment
2723 shall not apply to emergency care provided to the employee.

2724 (15) PRACTICE PARAMETERS.--The practice parameters and
2725 protocols mandated under this chapter shall be the practice
2726 parameters and protocols adopted by the United States Agency for
2727 Healthcare Research and Quality in effect on January 1, 2003.

2728 ~~(a) The Agency for Health Care Administration, in~~
2729 ~~conjunction with the department and appropriate health~~
2730 ~~professional associations and health-related organizations shall~~
2731 ~~develop and may adopt by rule scientifically sound practice~~
2732 ~~parameters for medical procedures relevant to workers'~~
2733 ~~compensation claimants. Practice parameters developed under this~~
2734 ~~section must focus on identifying effective remedial treatments~~
2735 ~~and promoting the appropriate utilization of health care~~
2736 ~~resources. Priority must be given to those procedures that~~
2737 ~~involve the greatest utilization of resources either because~~
2738 ~~they are the most costly or because they are the most frequently~~
2739 ~~performed. Practice parameters for treatment of the 10 top~~
2740 ~~procedures associated with workers' compensation injuries~~
2741 ~~including the remedial treatment of lower-back injuries must be~~
2742 ~~developed by December 31, 1994.~~

2743 ~~(b) The guidelines may be initially based on guidelines~~
2744 ~~prepared by nationally recognized health care institutions and~~
2745 ~~professional organizations but should be tailored to meet the~~
2746 ~~workers' compensation goal of returning employees to full~~
2747 ~~employment as quickly as medically possible, taking into~~
2748 ~~consideration outcomes data collected from managed care~~



2749 ~~providers and any other inpatient and outpatient facilities~~
2750 ~~serving workers' compensation claimants.~~

2751 ~~(c) Procedures must be instituted which provide for the~~
2752 ~~periodic review and revision of practice parameters based on the~~
2753 ~~latest outcomes data, research findings, technological~~
2754 ~~advancements, and clinical experiences, at least once every 3~~
2755 ~~years.~~

2756 ~~(d) Practice parameters developed under this section must~~
2757 ~~be used by carriers and the agency in evaluating the~~
2758 ~~appropriateness and overutilization of medical services provided~~
2759 ~~to injured employees.~~

2760 (16) STANDARDS OF CARE.--The following standards of care
2761 shall be followed in providing medical care under this chapter:

2762 (a) Abnormal anatomical findings alone, in the absence of
2763 objective relevant medical findings, shall not be an indicator
2764 of injury or illness, a justification for the provision of
2765 remedial medical care or the assignment of restrictions, or a
2766 foundation for limitations.

2767 (b) At all times during evaluation and treatment, the
2768 provider shall act on the premise that returning to work is an
2769 integral part of the treatment plan. The goal of removing all
2770 restrictions and limitations as early as appropriate shall be
2771 part of the treatment plan on a continuous basis. The assignment
2772 of restrictions and limitations shall be reviewed with each
2773 patient exam and upon receipt of new information, such as
2774 progress reports from physical therapists and other providers.
2775 Consideration shall be given to upgrading or removing the



2776 restrictions and limitations with each patient exam, based upon
2777 the presence or absence of objective relevant medical findings.

2778 (c) Reasonable necessary medical care of injured employees
2779 shall in all situations:

2780 1. Utilize a high intensity, short duration treatment
2781 approach that focuses on early activation and restoration of
2782 function whenever possible.

2783 2. Include reassessment of the treatment plans, regimes,
2784 therapies, prescriptions, and functional limitations or
2785 restrictions prescribed by the provider every 30 days.

2786 3. Be focused on treatment of the individual employee's
2787 specific clinical dysfunction or status and shall not be based
2788 upon nondescript diagnostic labels.

2789

2790 All treatment shall be inherently scientifically logical and the
2791 evaluation or treatment procedure must match the documented
2792 physiologic and clinical problem. Treatment shall match the
2793 type, intensity, and duration of service required by the problem
2794 identified.

2795 (17) Failure to comply with this section shall be
2796 considered a violation of this chapter and is subject to
2797 penalties as provided for in s. 440.525.

2798 Section 16. Paragraphs (d) and (i) of subsection (1) and
2799 subsections (2), (6), (7), (8), (9), (10), (11), (17), and (25)
2800 of section 440.134, Florida Statutes, are amended to read:

2801 440.134 Workers' compensation managed care arrangement.--

2802 (1) As used in this section, the term:



2803 (d) "Grievance" means a written complaint, other than a
2804 petition for benefits, filed by the injured worker pursuant to
2805 the requirements of the managed care arrangement, expressing
2806 dissatisfaction with the ~~medical care provided by an insurer's~~
2807 workers' compensation managed care arrangement's refusal to
2808 provide medical care or the medical care provided arrangement
2809 ~~health care providers, expressed in writing by an injured~~
2810 ~~worker.~~

2811 (i) "Medical care coordinator" means a primary care
2812 provider within a provider network who is responsible for
2813 managing the medical care of an injured worker including
2814 determining other health care providers and health care
2815 facilities to which the injured employee will be referred for
2816 evaluation or treatment. A medical care coordinator shall be a
2817 physician licensed under chapter 458, ~~or~~ an osteopathic
2818 physician licensed under chapter 459, a chiropractic physician
2819 licensed under chapter 460, or a podiatric physician licensed
2820 under chapter 461.

2821 (2)(a) The self-insured employer or carrier may, subject
2822 to the terms and limitations specified elsewhere in this section
2823 and chapter, furnish to the employee solely through managed care
2824 arrangements such medically necessary remedial treatment, care,
2825 and attendance for such period as the nature of the injury or
2826 the process of recovery requires and which shall be in
2827 accordance with practice parameters and protocols established
2828 pursuant to this chapter. For any self-insured employer or
2829 carrier who elects to deliver the medical benefits required by
2830 this chapter through a method other than a workers' compensation



2831 managed care arrangement, the discontinuance of the use of the
2832 workers' compensation managed care arrangement shall be without
2833 regard to the date of the accident, notwithstanding any other
2834 provision of law or rule.

2835 (b) The agency shall authorize an insurer to offer or
2836 utilize a workers' compensation managed care arrangement after
2837 the insurer files a completed application along with the payment
2838 of a \$1,000 application fee, and upon the agency's being
2839 satisfied that the applicant has the ability to provide quality
2840 of care consistent with the prevailing professional standards of
2841 care and the insurer and its workers' compensation managed care
2842 arrangement otherwise meets the requirements of this section. No
2843 insurer may offer or utilize a managed care arrangement without
2844 such authorization. The authorization, unless sooner suspended
2845 or revoked, shall automatically expire 2 years after the date of
2846 issuance unless renewed by the insurer. The authorization shall
2847 be renewed upon application for renewal and payment of a renewal
2848 fee of \$1,000, provided that the insurer is in compliance with
2849 the requirements of this section and any rules adopted
2850 hereunder. An application for renewal of the authorization shall
2851 be made 90 days prior to expiration of the authorization, on
2852 forms provided by the agency. The renewal application shall not
2853 require the resubmission of any documents previously filed with
2854 the agency if such documents have remained valid and unchanged
2855 since their original filing.

2856 (6) The proposed managed care plan of operation must
2857 include:



2858 (a) A statement or map providing a clear description of
2859 the service area.

2860 (b) A description of the grievance procedure to be used.

2861 (c) A description of the quality assurance program which
2862 assures that the health care services provided to workers shall
2863 be rendered under reasonable standards of quality of care
2864 consistent with the prevailing standards of medical practice in
2865 the medical community. The program shall include, but not be
2866 limited to:

2867 1. A written statement of goals and objectives that
2868 stresses health and return-to-work outcomes as the principal
2869 criteria for the evaluation of the quality of care rendered to
2870 injured workers.

2871 2. A written statement describing how methodology has been
2872 incorporated into an ongoing system for monitoring of care that
2873 is individual case oriented and, when implemented, can provide
2874 interpretation and analysis of patterns of care rendered to
2875 individual patients by individual providers.

2876 3. Written procedures for taking appropriate remedial
2877 action whenever, as determined under the quality assurance
2878 program, inappropriate or substandard services have been
2879 provided or services that should have been furnished have not
2880 been provided.

2881 4. A written plan, which includes ongoing review, for
2882 providing review of physicians and other licensed medical
2883 providers.



2884 5. Appropriate financial incentives to reduce service
2885 costs and utilization without sacrificing the quality of
2886 service.

2887 6. Adequate methods of peer review and utilization review.
2888 The utilization review process shall include a health care
2889 facility's facilities precertification mechanism, including, but
2890 not limited to, all elective admissions and nonemergency
2891 surgeries and adherence to practice parameters and protocols
2892 established in accordance with this chapter.

2893 7. Provisions for resolution of disputes arising between a
2894 health care provider and an insurer regarding reimbursements and
2895 utilization review.

2896 8. Availability of a process for aggressive medical care
2897 coordination, as well as a program involving cooperative efforts
2898 by the workers, the employer, and the workers' compensation
2899 managed care arrangement to promote early return to work for
2900 injured workers.

2901 9. A written plan allowing for the independent medical
2902 examination provided for in s. 440.13(5). Notwithstanding any
2903 provision to the contrary, the costs for the independent medical
2904 examination shall be paid by the carrier if such examination is
2905 performed by a physician in the provider network. Otherwise,
2906 such costs shall be paid in accordance with s. 440.13(5). An
2907 independent medical examination requested by a claimant and paid
2908 for by the carrier shall constitute the claimant's one
2909 independent medical examination per accident under s. 440.13(5).
2910 ~~A process allowing employees to obtain one second medical~~



2911 ~~opinion in the same specialty and within the provider network~~
2912 ~~during the course of treatment for a work-related injury.~~

2913 10. A provision for the selection of a primary care
2914 provider by the employee from among primary providers in the
2915 provider network.

2916 11. The written information proposed to be used by the
2917 insurer to comply with subparagraph 8.

2918 (7) Written procedures to provide the insurer with timely
2919 medical records and information including, but not limited to,
2920 work status, work restrictions, date of maximum medical
2921 improvement, permanent impairment ratings, and other information
2922 as required, including information demonstrating compliance with
2923 the practice parameters and protocols of treatment established
2924 pursuant to this chapter.

2925 (8) Evidence that appropriate health care providers and
2926 administrative staff of the insurer's workers' compensation
2927 managed care arrangement have received training and education on
2928 the provisions of this chapter; ~~and~~ the administrative rules
2929 that govern the provision of remedial treatment, care, and
2930 attendance of injured workers; and the practice parameters and
2931 protocols of treatment established pursuant to this chapter.

2932 (9) Written procedures and methods to prevent
2933 inappropriate or excessive treatment that are in accordance with
2934 the practice parameters and protocols of treatment established
2935 pursuant to this chapter.

2936 (10) Written procedures and methods for the management of
2937 an injured worker's medical care by a medical care coordinator
2938 including:



2939 (a) The mechanism for assuring that covered employees
2940 receive all initial covered services from a primary care
2941 provider participating in the provider network, except for
2942 emergency care.

2943 (b) The mechanism for assuring that all continuing covered
2944 services be received from the same primary care provider
2945 participating in the provider network that provided the initial
2946 covered services, except when services from another provider are
2947 authorized by the medical care coordinator pursuant to paragraph
2948 (d).

2949 (c) The policies and procedures for allowing an employee
2950 one change to another provider within the ~~same specialty and~~
2951 provider network as the authorized treating physician during the
2952 course of treatment for a work-related injury, in accordance
2953 with the procedures provided in s. 440.13(2)(f), ~~if a request is~~
2954 ~~made to the medical care coordinator by the employee; and~~
2955 ~~requiring that special provision be made for more than one such~~
2956 ~~referral through the arrangement's grievance procedures.~~

2957 (d) The process for assuring that all referrals authorized
2958 by a medical care coordinator, in accordance with the practice
2959 parameters and protocols of treatment established pursuant to
2960 this chapter, are made to the participating network providers,
2961 unless medically necessary treatment, care, and attendance are
2962 not available and accessible to the injured worker in the
2963 provider network.

2964 (e) Assignment of a medical care coordinator licensed
2965 under chapter 458 or chapter 459 to manage care by physicians
2966 licensed under chapter 458 or chapter 459, a medical care



2967 coordinator licensed under chapter 460 to manage care by
2968 physicians licensed under chapter 460, and a medical care
2969 coordinator licensed under chapter 461 to manage care by
2970 physicians licensed under chapter 461 upon request by an injured
2971 employee for care by a physician licensed under chapter 458,
2972 chapter 459, chapter 460, or chapter 461.

2973 (11) A description of the use of workers' compensation
2974 practice parameters and protocols of treatment for health care
2975 services ~~when adopted by the agency.~~

2976 (17) Notwithstanding any other provisions of this chapter,
2977 when a carrier provides medical care through a workers'
2978 compensation managed care arrangement, pursuant to this section,
2979 those workers who are subject to the arrangement must receive
2980 medical services for work-related injuries and diseases as
2981 prescribed in the contract, provided the employer and carrier
2982 have provided notice to the employees of the arrangement in a
2983 manner approved by the agency and the medical services are in
2984 accordance with the practice parameters and protocols
2985 established pursuant to this chapter. Treatment received outside
2986 the workers' compensation managed care arrangement is not
2987 compensable, regardless of the purpose of the treatment,
2988 including, but not limited to, evaluations, examinations, or
2989 diagnostic studies to determine causation between medical
2990 findings and a compensable accident, the existence or extent of
2991 impairments or disabilities, and whether the injured employee
2992 has reached maximum medical improvement, unless authorized by
2993 the carrier prior to the treatment date.

2994 (25) The agency shall adopt rules that specify:



2995 (a) Procedures for authorization and examination of
2996 workers' compensation managed care arrangements by the agency.

2997 (b) Requirements and procedures for authorization of
2998 workers' compensation arrangement provider networks and
2999 procedures for the agency to grant exceptions from accessibility
3000 of services.

3001 (c) Requirements and procedures for case management,
3002 utilization management, and peer review.

3003 (d) Requirements and procedures for quality assurance and
3004 medical records.

3005 (e) Requirements and procedures for dispute resolution in
3006 conformance with this chapter.

3007 (f) Requirements and procedures for employee and provider
3008 education.

3009 (g) Requirements and procedures for reporting data
3010 regarding grievances, return-to-work outcomes, and provider
3011 networks.

3012 Section 17. Subsections (1) and (4) and paragraph (b) of
3013 subsection (5) of section 440.14, Florida Statutes, are amended
3014 to read:

3015 440.14 Determination of pay.--

3016 (1) Except as otherwise provided in this chapter, the
3017 average weekly wages of the injured employee on the date of the
3018 accident ~~at the time of the injury~~ shall be taken as the basis
3019 upon which to compute compensation and shall be determined,
3020 subject to the limitations of s. 440.12(2), as follows:

3021 (a) If the injured employee has worked in the employment
3022 in which she or he was working on the date of the accident ~~at~~



3023 ~~the time of the injury~~, whether for the same or another
3024 employer, during substantially the whole of 13 weeks immediately
3025 preceding the accident injury, her or his average weekly wage
3026 shall be one-thirteenth of the total amount of wages earned in
3027 such employment during the 13 weeks. As used in this paragraph,
3028 the term "substantially the whole of 13 weeks" means the
3029 calendar ~~shall be deemed to mean and refer to a constructive~~
3030 period of 13 weeks as a whole, which shall be defined as the 13
3031 calendar weeks before the date of the accident, excluding the
3032 week during which the accident occurred. ~~a consecutive period of~~
3033 ~~91 days, and~~ The term "during substantially the whole of 13
3034 weeks" shall be deemed to mean during not less than 75 ~~90~~
3035 percent of the total customary ~~full-time~~ hours of employment
3036 within such period considered as a whole.

3037 (b) If the injured employee has not worked in such
3038 employment during substantially the whole of 13 weeks
3039 immediately preceding the accident injury, the wages of a
3040 similar employee in the same employment who has worked
3041 substantially the whole of such 13 weeks shall be used in making
3042 the determination under the preceding paragraph.

3043 (c) If an employee is a seasonal worker and the foregoing
3044 method cannot be fairly applied in determining the average
3045 weekly wage, then the employee may use, instead of the 13 weeks
3046 immediately preceding the accident injury, the calendar year or
3047 the 52 weeks immediately preceding the accident injury. The
3048 employee will have the burden of proving that this method will
3049 be more reasonable and fairer than the method set forth in
3050 paragraphs (a) and (b) and, further, must document prior



3051 earnings with W-2 forms, written wage statements, or income tax
3052 returns. The employer shall have 30 days following the receipt
3053 of this written proof to adjust the compensation rate, including
3054 the making of any additional payment due for prior weekly
3055 payments, based on the lower rate compensation.

3056 (d) If any of the foregoing methods cannot reasonably and
3057 fairly be applied, the full-time weekly wages of the injured
3058 employee shall be used, except as otherwise provided in
3059 paragraph (e) or paragraph (f).

3060 (e) If it is established that the injured employee was
3061 under 22 years of age when the accident occurred ~~injured~~ and
3062 that under normal conditions her or his wages should be expected
3063 to increase during the period of disability, the fact may be
3064 considered in arriving at her or his average weekly wages.

3065 (f) If it is established that the injured employee was a
3066 part-time worker on the date of the accident ~~at the time of the~~
3067 ~~injury~~, that she or he had adopted part-time employment as a
3068 customary practice, and that under normal working conditions she
3069 or he probably would have remained a part-time worker during the
3070 period of disability, these factors shall be considered in
3071 arriving at her or his average weekly wages. For the purpose of
3072 this paragraph, the term "part-time worker" means an individual
3073 who customarily works less than the full-time hours or full-time
3074 workweek of a similar employee in the same employment.

3075 (g) If compensation is due for a fractional part of the
3076 week, the compensation for such fractional part shall be
3077 determined by dividing the weekly compensation rate by the



3078 number of days employed per week to compute the amount due for
3079 each day.

3080 (4) Upon termination of the employee or upon termination
3081 of the payment of fringe benefits of any employee who is
3082 collecting indemnity benefits pursuant to s. 440.15(2) or
3083 (3)~~(b)~~, the employer shall within 7 days of such termination
3084 file a corrected 13-week wage statement reflecting the wages
3085 paid and the fringe benefits that had been paid to the injured
3086 employee, as provided in s. 440.02(27).

3087 (5)

3088 (b) The employee waives any entitlement to interest,
3089 penalties, and attorney's fees during the period in which the
3090 employee has not provided information concerning the loss of
3091 earnings from concurrent employment. Carriers are not subject to
3092 penalties by the division under s. 440.20(8)(b) ~~and (c)~~ for
3093 unpaid compensation related to concurrent employment during the
3094 period in which the employee has not provided information
3095 concerning the loss of earnings from concurrent employment.

3096 Section 18. Section 440.15, Florida Statutes, is amended
3097 to read:

3098 440.15 Compensation for disability.--Compensation for
3099 disability shall be paid to the employee, subject to the limits
3100 provided in s. 440.12(2), as follows:

3101 (1) PERMANENT TOTAL DISABILITY.--

3102 (a) In case of total disability adjudged to be permanent,
3103 66 2/3 percent of the average weekly wages shall be paid to the
3104 employee during the continuance of such total disability.



3105 (b) ~~Only~~ A catastrophic injury as defined in s. 440.02(38)
3106 shall, in the absence of conclusive proof of a substantial
3107 earning capacity, constitute permanent total disability. In all
3108 other cases, no compensation shall be payable under paragraph
3109 (a) if the employee is engaged in, or is physically capable of
3110 engaging in at least sedentary employment. In order to obtain
3111 permanent total disability benefits, the employee must establish
3112 that he or she is not able uninterruptedly to engage in at least
3113 sedentary employment, within a 50-mile radius of the employee's
3114 residence, due to his or her physical limitation. Such benefits
3115 shall be payable until the employee reaches age 75,
3116 notwithstanding any age limits. If the accident occurred on or
3117 after the employee reaches age 70, benefits shall be payable
3118 during the continuance of permanent total disability, not to
3119 exceed 5 years following the determination of permanent total
3120 disability. Only claimants with catastrophic injuries or
3121 claimants who are incapable of engaging in employment, as
3122 described in this paragraph, are eligible for permanent total
3123 benefits. In no other case may permanent total disability be
3124 awarded.

3125 (c) In cases of permanent total disability resulting from
3126 injuries that occurred prior to July 1, 1955, such payments
3127 shall not be made in excess of 700 weeks.

3128 (d) If an employee who is being paid compensation for
3129 permanent total disability becomes rehabilitated to the extent
3130 that she or he establishes an earning capacity, the employee
3131 shall be paid, instead of the compensation provided in paragraph
3132 (a), benefits pursuant to subsection (3). The department shall



3133 adopt rules to enable a permanently and totally disabled
3134 employee who may have reestablished an earning capacity to
3135 undertake a trial period of reemployment without prejudicing her
3136 or his return to permanent total status in the case that such
3137 employee is unable to sustain an earning capacity.

3138 (e)1. The employer's or carrier's right to conduct
3139 vocational evaluations or testing by the employer's or carrier's
3140 chosen rehabilitation advisor or provider pursuant to s. 440.491
3141 continues even after the employee has been accepted or
3142 adjudicated as entitled to compensation under this chapter and
3143 costs for such evaluations and testing shall be borne by the
3144 employer or carrier, respectively. This right includes, but is
3145 not limited to, instances in which such evaluations or tests are
3146 recommended by a treating physician or independent medical-
3147 examination physician, instances warranted by a change in the
3148 employee's medical condition, or instances in which the employee
3149 appears to be making appropriate progress in recuperation. This
3150 right may not be exercised more than once every calendar year.

3151 2. The carrier must confirm the scheduling of the
3152 vocational evaluation or testing in writing, and must notify the
3153 employee and the employee's counsel, if any, at least 7 days
3154 before the date on which vocational evaluation or testing is
3155 scheduled to occur.

3156 3. ~~Pursuant to an order of the judge of compensation~~
3157 ~~claims~~, The employer or carrier may withhold payment of benefits
3158 for permanent total disability or supplements for any period
3159 during which the employee willfully fails or refuses to appear



3160 without good cause for the scheduled vocational evaluation or
3161 testing.

3162 (f)1. If permanent total disability results from injuries
3163 that occurred subsequent to June 30, 1955, and for which the
3164 liability of the employer for compensation has not been
3165 discharged under s. 440.20(11), the injured employee shall
3166 receive additional weekly compensation benefits equal to 3 5
3167 percent of her or his weekly compensation rate, as established
3168 pursuant to the law in effect on the date of her or his injury,
3169 multiplied by the number of calendar years since the date of
3170 injury. The weekly compensation payable and the additional
3171 benefits payable under this paragraph, when combined, may not
3172 exceed the maximum weekly compensation rate in effect at the
3173 time of payment as determined pursuant to s. 440.12(2).

3174 ~~Entitlement to~~ These supplemental payments shall not be paid or
3175 payable after the employee attains ~~cease at~~ age 62, regardless
3176 of whether ~~if~~ the employee has applied for or is eligible to
3177 apply is eligible for social security benefits under 42 U.S.C.
3178 ss. 402 and 423, ~~whether or not the employee has applied for~~
3179 ~~such benefits~~. These supplemental benefits shall be paid by the
3180 department out of the Workers' Compensation Administration Trust
3181 Fund when the injury occurred subsequent to June 30, 1955, and
3182 before July 1, 1984. These supplemental benefits shall be paid
3183 by the employer when the injury occurred on or after July 1,
3184 1984. Supplemental benefits are not payable for any period prior
3185 to October 1, 1974.

3186 2.a. The department shall provide by rule for the periodic
3187 reporting to the department of all earnings of any nature and



3188 social security income by the injured employee entitled to or
3189 claiming additional compensation under subparagraph 1. Neither
3190 the department nor the employer or carrier shall make any
3191 payment of those additional benefits provided by subparagraph 1.
3192 for any period during which the employee willfully fails or
3193 refuses to report upon request by the department in the manner
3194 prescribed by such rules.

3195 b. The department shall provide by rule for the periodic
3196 reporting to the employer or carrier of all earnings of any
3197 nature and social security income by the injured employee
3198 entitled to or claiming benefits for permanent total disability.
3199 The employer or carrier is not required to make any payment of
3200 benefits for permanent total disability for any period during
3201 which the employee willfully fails or refuses to report upon
3202 request by the employer or carrier in the manner prescribed by
3203 such rules or if any employee who is receiving permanent total
3204 disability benefits refuses to apply for or cooperate with the
3205 employer or carrier in applying for social security benefits.

3206 3. When an injured employee receives a full or partial
3207 lump-sum advance of the employee's permanent total disability
3208 compensation benefits, the employee's benefits under this
3209 paragraph shall be computed on the employee's weekly
3210 compensation rate as reduced by the lump-sum advance.

3211 (2) TEMPORARY TOTAL DISABILITY.--

3212 (a) Subject to subsection (7), in case of disability total
3213 in character but temporary in quality, 66 2/3 percent of the
3214 average weekly wages shall be paid to the employee during the
3215 continuance thereof, not to exceed 104 weeks except as provided



3216 in this subsection, s. 440.12(1), and s. 440.14(3). Once the
3217 employee reaches the maximum number of weeks allowed, or the
3218 employee reaches the date of maximum medical improvement,
3219 whichever occurs earlier, temporary disability benefits shall
3220 cease and the injured worker's permanent impairment shall be
3221 determined.

3222 (b) Notwithstanding the provisions of paragraph (a), an
3223 employee who has sustained the loss of an arm, leg, hand, or
3224 foot, has been rendered a paraplegic, paraparetic, quadriplegic,
3225 or quadriparetic, or has lost the sight of both eyes shall be
3226 paid temporary total disability of 80 percent of her or his
3227 average weekly wage. The increased temporary total disability
3228 compensation provided for in this paragraph must not extend
3229 beyond 6 months from the date of the accident; however, such
3230 benefits shall not be due or payable if the employee is eligible
3231 for, entitled to, or collecting permanent total disability
3232 benefits. The compensation provided by this paragraph is not
3233 subject to the limits provided in s. 440.12(2), but instead is
3234 subject to a maximum weekly compensation rate of \$700. If, at
3235 the conclusion of this period of increased temporary total
3236 disability compensation, the employee is still temporarily
3237 totally disabled, the employee shall continue to receive
3238 temporary total disability compensation as set forth in
3239 paragraphs (a) and (c). The period of time the employee has
3240 received this increased compensation will be counted as part of,
3241 and not in addition to, the maximum periods of time for which
3242 the employee is entitled to compensation under paragraph (a) but
3243 not paragraph (c).



3244 (c) Temporary total disability benefits paid pursuant to
3245 this subsection shall include such period as may be reasonably
3246 necessary for training in the use of artificial members and
3247 appliances, and shall include such period as the employee may be
3248 receiving training and education under a program pursuant to s.
3249 440.491. ~~Notwithstanding s. 440.02, the date of maximum medical~~
3250 ~~improvement for purposes of paragraph (3)(b) shall be no earlier~~
3251 ~~than the last day for which such temporary disability benefits~~
3252 ~~are paid.~~

3253 (d) The department shall, by rule, provide for the
3254 periodic reporting to the department, employer, or carrier of
3255 all earned income, including income from social security, by the
3256 injured employee who is entitled to or claiming benefits for
3257 temporary total disability. The employer or carrier is not
3258 required to make any payment of benefits for temporary total
3259 disability for any period during which the employee willfully
3260 fails or refuses to report upon request by the employer or
3261 carrier in the manner prescribed by the rules. The rule must
3262 require the claimant to personally sign the claim form and
3263 attest that she or he has reviewed, understands, and
3264 acknowledges the foregoing.

3265 (3) PERMANENT IMPAIRMENT ~~AND WAGE-LOSS~~ BENEFITS.--

3266 (a) ~~Impairment benefits.~~

3267 ~~1.~~ Once the employee has reached the date of maximum
3268 medical improvement, impairment benefits are due and payable
3269 within 14 ~~20~~ days after the carrier has knowledge of the
3270 impairment.



3271 (b)2- The three-member panel, in cooperation with the
3272 department, shall establish and use a uniform permanent
3273 impairment rating schedule. This schedule must be based on
3274 medically or scientifically demonstrable findings as well as the
3275 systems and criteria set forth in the American Medical
3276 Association's Guides to the Evaluation of Permanent Impairment;
3277 the Snellen Charts, published by American Medical Association
3278 Committee for Eye Injuries; and the Minnesota Department of
3279 Labor and Industry Disability Schedules. The schedule must
3280 ~~should~~ be based upon objective findings. The schedule shall be
3281 more comprehensive than the AMA Guides to the Evaluation of
3282 Permanent Impairment and shall expand the areas already
3283 addressed and address additional areas not currently contained
3284 in the guides. On August 1, 1979, and pending the adoption, by
3285 rule, of a permanent schedule, Guides to the Evaluation of
3286 Permanent Impairment, copyright 1977, 1971, 1988, by the
3287 American Medical Association, shall be the temporary schedule
3288 and shall be used for the purposes hereof. For injuries after
3289 July 1, 1990, pending the adoption by rule of a uniform
3290 disability rating agency schedule, the Minnesota Department of
3291 Labor and Industry Disability Schedule shall be used unless that
3292 schedule does not address an injury. In such case, the Guides to
3293 the Evaluation of Permanent Impairment by the American Medical
3294 Association shall be used. Determination of permanent impairment
3295 under this schedule must be made by a physician licensed under
3296 chapter 458, a doctor of osteopathic medicine licensed under
3297 chapters 458 and 459, a chiropractic physician licensed under
3298 chapter 460, a podiatric physician licensed under chapter 461,



3299 an optometrist licensed under chapter 463, or a dentist licensed
3300 under chapter 466, as appropriate considering the nature of the
3301 injury. No other persons are authorized to render opinions
3302 regarding the existence of or the extent of permanent
3303 impairment.

3304 (c)3- All impairment income benefits shall be based on an
3305 impairment rating using the impairment schedule referred to in
3306 paragraph (b) subparagraph 2. Impairment income benefits are
3307 paid biweekly ~~weekly~~ at the rate of 75 ~~50~~ percent of the
3308 employee's average weekly temporary total disability benefit not
3309 to exceed the maximum weekly benefit under s. 440.12; provided,
3310 however, that such benefits shall be reduced by 50 percent for
3311 each week in which the employee has earned income equal to or in
3312 excess of the employee's average weekly wage. An employee's
3313 entitlement to impairment income benefits begins the day after
3314 the employee reaches maximum medical improvement or the
3315 expiration of temporary benefits, whichever occurs earlier, and
3316 continues until the earlier of:

3317 1.a- The expiration of a period computed at the rate of 3
3318 weeks for each percentage point of impairment; or

3319 2.b- The death of the employee.

3320

3321 Impairment income benefits as defined by this subsection are
3322 payable only for impairment ratings for physical impairments. If
3323 objective medical findings can substantiate a permanent
3324 psychiatric impairment resulting from the accident, permanent
3325 impairment benefits are limited for the permanent psychiatric
3326 impairment to 1-percent permanent impairment.



3327 (d)4. After the employee has been certified by a doctor as
3328 having reached maximum medical improvement or 6 weeks before the
3329 expiration of temporary benefits, whichever occurs earlier, the
3330 certifying doctor shall evaluate the condition of the employee
3331 and assign an impairment rating, using the impairment schedule
3332 referred to in paragraph (b) subparagraph 2. ~~Compensation is not~~
3333 ~~payable for the mental, psychological, or emotional injury~~
3334 ~~arising out of depression from being out of work.~~ If the
3335 certification and evaluation are performed by a doctor other
3336 than the employee's treating doctor, the certification and
3337 evaluation must be submitted to the treating doctor, the
3338 employee, and the carrier within 10 days after the evaluation.
3339 ~~and~~ The treating doctor must indicate to the carrier agreement
3340 or disagreement with the other doctor's certification and
3341 evaluation.

3342 1. The certifying doctor shall issue a written report to
3343 the ~~department, the employee,~~ and the carrier certifying that
3344 maximum medical improvement has been reached, stating the
3345 impairment rating to the body as a whole, and providing any
3346 other information required by the department by rule. The
3347 carrier shall establish an overall maximum medical improvement
3348 date and permanent impairment rating, based upon all such
3349 reports.

3350 2. Within 14 days after the carrier's knowledge of each
3351 maximum medical improvement date and impairment rating to the
3352 body as a whole upon which the carrier is paying benefits, the
3353 carrier shall report such maximum medical improvement date and,
3354 when determined, the overall maximum medical improvement date



3355 and associated impairment rating to the department in a format
3356 as set forth in department rule. If the employee has not been
3357 certified as having reached maximum medical improvement before
3358 the expiration of 98 ~~102~~ weeks after the date temporary ~~total~~
3359 disability benefits begin to accrue, the carrier shall notify
3360 the treating doctor of the requirements of this section.

3361 (e)~~5~~. The carrier shall pay the employee impairment income
3362 benefits for a period based on the impairment rating.

3363 (f)~~6~~. The department may by rule specify forms and
3364 procedures governing the method of payment of ~~wage loss and~~
3365 ~~impairment benefits under this section for dates of accidents~~
3366 ~~before January 1, 1994, and for dates of accidents on or after~~
3367 ~~January 1, 1994.~~

3368 ~~(b) Supplemental benefits.--~~

3369 ~~1. All supplemental benefits must be paid in accordance~~
3370 ~~with this subsection. An employee is entitled to supplemental~~
3371 ~~benefits as provided in this paragraph as of the expiration of~~
3372 ~~the impairment period, if:~~

3373 ~~a. The employee has an impairment rating from the~~
3374 ~~compensable injury of 20 percent or more as determined pursuant~~
3375 ~~to this chapter;~~

3376 ~~b. The employee has not returned to work or has returned~~
3377 ~~to work earning less than 80 percent of the employee's average~~
3378 ~~weekly wage as a direct result of the employee's impairment; and~~

3379 ~~c. The employee has in good faith attempted to obtain~~
3380 ~~employment commensurate with the employee's ability to work.~~

3381 ~~2. If an employee is not entitled to supplemental benefits~~
3382 ~~at the time of payment of the final weekly impairment income~~



3383 ~~benefit because the employee is earning at least 80 percent of~~
3384 ~~the employee's average weekly wage, the employee may become~~
3385 ~~entitled to supplemental benefits at any time within 1 year~~
3386 ~~after the impairment income benefit period ends if:~~

3387 ~~a. The employee earns wages that are less than 80 percent~~
3388 ~~of the employee's average weekly wage for a period of at least~~
3389 ~~90 days;~~

3390 ~~b. The employee meets the other requirements of~~
3391 ~~subparagraph 1.; and~~

3392 ~~c. The employee's decrease in earnings is a direct result~~
3393 ~~of the employee's impairment from the compensable injury.~~

3394 ~~3. If an employee earns wages that are at least 80 percent~~
3395 ~~of the employee's average weekly wage for a period of at least~~
3396 ~~90 days during which the employee is receiving supplemental~~
3397 ~~benefits, the employee ceases to be entitled to supplemental~~
3398 ~~benefits for the filing period. Supplemental benefits that have~~
3399 ~~been terminated shall be reinstated when the employee satisfies~~
3400 ~~the conditions enumerated in subparagraph 2. and files the~~
3401 ~~statement required under subparagraph 4. Notwithstanding any~~
3402 ~~other provision, if an employee is not entitled to supplemental~~
3403 ~~benefits for 12 consecutive months, the employee ceases to be~~
3404 ~~entitled to any additional income benefits for the compensable~~
3405 ~~injury. If the employee is discharged within 12 months after~~
3406 ~~losing entitlement under this subsection, benefits may be~~
3407 ~~reinstated if the employee was discharged at that time with the~~
3408 ~~intent to deprive the employee of supplemental benefits.~~

3409 ~~4. After the initial determination of supplemental~~
3410 ~~benefits, the employee must file a statement with the carrier~~



3411 ~~stating that the employee has earned less than 80 percent of the~~
3412 ~~employee's average weekly wage as a direct result of the~~
3413 ~~employee's impairment, stating the amount of wages the employee~~
3414 ~~earned in the filing period, and stating that the employee has~~
3415 ~~in good faith sought employment commensurate with the employee's~~
3416 ~~ability to work. The statement must be filed quarterly on a form~~
3417 ~~and in the manner prescribed by the department. The department~~
3418 ~~may modify the filing period as appropriate to an individual~~
3419 ~~case. Failure to file a statement relieves the carrier of~~
3420 ~~liability for supplemental benefits for the period during which~~
3421 ~~a statement is not filed.~~

3422 ~~5. The carrier shall begin payment of supplemental~~
3423 ~~benefits not later than the seventh day after the expiration~~
3424 ~~date of the impairment income benefit period and shall continue~~
3425 ~~to timely pay those benefits. The carrier may request a~~
3426 ~~mediation conference for the purpose of contesting the~~
3427 ~~employee's entitlement to or the amount of supplemental income~~
3428 ~~benefits.~~

3429 ~~6. Supplemental benefits are calculated quarterly and paid~~
3430 ~~monthly. For purposes of calculating supplemental benefits, 80~~
3431 ~~percent of the employee's average weekly wage and the average~~
3432 ~~wages the employee has earned per week are compared quarterly.~~
3433 ~~For purposes of this paragraph, if the employee is offered a~~
3434 ~~bona fide position of employment that the employee is capable of~~
3435 ~~performing, given the physical condition of the employee and the~~
3436 ~~geographic accessibility of the position, the employee's weekly~~
3437 ~~wages are considered equivalent to the weekly wages for the~~
3438 ~~position offered to the employee.~~



3439 ~~7. Supplemental benefits are payable at the rate of 80~~
3440 ~~percent of the difference between 80 percent of the employee's~~
3441 ~~average weekly wage determined pursuant to s. 440.14 and the~~
3442 ~~weekly wages the employee has earned during the reporting~~
3443 ~~period, not to exceed the maximum weekly income benefit under s.~~
3444 ~~440.12.~~

3445 ~~8. The department may by rule define terms that are~~
3446 ~~necessary for the administration of this section and forms and~~
3447 ~~procedures governing the method of payment of supplemental~~
3448 ~~benefits for dates of accidents before January 1, 1994, and for~~
3449 ~~dates of accidents on or after January 1, 1994.~~

3450 ~~(c) Duration of temporary impairment and supplemental~~
3451 ~~income benefits. The employee's eligibility for temporary~~
3452 ~~benefits, impairment income benefits, and supplemental benefits~~
3453 ~~terminates on the expiration of 401 weeks after the date of~~
3454 ~~injury.~~

3455 (g) Notwithstanding paragraph (c), for accidents occurring
3456 on or after October 1, 2003, an employee's entitlement to
3457 impairment income benefits begins the day after the employee
3458 reaches maximum medical improvement or the expiration of
3459 temporary benefits, whichever occurs earlier, and continues for
3460 the following periods:

3461 1. Two weeks of benefits are to be paid to the employee
3462 for each percentage point of impairment from 1 percent up to and
3463 including 10 percent.

3464 2. For each percentage point of impairment from 11 percent
3465 up to and including 15 percent, 3 weeks of benefits are to be
3466 paid.



3467 3. For each percentage point of impairment from 16 percent
3468 up to and including 20 percent, 4 weeks of benefits are to be
3469 paid.

3470 4. For each percentage point of impairment from 21 percent
3471 and higher, 6 weeks of benefits are to be paid.

3472 (4) TEMPORARY PARTIAL DISABILITY.--

3473 (a) Subject to subsection (7), in case of temporary
3474 partial disability, compensation shall be equal to 80 percent of
3475 the difference between 80 percent of the employee's average
3476 weekly wage and the salary, wages, and other remuneration the
3477 employee is able to earn post injury, as compared weekly;
3478 however, ~~the weekly~~ temporary partial disability benefits may
3479 not exceed an amount equal to 66 2/3 percent of the employee's
3480 average weekly wage at the time of accident injury. In order to
3481 simplify the comparison of the preinjury average weekly wage
3482 with the salary, wages, and other remuneration the employee is
3483 able to earn post injury, the department may by rule provide for
3484 payment of the initial installment of temporary partial
3485 disability benefits to be paid as a partial week so that payment
3486 for remaining weeks of temporary partial disability can ~~the~~
3487 ~~modification of the weekly comparison so as to~~ coincide as
3488 closely as possible with the post injury employer's work week
3489 ~~injured worker's pay periods~~. The amount determined to be the
3490 salary, wages, and other remuneration the employee is able to
3491 earn shall in no case be less than the sum actually being earned
3492 by the employee, including earnings from sheltered employment.
3493 Benefits shall be payable under this subsection only if overall
3494 maximum medical improvement has not been reached and the medical



3495 conditions resulting from the accident create restrictions on
3496 the injured employee's ability to return to work.

3497 (b) Within 5 business days after the carrier's knowledge
3498 of the employee's release to restricted work, the carrier shall
3499 mail to the employee and employer an informational letter,
3500 adopted by department rule, explaining the employee's possible
3501 eligibility and responsibilities for temporary partial
3502 disability benefits.

3503 (c) When an employee returns to work with the restrictions
3504 resulting from the accident and is earning wages less than 80
3505 percent of the preinjury average weekly wage, the first
3506 installment of temporary partial disability benefits is due 7
3507 days after the last date of the post injury employer's first
3508 biweekly work week. Thereafter, payment for temporary partial
3509 benefits shall be paid biweekly no later than the 7th day
3510 following the last day of each biweekly work week.

3511 (d) If the employee is unable to return to work with the
3512 restrictions resulting from the accident and is not earning
3513 wages, salary, or other remuneration, temporary partial
3514 disability benefits shall be paid no later than the last day of
3515 each biweekly period. The employee shall notify the carrier
3516 within 5 business days after returning to work. Failure to
3517 notify the carrier of the establishment of an earning capacity
3518 in the required time shall result in a suspension or nonpayment
3519 of temporary partial disability benefits until the proper
3520 notification is provided.

3521 (e)~~(b)~~ Such benefits shall be paid during the continuance
3522 of such disability, not to exceed a period of 104 weeks, as



3523 provided by this subsection and subsection (2). Once the injured
3524 employee reaches the maximum number of weeks, temporary
3525 disability benefits cease and the injured worker's permanent
3526 impairment must be determined. If the employee is terminated
3527 from post injury employment based on the employee's misconduct,
3528 temporary partial disability benefits are not payable as
3529 provided for in this section. The department shall ~~may~~ by rule
3530 specify forms and procedures governing the method and time for
3531 ~~of~~ payment of temporary disability benefits for dates of
3532 accidents before January 1, 1994, and for dates of accidents on
3533 or after January 1, 1994.

3534 (5) SUBSEQUENT INJURY.--

3535 (a) The fact that an employee has suffered previous
3536 disability, impairment, anomaly, or disease, or received
3537 compensation therefor, shall not preclude her or him from
3538 benefits, as specified in paragraph (b), for a subsequent
3539 aggravation or acceleration of the preexisting condition or ~~nor~~
3540 preclude benefits for death resulting therefrom, except that no
3541 benefits shall be payable if the employee, at the time of
3542 entering into the employment of the employer by whom the
3543 benefits would otherwise be payable, falsely represents herself
3544 or himself in writing as not having previously been disabled or
3545 compensated because of such previous disability, impairment,
3546 anomaly, or disease and the employer detrimentally relies on the
3547 misrepresentation. ~~Compensation for temporary disability,~~
3548 ~~medical benefits, and wage-loss benefits shall not be subject to~~
3549 ~~apportionment.~~



3550 (b) If a compensable injury, disability, or need for
3551 medical care ~~permanent impairment~~, or any portion thereof, is a
3552 result of aggravation or acceleration of a preexisting
3553 condition, or is the result of merger with a preexisting
3554 condition, only the disabilities and medical treatment
3555 associated with such compensable injury shall be payable under
3556 this chapter, excluding the degree of disability or medical
3557 conditions existing at the time of the impairment rating or at
3558 the time of the accident, regardless of whether the preexisting
3559 condition was disabling at the time of the accident or at the
3560 time of the impairment rating and without considering whether
3561 the preexisting condition would be disabling without the
3562 compensable accident impairment, ~~an employee eligible to receive~~
3563 ~~impairment benefits under paragraph (3)(a) shall receive such~~
3564 ~~benefits for the total impairment found to result, excluding the~~
3565 ~~degree of impairment existing at the time of the subject~~
3566 ~~accident or injury or which would have existed by the time of~~
3567 ~~the impairment rating without the intervention of the~~
3568 ~~compensable accident or injury~~. The degree of permanent
3569 impairment or disability attributable to the accident or injury
3570 shall be compensated in accordance with this section,
3571 apportioning out the preexisting condition based on the
3572 anatomical impairment rating attributable to the preexisting
3573 condition. Medical benefits shall be paid apportioning out the
3574 percentage of the need for such care attributable to the
3575 preexisting condition ~~paragraph (3)(a)~~. As used in this
3576 paragraph, "merger" means the combining of a preexisting
3577 permanent impairment or disability with a subsequent compensable



3578 permanent impairment or disability which, when the effects of
3579 both are considered together, result in a permanent impairment
3580 or disability rating which is greater than the sum of the two
3581 permanent impairment or disability ratings when each impairment
3582 or disability is considered individually.

3583 ~~(6) OBLIGATION TO REHIRE.--If the employer has not in good~~
3584 ~~faith made available to the employee, within a 100-mile radius~~
3585 ~~of the employee's residence, work appropriate to the employee's~~
3586 ~~physical limitations within 30 days after the carrier notifies~~
3587 ~~the employer of maximum medical improvement and the employee's~~
3588 ~~physical limitations, the employer shall pay to the department~~
3589 ~~for deposit into the Workers' Compensation Administration Trust~~
3590 ~~Fund a fine of \$250 for every \$5,000 of the employer's workers'~~
3591 ~~compensation premium or payroll, not to exceed \$2,000 per~~
3592 ~~violation, as the department requires by rule. The employer is~~
3593 ~~not subject to this subsection if the employee is receiving~~
3594 ~~permanent total disability benefits or if the employer has 50 or~~
3595 ~~fewer employees.~~

3596 (6)(7) EMPLOYEE REFUSES EMPLOYMENT.--If an injured
3597 employee refuses employment suitable to the capacity thereof,
3598 offered to or procured therefor, such employee shall not be
3599 entitled to any compensation at any time during the continuance
3600 of such refusal unless at any time in the opinion of the judge
3601 of compensation claims such refusal is justifiable. Time periods
3602 for the payment of benefits in accordance with this section
3603 shall be counted in determining the limitation of benefits as
3604 provided for in paragraphs (2)(a), (3)(c), and (4)(b).



3605 ~~(7)(8)~~ EMPLOYEE LEAVES EMPLOYMENT.--If an injured
3606 employee, when receiving compensation for temporary partial
3607 disability, leaves the employment of the employer by whom she or
3608 he was employed at the time of the accident for which such
3609 compensation is being paid, the employee shall, upon securing
3610 employment elsewhere, give to such former employer an affidavit
3611 in writing containing the name of her or his new employer, the
3612 place of employment, and the amount of wages being received at
3613 such new employment; and, until she or he gives such affidavit,
3614 the compensation for temporary partial disability will cease.
3615 The employer by whom such employee was employed at the time of
3616 the accident for which such compensation is being paid may also
3617 at any time demand of such employee an additional affidavit in
3618 writing containing the name of her or his employer, the place of
3619 her or his employment, and the amount of wages she or he is
3620 receiving; and if the employee, upon such demand, fails or
3621 refuses to make and furnish such affidavit, her or his right to
3622 compensation for temporary partial disability shall cease until
3623 such affidavit is made and furnished. If the employee leaves her
3624 or his employment while receiving temporary partial benefits
3625 without just cause as determined by the judge of compensation
3626 claims, temporary partial benefits shall be payable based on the
3627 deemed earnings of the employee as if she or he had remained
3628 employed.

3629 ~~(8)(9)~~ EMPLOYEE BECOMES INMATE OF INSTITUTION.--In case an
3630 employee becomes an inmate of a public institution, then no
3631 compensation shall be payable unless she or he has dependent
3632 upon her or him for support a person or persons defined as



3633 dependents elsewhere in this chapter, whose dependency shall be
3634 determined as if the employee were deceased and to whom
3635 compensation would be paid in case of death; and such
3636 compensation as is due such employee shall be paid such
3637 dependents during the time she or he remains such inmate.

3638 (9)~~(10)~~ EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
3639 AND FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE ACT.--

3640 (a) Weekly compensation benefits payable under this
3641 chapter for disability resulting from injuries to an employee
3642 who becomes eligible for benefits under 42 U.S.C. s. 423 shall
3643 be reduced to an amount whereby the sum of such compensation
3644 benefits payable under this chapter and such total benefits
3645 otherwise payable for such period to the employee and her or his
3646 dependents, had such employee not been entitled to benefits
3647 under this chapter, under 42 U.S.C. ss. 402 and 423, does not
3648 exceed 80 percent of the employee's average weekly wage.
3649 However, this provision shall not operate to reduce an injured
3650 worker's benefits under this chapter to a greater extent than
3651 such benefits would have otherwise been reduced under 42 U.S.C.
3652 s. 424(a). This reduction of compensation benefits is not
3653 applicable to any compensation benefits payable for any week
3654 subsequent to the week in which the injured worker reaches the
3655 age of 62 years.

3656 (b) If the provisions of 42 U.S.C. s. 424(a) are amended
3657 to provide for a reduction or increase of the percentage of
3658 average current earnings that the sum of compensation benefits
3659 payable under this chapter and the benefits payable under 42
3660 U.S.C. ss. 402 and 423 can equal, the amount of the reduction of



3661 benefits provided in this subsection shall be reduced or
3662 increased accordingly. The department may by rule specify forms
3663 and procedures governing the method for calculating and
3664 administering the offset of benefits payable under this chapter
3665 and benefits payable under 42 U.S.C. ss. 402 and 423. The
3666 department shall have first priority in taking any available
3667 social security offsets on dates of accidents occurring before
3668 July 1, 1984.

3669 (c) No disability compensation benefits payable for any
3670 week, including those benefits provided by paragraph (1)(f),
3671 shall be reduced pursuant to this subsection until the Social
3672 Security Administration determines the amount otherwise payable
3673 to the employee under 42 U.S.C. ss. 402 and 423 and the employee
3674 has begun receiving such social security benefit payments. The
3675 employee shall, upon demand by the department, the employer, or
3676 the carrier, authorize the Social Security Administration to
3677 release disability information relating to her or him and
3678 authorize the Division of Unemployment Compensation to release
3679 unemployment compensation information relating to her or him, in
3680 accordance with rules to be adopted by the department
3681 prescribing the procedure and manner for requesting the
3682 authorization and for compliance by the employee. Neither the
3683 department nor the employer or carrier shall make any payment of
3684 benefits for total disability or those additional benefits
3685 provided by paragraph (1)(f) for any period during which the
3686 employee willfully fails or refuses to authorize the release of
3687 information in the manner and within the time prescribed by such
3688 rules. The authority for release of disability information



3689 granted by an employee under this paragraph shall be effective
3690 for a period not to exceed 12 months, such authority to be
3691 renewable as the department may prescribe by rule.

3692 (d) If compensation benefits are reduced pursuant to this
3693 subsection, the minimum compensation provisions of s. 440.12(2)
3694 do not apply.

3695 (10)~~(11)~~ EMPLOYEE ELIGIBLE FOR BENEFITS UNDER THIS CHAPTER
3696 WHO HAS RECEIVED OR IS ENTITLED TO RECEIVE UNEMPLOYMENT
3697 COMPENSATION.--

3698 (a) No compensation benefits shall be payable for
3699 temporary total disability or permanent total disability under
3700 this chapter for any week in which the injured employee has
3701 received, or is receiving, unemployment compensation benefits.

3702 (b) If an employee is entitled to temporary partial
3703 benefits pursuant to subsection (4) and unemployment
3704 compensation benefits, such unemployment compensation benefits
3705 shall be primary and the temporary partial benefits shall be
3706 supplemental only, the sum of the two benefits not to exceed the
3707 amount of temporary partial benefits which would otherwise be
3708 payable.

3709 (11)~~(12)~~ FULL-PAY STATUS FOR CERTAIN LAW ENFORCEMENT
3710 OFFICERS.--Any law enforcement officer as defined in s.
3711 943.10(1), (2), or (3) who, while acting within the course of
3712 employment as provided by s. 440.091, is maliciously or
3713 intentionally injured and who thereby sustains a job-connected
3714 disability compensable under this chapter shall be carried in
3715 full-pay status rather than being required to use sick, annual,
3716 or other leave. Full-pay status shall be granted only after



3717 submission to the employing agency's head of a medical report
3718 which gives a current diagnosis of the employee's recovery and
3719 ability to return to work. In no case shall the employee's
3720 salary and workers' compensation benefits exceed the amount of
3721 the employee's regular salary requirements.

3722 (12)~~(13)~~ REPAYMENT.--If an employee has received a sum as
3723 an indemnity benefit under any classification or category of
3724 benefit under this chapter to which she or he is not entitled,
3725 the employee is liable to repay that sum to the employer or the
3726 carrier or to have that sum deducted from future benefits,
3727 regardless of the classification of benefits, payable to the
3728 employee under this chapter; however, a partial payment of the
3729 total repayment may not exceed 20 percent of the amount of the
3730 biweekly payment.

3731 Section 19. Subsections (1), (2), and (3) of section
3732 440.151, Florida Statutes, are amended to read:

3733 440.151 Occupational diseases.--

3734 (1)(a) Where the employer and employee are subject to the
3735 provisions of the Workers' Compensation Law, the disablement or
3736 death of an employee resulting from an occupational disease as
3737 hereinafter defined shall be treated as the happening of an
3738 injury by accident, notwithstanding any other provisions of this
3739 chapter, and the employee or, in case of death, the employee's
3740 dependents shall be entitled to compensation as provided by this
3741 chapter, except as hereinafter otherwise provided; and the
3742 practice and procedure prescribed by this chapter shall apply to
3743 all proceedings under this section, except as hereinafter
3744 otherwise provided. Provided, however, that in no case shall an



3745 employer be liable for compensation under the provisions of this
3746 section unless such disease has resulted from the nature of the
3747 employment in which the employee was engaged under such
3748 employer, ~~and~~ was actually contracted while so engaged, and the
3749 nature of the employment was the major contributing cause of the
3750 disease. Major contributing cause must be shown by medical
3751 evidence only, as demonstrated by physical examination findings
3752 and diagnostic testing. ~~meaning by~~ "Nature of the employment"
3753 means that in ~~to~~ the occupation in which the employee was so
3754 engaged there is attached a particular hazard of such disease
3755 that distinguishes it from the usual run of occupations, or the
3756 incidence of such disease is substantially higher in the
3757 occupation in which the employee was so engaged than in the
3758 usual run of occupations. In claims for death under s. 440.16,
3759 death must occur ~~or, in case of death, unless death follows~~
3760 ~~continuous disability from such disease, commencing within the~~
3761 ~~period above limited, for which compensation has been paid or~~
3762 ~~awarded, or timely claim made as provided in this section, and~~
3763 ~~results~~ within 350 weeks after ~~such~~ last exposure. Both
3764 causation and sufficient exposure to a specific harmful
3765 substance shown to be present in the workplace to support
3766 causation shall be proven by clear and convincing evidence.

3767 (b) No compensation shall be payable for an occupational
3768 disease if the employee, at the time of entering into the
3769 employment of the employer by whom the compensation would
3770 otherwise be payable, falsely represents herself or himself in
3771 writing as not having previously been disabled, laid off or
3772 compensated in damages or otherwise, because of such disease.



3773 (c) Where an occupational disease is aggravated by any
3774 other disease or infirmity, not itself compensable, or where
3775 disability or death from any other cause, not itself
3776 compensable, is aggravated, prolonged, accelerated or in anywise
3777 contributed to by an occupational disease, the compensation
3778 shall be payable only if the occupational disease is the major
3779 contributing cause of the injury. Any compensation shall be
3780 reduced and limited to such proportion only of the compensation
3781 that would be payable if the occupational disease were the sole
3782 cause of the disability or death as such occupational disease,
3783 as a causative factor, bears to all the causes of such
3784 disability or death, such reduction in compensation to be
3785 effected by reducing the number of weekly or monthly payments or
3786 the amounts of such payments, as under the circumstances of the
3787 particular case may be for the best interest of the claimant or
3788 claimants. Major contributing cause must be demonstrated by
3789 medical evidence based on physical examination findings and
3790 diagnostic testing.

3791 (d) No compensation for death from an occupational disease
3792 shall be payable to any person whose relationship to the
3793 deceased, which under the provisions of this Workers'
3794 Compensation Law would give right to compensation, arose
3795 subsequent to the beginning of the first compensable disability,
3796 save only to afterborn children of a marriage existing at the
3797 beginning of such disability.

3798 (e) No compensation shall be payable for disability or
3799 death resulting from tuberculosis arising out of and in the
3800 course of employment by the Department of Health at a state



3801 tuberculosis hospital, or aggravated by such employment, when
3802 the employee had suffered from said disease at any time prior to
3803 the commencement of such employment.

3804 (2) Whenever used in this section the term "occupational
3805 disease" shall be construed to mean only a disease which is due
3806 to causes and conditions which are characteristic of and
3807 peculiar to a particular trade, occupation, process, or
3808 employment, and to exclude all ordinary diseases of life to
3809 which the general public is exposed, unless the incidence of the
3810 disease is substantially higher in the particular trade,
3811 occupation, process, or employment than for the general public.
3812 "Occupational disease" means only a disease for which there are
3813 epidemiological studies showing that exposure to the specific
3814 substance involved, at the levels to which the employee was
3815 exposed, may cause the precise disease sustained by the
3816 employee.

3817 (3) Except as hereinafter otherwise provided in this
3818 section, "disablement" means disability as described in s.
3819 440.02(13) the event of an employee's becoming actually
3820 incapacitated, partially or totally, because of an occupational
3821 disease, from performing her or his work in the last occupation
3822 in which injuriously exposed to the hazards of such disease; and
3823 "disability" means the state of being so incapacitated.

3824 Section 20. Subsections (1) and (7) of section 440.16,
3825 Florida Statutes, are amended to read:

3826 440.16 Compensation for death.--



3827 (1) If death results from the accident within 1 year
 3828 thereafter or follows continuous disability and results from the
 3829 accident within 5 years thereafter, the employer shall pay:

3830 (a) Within 14 days after receiving the bill, actual
 3831 funeral expenses not to exceed \$7,500 ~~\$5,000~~.

3832 (b) Compensation, in addition to the above, in the
 3833 following percentages of the average weekly wages to the
 3834 following persons entitled thereto on account of dependency upon
 3835 the deceased, and in the following order of preference, subject
 3836 to the limitation provided in subparagraph 2., but such
 3837 compensation shall be subject to the limits provided in s.
 3838 440.12(2), shall not exceed \$150,000 ~~\$100,000~~, and may be less
 3839 than, but shall not exceed, for all dependents or persons
 3840 entitled to compensation, 66 2/3 percent of the average wage:

3841 1. To the spouse, if there is no child, 50 percent of the
 3842 average weekly wage, such compensation to cease upon the
 3843 spouse's death.

3844 2. To the spouse, if there is a child or children, the
 3845 compensation payable under subparagraph 1. and, in addition, 16
 3846 2/3 percent on account of the child or children. However, when
 3847 the deceased is survived by a spouse and also a child or
 3848 children, whether such child or children are the product of the
 3849 union existing at the time of death or of a former marriage or
 3850 marriages, the judge of compensation claims may provide for the
 3851 payment of compensation in such manner as may appear to the
 3852 judge of compensation claims just and proper and for the best
 3853 interests of the respective parties and, in so doing, may
 3854 provide for the entire compensation to be paid exclusively to



3855 the child or children; and, in the case of death of such spouse,
3856 33 1/3 percent for each child. However, upon the surviving
3857 spouse's remarriage, the spouse shall be entitled to a lump-sum
3858 payment equal to 26 weeks of compensation at the rate of 50
3859 percent of the average weekly wage as provided in s. 440.12(2),
3860 unless the \$150,000 ~~\$100,000~~ limit provided in this paragraph is
3861 exceeded, in which case the surviving spouse shall receive a
3862 lump-sum payment equal to the remaining available benefits in
3863 lieu of any further indemnity benefits. In no case shall a
3864 surviving spouse's acceptance of a lump-sum payment affect
3865 payment of death benefits to other dependents.

3866 3. To the child or children, if there is no spouse, 33 1/3
3867 percent for each child.

3868 4. To the parents, 25 percent to each, such compensation
3869 to be paid during the continuance of dependency.

3870 5. To the brothers, sisters, and grandchildren, 15 percent
3871 for each brother, sister, or grandchild.

3872 (c) To the surviving spouse, payment of postsecondary
3873 student fees for instruction at any area technical center
3874 established under s. 1001.44 for up to 1,800 classroom hours or
3875 payment of student fees at any community college established
3876 under part III of chapter 1004 for up to 80 semester hours. The
3877 spouse of a deceased state employee shall be entitled to a full
3878 waiver of such fees as provided in ss. 1009.22 and 1009.23 in
3879 lieu of the payment of such fees. The benefits provided for in
3880 this paragraph shall be in addition to other benefits provided
3881 for in this section and shall terminate 7 years after the death
3882 of the deceased employee, or when the total payment in eligible



3883 compensation under paragraph (b) has been received. To qualify
3884 for the educational benefit under this paragraph, the spouse
3885 shall be required to meet and maintain the regular admission
3886 requirements of, and be registered at, such area technical
3887 center or community college, and make satisfactory academic
3888 progress as defined by the educational institution in which the
3889 student is enrolled.

3890 (7) Compensation under this chapter to aliens not
3891 residents (or about to become nonresidents) of the United States
3892 or Canada shall be the same in amount as provided for residents,
3893 except that dependents in any foreign country shall be limited
3894 to surviving spouse and child or children, or if there be no
3895 surviving spouse or child or children, to surviving father or
3896 mother whom the employee has supported, either wholly or in
3897 part, for the period of 1 year prior to the date of the injury,
3898 and except that the judge of compensation claims may, at the
3899 option of the judge of compensation claims, or upon the
3900 application of the insurance carrier, commute all future
3901 installments of compensation to be paid to such aliens by paying
3902 or causing to be paid to them one-half of the commuted amount of
3903 such future installments of compensation as determined by the
3904 judge of compensation claims, and provided further that
3905 compensation to dependents referred to in this subsection shall
3906 in no case exceed \$75,000 ~~\$50,000~~.

3907 Section 21. Subsection (9) of section 440.185, Florida
3908 Statutes, is amended, and subsection (12) is added to said
3909 section, to read:



3910 440.185 Notice of injury or death; reports; penalties for
3911 violations.--

3912 (9) Any employer or carrier who fails or refuses to timely
3913 send any form, report, or notice required by this section shall
3914 be subject to an administrative fine by the department ~~a civil~~
3915 ~~penalty~~ not to exceed \$1,000 ~~\$500~~ for each such failure or
3916 refusal. If, within 1 calendar year, an employer fails to timely
3917 submit to the carrier more than 10 percent of its notices of
3918 injury or death, the employer shall be subject to an
3919 administrative fine by the department not to exceed \$2,000 for
3920 each such failure or refusal. However, any employer who fails to
3921 notify the carrier of the injury on the prescribed form or by
3922 letter within the 7 days required in subsection (2) shall be
3923 liable for the administrative fine ~~civil penalty~~, which shall be
3924 paid by the employer and not the carrier. Failure by the
3925 employer to meet its obligations under subsection (2) shall not
3926 relieve the carrier from liability for the administrative fine
3927 ~~civil penalty~~ if it fails to comply with subsections (4) and
3928 (5).

3929 (12) Upon receiving notice of an injury from an employee
3930 under subsection (1), the employer or carrier shall provide the
3931 employee with a written notice, in the form and manner
3932 determined by the department by rule, of the availability of
3933 services from the Employee Assistance and Ombudsman Office. The
3934 substance of the notice to the employee shall include:

3935 (a) A description of the scope of services provided by the
3936 office.



3937 (b) A listing of the toll-free telephone number of, the
3938 email address, and the postal address of the office.

3939 (c) A statement that the informational brochure referred
3940 to in subsection (4) will be mailed to the employee within 3
3941 days after the carrier receives notice of the injury.

3942 (d) Any other information regarding access to assistance
3943 that the department finds is immediately necessary for an
3944 injured employee.

3945 Section 22. Subsections (1) and (2) of section 440.192,
3946 Florida Statutes, are amended, and subsection (9) is added to
3947 said section, to read:

3948 440.192 Procedure for resolving benefit disputes.—

3949 (1) ~~Subject to s. 440.191,~~ Any employee may, for any
3950 benefit that is ripe, due, and owing, who has not received a
3951 benefit to which the employee believes she or he is entitled
3952 under this chapter shall file by certified mail, or by
3953 electronic means approved by the Deputy Chief Judge, with the
3954 Office of the Judges of Compensation Claims a petition for
3955 benefits which meets the requirements of this section and the
3956 definition of specificity in s. 440.02. The department shall
3957 inform employees of the location of the Office of the Judges of
3958 Compensation Claims for purposes of filing a petition for
3959 benefits. The employee shall also serve copies of the petition
3960 for benefits by certified mail, or by electronic means approved
3961 by the Deputy Chief Judge, upon the employer and the employer's
3962 carrier. The ~~Deputy~~ Chief Judge shall refer the petitions to the
3963 judges of compensation claims.



3964 (2) Upon receipt, the Office of the Judges of Compensation
3965 Claims shall review each petition and shall dismiss each
3966 petition or any portion of such a petition, ~~upon the judge's own~~
3967 ~~motion or upon the motion of any party~~, that does not on its
3968 face specifically identify or itemize the following:

3969 (a) Name, address, telephone number, and social security
3970 number of the employee.

3971 (b) Name, address, and telephone number of the employer.

3972 (c) A detailed description of the injury and cause of the
3973 injury, including the location of the occurrence and the date or
3974 dates of the accident.

3975 (d) A detailed description of the employee's job, work
3976 responsibilities, and work the employee was performing when the
3977 injury occurred.

3978 (e) The time period for which compensation and the
3979 specific classification of compensation were not timely
3980 provided.

3981 (f) Date of maximum medical improvement, character of
3982 disability, and specific statement of all benefits or
3983 compensation that the employee is seeking.

3984 (g) All specific travel costs to which the employee
3985 believes she or he is entitled, including dates of travel and
3986 purpose of travel, means of transportation, and mileage and
3987 including the date the request for mileage was filed with the
3988 carrier and a copy of the request filed with the carrier.

3989 (h) Specific listing of all medical charges alleged
3990 unpaid, including the name and address of the medical provider,
3991 the amounts due, and the specific dates of treatment.



3992 (i) The type or nature of treatment care or attendance
3993 sought and the justification for such treatment. If the employee
3994 is under the care of a physician for an injury identified under
3995 paragraph (c), a copy of the physician's request, authorization,
3996 or recommendation for treatment, care, or attendance must
3997 accompany the petition.

3998 (j) Specific explanation of any other disputed issue that
3999 a judge of compensation claims will be called to rule upon.

4000

4001 The dismissal of any petition or portion of such a petition
4002 under this section is without prejudice and does not require a
4003 hearing.

4004 (9) A petition for benefits must contain claims for all
4005 benefits that are ripe, due, and owing on the date the petition
4006 is filed. Unless stipulated in writing by the parties, only
4007 claims which have been properly raised in a petition for
4008 benefits and have undergone mediation may be considered for
4009 adjudication by a judge of compensation claims.

4010 Section 23. Section 440.1926, Florida Statutes, is created
4011 to read:

4012 440.1926 Alternate dispute resolution; claim
4013 arbitration.--Notwithstanding any other provision of this
4014 chapter, the employer, carrier, and employee may mutually agree
4015 to seek consent from a judge of compensation claims to enter
4016 into binding claim arbitration in lieu of any other remedy
4017 provided for in this chapter to resolve all issues in dispute
4018 regarding an injury. Arbitrations agreed to pursuant to this
4019 section shall be governed by chapter 682, the Florida



4020 Arbitration Code, except that, notwithstanding any provision in
4021 chapter 682, the term "court" shall mean a judge of compensation
4022 claims. An arbitration award in accordance with this section
4023 shall be enforceable in the same manner and with the same powers
4024 as any final compensation order.

4025 Section 24. Subsections (2), (3), (4), (6), and (8) and
4026 paragraph (d) of subsection (11) of section 440.20, Florida
4027 Statutes, are amended to read:

4028 440.20 Time for payment of compensation and medical bills;
4029 penalties for late payment.--

4030 (2)(a) The carrier must pay the first installment of
4031 compensation for total disability or death benefits or deny
4032 compensability no later than the 14th calendar day after the
4033 employer receives notification ~~notice~~ of the injury or death,
4034 when disability is immediate and continuous for 8 calendar days
4035 or more after the injury. If the first 7 days after disability
4036 are nonconsecutive or delayed, the first installment of
4037 compensation is due on the 6th day after the first 8 calendar
4038 days of disability. The carrier shall thereafter pay
4039 compensation in biweekly installments or as otherwise provided
4040 in s. 440.15, unless the judge of compensation claims determines
4041 or the parties agree that an alternate installment schedule is
4042 in the best interests of the employee.

4043 (b) The carrier must pay, disallow, or deny all medical,
4044 dental, pharmacy, and hospital bills submitted to the carrier in
4045 accordance with department rule no later than 45 calendar days
4046 after the carrier's receipt of the bill.



4047 (3) Upon making initial payment of indemnity benefits, or
4048 upon suspension or cessation of payment for any reason, the
4049 carrier shall immediately notify the injured employee, the
4050 employer, and the department that it has commenced, suspended,
4051 or ceased payment of compensation. The department may require
4052 such notification to the injured employee, employer, and the
4053 department in a ~~any~~ format and manner it deems necessary to
4054 obtain accurate and timely notification ~~reporting~~.

4055 (4) If the carrier is uncertain of its obligation to
4056 provide all benefits or compensation, ~~it may initiate payment~~
4057 ~~without prejudice and without admitting liability.~~ the carrier
4058 shall immediately and in good faith commence investigation of
4059 the employee's entitlement to benefits under this chapter and
4060 shall admit or deny compensability within 120 days after the
4061 initial provision of compensation or benefits as required under
4062 subsection (2) or s. 440.192(8). Additionally, the carrier shall
4063 initiate payment and continue the provision of all benefits and
4064 compensation as if the claim had been accepted as compensable,
4065 without prejudice and without admitting liability. Upon
4066 commencement of payment as required under subsection (2) or s.
4067 440.192 (8), the carrier shall provide written notice to the
4068 employee that it has elected to pay ~~all or part of~~ the claim
4069 pending further investigation, and that it will advise the
4070 employee of claim acceptance or denial within 120 days. A
4071 carrier that fails to deny compensability within 120 days after
4072 the initial provision of benefits or payment of compensation as
4073 required under subsection (2) or s. 440.192(8) waives the right
4074 to deny compensability, unless the carrier can establish



4075 material facts relevant to the issue of compensability that it
4076 could not have discovered through reasonable investigation
4077 within the 120-day period. The initial provision of compensation
4078 or benefits, for purposes of this subsection, means the first
4079 installment of compensation or benefits to be paid by the
4080 carrier under subsection (2) or pursuant to a petition for
4081 benefits under s. 440.192(8).

4082 (6)(a) If any installment of compensation for death or
4083 dependency benefits, or compensation for disability benefits,
4084 ~~permanent impairment, or wage loss~~ payable without an award is
4085 not paid within 7 days after it becomes due, as provided in
4086 subsection (2), subsection (3), or subsection (4), there shall
4087 be added to such unpaid installment a ~~punitive~~ penalty of an
4088 amount equal to 20 percent of the unpaid installment ~~or \$5,~~
4089 which shall be paid at the same time as, but in addition to,
4090 such installment of compensation. This penalty shall not apply
4091 for late payments resulting ~~, unless notice is filed under~~
4092 ~~subsection (4) or unless such nonpayment results~~ from conditions
4093 over which the employer or carrier had no control. When any
4094 installment of compensation payable without an award has not
4095 been paid within 7 days after it became due and the claimant
4096 concludes the prosecution of the claim before a judge of
4097 compensation claims without having specifically claimed
4098 additional compensation in the nature of a penalty under this
4099 section, the claimant will be deemed to have acknowledged that,
4100 owing to conditions over which the employer or carrier had no
4101 control, such installment could not be paid within the period
4102 prescribed for payment and to have waived the right to claim



4103 such penalty. However, during the course of a hearing, the judge
4104 of compensation claims shall on her or his own motion raise the
4105 question of whether such penalty should be awarded or excused.
4106 The department may assess without a hearing the ~~punitive~~ penalty
4107 against either the employer or the ~~insurance~~ carrier, depending
4108 upon who was at fault in causing the delay. The insurance policy
4109 cannot provide that this sum will be paid by the carrier if the
4110 department or the judge of compensation claims determines that
4111 the ~~punitive~~ penalty should be paid ~~made~~ by the employer rather
4112 than the carrier. Any additional installment of compensation
4113 paid by the carrier pursuant to this section shall be paid
4114 directly to the employee by check or, if authorized by the
4115 employee, by direct deposit into the employee's account at a
4116 financial institution. ~~As used in this subsection, the term~~
4117 ~~"financial institution" means a financial institution as defined~~
4118 ~~in s. 655.005(1)(h).~~

4119 (b) For medical services provided on or after January 1,
4120 2004, the department shall require that all medical, hospital,
4121 pharmacy, or dental bills properly submitted by the provider,
4122 except for bills that are disallowed or denied by the carrier or
4123 its authorized vendor in accordance with department rule, are
4124 timely paid within 45 calendar days after the carrier's receipt
4125 of the bill. The department shall impose penalties for late
4126 payments or disallowances or denials of medical, hospital,
4127 pharmacy, or dental bills that are below a minimum 95 percent
4128 timely performance standard. The carrier shall pay to the
4129 Workers' Compensation Administration Trust Fund a penalty of:



4130 1. Twenty-five dollars for each bill below the 95 percent
4131 timely performance standard, but meeting a 90 percent timely
4132 standard.

4133 2. Fifty dollars for each bill below a 90 percent timely
4134 performance standard.

4135 (8)(a) In addition to any other penalties provided by this
4136 chapter for late payment, if any installment of compensation is
4137 not paid when it becomes due, the employer, carrier, or
4138 servicing agent shall pay interest thereon at the rate of 12
4139 percent per year from the date the installment becomes due until
4140 it is paid, whether such installment is payable without an order
4141 or under the terms of an order. The interest payment shall be
4142 the greater of the amount of interest due or \$5.

4143 ~~(a) Within 30 days after final payment of compensation has~~
4144 ~~been made, the employer, carrier, or servicing agent shall send~~
4145 ~~to the department a notice, in accordance with a format and~~
4146 ~~manner prescribed by the department, stating that such final~~
4147 ~~payment has been made and stating the total amount of~~
4148 ~~compensation paid, the name of the employee and of any other~~
4149 ~~person to whom compensation has been paid, the date of the~~
4150 ~~injury or death, and the date to which compensation has been~~
4151 ~~paid.~~

4152 ~~(b) If the employer, carrier, or servicing agent fails to~~
4153 ~~so notify the department within such time, the department shall~~
4154 ~~assess against such employer, carrier, or servicing agent a~~
4155 ~~civil penalty in an amount not over \$100.~~

4156 (b)(e) In order to ensure carrier compliance under this
4157 chapter and ~~provisions of the Florida Insurance Code~~, the office



4158 ~~department~~ shall monitor, audit, and investigate the performance
4159 of carriers ~~by conducting market conduct examinations, as~~
4160 ~~provided in s. 624.3161, and conducting investigations, as~~
4161 ~~provided in s. 624.317.~~ The office ~~department~~ shall require
4162 ~~establish by rule minimum performance standards for carriers to~~
4163 ensure that a ~~minimum of 90 percent of~~ all compensation benefits
4164 are timely paid in accordance with this section. The office
4165 ~~department~~ shall impose penalties ~~fine a carrier as provided in~~
4166 ~~s. 440.13(11)(b) up to \$50 for each late payments~~ payment of
4167 compensation that are ~~is~~ below a ~~the~~ minimum 95 ~~90~~ percent
4168 timely payment performance standard. The carrier shall pay to
4169 the Workers' Compensation Administration Trust Fund a penalty
4170 of:

4171 1. Fifty dollars per number of installments of
4172 compensation below the 95 percent timely payment performance
4173 standard and equal to or greater than a 90 percent timely
4174 payment performance standard.

4175 2. One hundred dollars per number of installments of
4176 compensation below a 90 percent timely payment performance
4177 standard.

4178
4179 This section does not affect the imposition of any penalties or
4180 interest due to the claimant. If a carrier contracts with a
4181 servicing agent to fulfill its administrative responsibilities
4182 under this chapter, the payment practices of the servicing agent
4183 are deemed the payment practices of the carrier for the purpose
4184 of assessing penalties against the carrier.

4185 (11)



4186 (d)1. With respect to any lump-sum settlement under this
4187 subsection, a judge of compensation claims must consider at the
4188 time of the settlement, whether the settlement allocation
4189 provides for the appropriate recovery of child support
4190 arrearages. An employer or carrier does not have a duty to
4191 investigate or collect information regarding child support
4192 arrears.

4193 2. When reviewing any settlement of lump-sum payment
4194 pursuant to this subsection, judges of compensation claims shall
4195 consider the interests of the worker and the worker's family
4196 when approving the settlement, which must consider and provide
4197 for appropriate recovery of past due support.

4198 Section 25. Section 440.25, Florida Statutes, is amended
4199 to read:

4200 440.25 Procedures for mediation and hearings.--

4201 (1) Forty days ~~Within 90 days~~ after a petition for
4202 benefits is filed under s. 440.192, ~~a mediation conference~~
4203 ~~concerning such petition shall be held.~~ Within 40 days after
4204 ~~such petition is filed,~~ the judge of compensation claims shall
4205 notify the interested parties by order that a mediation
4206 conference concerning such petition has been scheduled ~~will be~~
4207 ~~held~~ unless the parties have notified the judge ~~Office of the~~
4208 ~~Judges~~ of compensation claims that a private mediation has been
4209 held or is scheduled to be held. A mediation, whether private or
4210 public, shall be held within 130 days after the filing of the
4211 petition. Such order must give the date ~~by which~~ the mediation
4212 conference is to ~~must~~ be held. Such order may be served
4213 personally upon the interested parties or may be sent to the



4214 interested parties by mail. If multiple petitions are pending,
4215 or if additional petitions are filed after the scheduling of a
4216 mediation, the judge of compensation claims shall consolidate
4217 all petitions into one mediation. The claimant or the adjuster
4218 of the employer or carrier may, at the mediator's discretion,
4219 attend the mediation conference by telephone or, if agreed to by
4220 the parties, other electronic means. A continuance may be
4221 granted upon the agreement of the parties or if the requesting
4222 party demonstrates to the judge of compensation claims that the
4223 reason for requesting the continuance arises from circumstances
4224 beyond the party's control. Any order granting a continuance
4225 must set forth the date of the rescheduled mediation conference.
4226 A mediation conference may not be used solely for the purpose of
4227 mediating attorney's fees.

4228 (2) Any party who participates in a mediation conference
4229 shall not be precluded from requesting a hearing following the
4230 mediation conference should both parties not agree to be bound
4231 by the results of the mediation conference. A mediation
4232 conference is required to be held unless this requirement is
4233 waived by the Deputy Chief Judge. ~~No later than 3 days prior to~~
4234 ~~the mediation conference, all parties must submit any applicable~~
4235 ~~motions, including, but not limited to, a motion to waive the~~
4236 ~~mediation conference, to the judge of compensation claims.~~

4237 (3)~~(a)~~ Such mediation conference shall be conducted
4238 informally and does not require the use of formal rules of
4239 evidence or procedure. Any information from the files, reports,
4240 case summaries, mediator's notes, or other communications or
4241 materials, oral or written, relating to a mediation conference



4242 under this section obtained by any person performing mediation
4243 duties is privileged and confidential and may not be disclosed
4244 without the written consent of all parties to the conference.
4245 Any research or evaluation effort directed at assessing the
4246 mediation program activities or performance must protect the
4247 confidentiality of such information. Each party to a mediation
4248 conference has a privilege during and after the conference to
4249 refuse to disclose and to prevent another from disclosing
4250 communications made during the conference whether or not the
4251 contested issues are successfully resolved. This subsection and
4252 paragraphs (4)(a) and (b) shall not be construed to prevent or
4253 inhibit the discovery or admissibility of any information that
4254 is otherwise subject to discovery or that is admissible under
4255 applicable law or rule of procedure, except that any conduct or
4256 statements made during a mediation conference or in negotiations
4257 concerning the conference are inadmissible in any proceeding
4258 under this chapter.

4259 (a)1- Unless the parties conduct a private mediation under
4260 paragraph (b) ~~subparagraph 2-~~, mediation shall be conducted by a
4261 mediator selected by the Director of the Division of
4262 Administrative Hearings from among mediators employed on a full-
4263 time basis by the Office of the Judges of Compensation Claims. A
4264 mediator must be a member of The Florida Bar for at least 5
4265 years and must complete a mediation training program approved by
4266 the Deputy Chief Judge ~~Director of the Division of~~
4267 ~~Administrative Hearings~~. Adjunct mediators may be employed by
4268 the Office of the Judges of Compensation Claims on an as-needed
4269 basis and shall be selected from a list prepared by the Director



4270 of the Division of Administrative Hearings. An adjunct mediator
4271 must be independent of all parties participating in the
4272 mediation conference. An adjunct mediator must be a member of
4273 The Florida Bar for at least 5 years and must complete a
4274 mediation training program approved by the Office of the Judges
4275 of Compensation Claims ~~Director of the Division of~~
4276 ~~Administrative Hearings~~. An adjunct mediator shall have access
4277 to the office, equipment, and supplies of the judge of
4278 compensation claims in each district.

4279 (b)2- With respect to any private mediation ~~occurring on~~
4280 ~~or after January 1, 2003~~, if the parties agree or if mediators
4281 are not available under paragraph (a), pursuant to notice from
4282 the judge of compensation claims, subparagraph 1- to conduct the
4283 required mediation within the period specified in this section,
4284 the parties shall hold a mediation conference at the carrier's
4285 expense within the 130-day ~~90-day~~ period set for mediation. The
4286 mediation conference shall be conducted by a mediator certified
4287 under s. 44.106. If the parties do not agree upon a mediator
4288 within 10 days after the date of the order, the claimant shall
4289 notify the judge in writing and the judge shall appoint a
4290 mediator under this subparagraph within 7 days. In the event
4291 both parties agree, the results of the mediation conference
4292 shall be binding and neither party shall have a right to appeal
4293 the results. In the event either party refuses to agree to the
4294 results of the mediation conference, the results of the
4295 mediation conference as well as the testimony, witnesses, and
4296 evidence presented at the conference shall not be admissible at
4297 any subsequent proceeding on the claim. The mediator shall not



4298 be called in to testify or give deposition to resolve any claim
4299 for any hearing before the judge of compensation claims. The
4300 employer may be represented by an attorney at the mediation
4301 conference if the employee is also represented by an attorney at
4302 the mediation conference.

4303 ~~(b) The parties shall complete the pretrial stipulations~~
4304 ~~before the conclusion of the mediation conference if the claims,~~
4305 ~~except for attorney's fees and costs, have not been settled and~~
4306 ~~if any claims in any filed petition remain unresolved. The judge~~
4307 ~~of compensation claims may impose sanctions against a party or~~
4308 ~~both parties for failing to complete the pretrial stipulations~~
4309 ~~before the conclusion of the mediation conference.~~

4310 (4)(a) If the parties fail to agree to upon written
4311 submission of pretrial stipulations ~~at the mediation conference,~~
4312 the judge of compensation claims shall conduct a live order a
4313 pretrial hearing ~~to occur within 14 days after the date of~~
4314 ~~mediation ordered by the judge of compensation claims.~~ The judge
4315 of compensation claims shall give the interested parties at
4316 least 14 7 days' advance notice of the pretrial hearing by mail.
4317 ~~At the pretrial hearing, the judge of compensation claims shall,~~
4318 ~~subject to paragraph (b), set a date for the final hearing that~~
4319 ~~allows the parties at least 60 days to conduct discovery unless~~
4320 ~~the parties consent to an earlier hearing date.~~

4321 (b) The final hearing must be held and concluded within 90
4322 days after the mediation conference is held, allowing the
4323 parties sufficient time to complete discovery. Except as set
4324 forth in this section, continuances may be granted only if the
4325 requesting party demonstrates to the judge of compensation



4326 claims that the reason for requesting the continuance arises
4327 from circumstances beyond the party's control. The written
4328 consent of the claimant must be obtained before any request from
4329 a claimant's attorney is granted for an additional continuance
4330 after the initial continuance has been granted. Any order
4331 granting a continuance must set forth the date and time of the
4332 rescheduled hearing. A continuance may be granted only if the
4333 requesting party demonstrates to the judge of compensation
4334 claims that the reason for requesting the continuance arises
4335 from circumstances beyond the control of the parties. The judge
4336 of compensation claims shall report any grant of two or more
4337 continuances to the Deputy Chief Judge.

4338 (c) The judge of compensation claims shall give the
4339 interested parties at least 14 ~~7~~ days' advance notice of the
4340 final hearing, served upon the interested parties by mail.

4341 (d) The final hearing shall be held within 210 days after
4342 receipt of the petition for benefits in the county where the
4343 injury occurred, if the injury occurred in this state, unless
4344 otherwise agreed to between the parties and authorized by the
4345 judge of compensation claims in the county where the injury
4346 occurred. However, the claimant may waive the timeframes within
4347 this section for good cause shown. If the injury occurred
4348 outside the state and is one for which compensation is payable
4349 under this chapter, then the final hearing may be held in the
4350 county of the employer's residence or place of business, or in
4351 any other county of the state that will, in the discretion of
4352 the Deputy Chief Judge, be the most convenient for a hearing.
4353 The final hearing shall be conducted by a judge of compensation



4354 claims, who shall, within 30 days after final hearing or closure
4355 of the hearing record, unless otherwise agreed by the parties,
4356 enter a final order on the merits of the disputed issues. The
4357 judge of compensation claims may enter an abbreviated final
4358 order in cases in which compensability is not disputed. Either
4359 party may request separate findings of fact and conclusions of
4360 law. At the final hearing, the claimant and employer may each
4361 present evidence with respect to the claims presented by the
4362 petition for benefits and may be represented by any attorney
4363 authorized in writing for such purpose. When there is a conflict
4364 in the medical evidence submitted at the hearing, the provisions
4365 of s. 440.13 shall apply. The report or testimony of the expert
4366 medical advisor shall be admitted into evidence in a ~~made a part~~
4367 ~~of the record of the proceeding and shall be given the same~~
4368 ~~consideration by the judge of compensation claims as is accorded~~
4369 ~~other medical evidence submitted in the proceeding;~~ and all
4370 costs incurred in connection with such examination and testimony
4371 may be assessed as costs in the proceeding, subject to the
4372 provisions of s. 440.13. No judge of compensation claims may
4373 make a finding of a degree of permanent impairment that is
4374 greater than the greatest permanent impairment rating given the
4375 claimant by any examining or treating physician, except upon
4376 stipulation of the parties. Any benefit due but not raised at
4377 the final hearing which was ripe, due, or owing at the time of
4378 the final hearing is waived.

4379 (e) The order making an award or rejecting the claim,
4380 referred to in this chapter as a "compensation order," shall set
4381 forth the findings of ultimate facts and the mandate; and the



4382 order need not include any other reason or justification for
4383 such mandate. The compensation order shall be filed in the
4384 Office of the Judges of Compensation Claims at Tallahassee. A
4385 copy of such compensation order shall be sent by mail to the
4386 parties and attorneys of record at the last known address of
4387 each, with the date of mailing noted thereon.

4388 ~~(f) Each judge of compensation claims is required to~~
4389 ~~submit a special report to the Deputy Chief Judge in each~~
4390 ~~contested workers' compensation case in which the case is not~~
4391 ~~determined within 30 days of final hearing or closure of the~~
4392 ~~hearing record. Said form shall be provided by the director of~~
4393 ~~the Division of Administrative Hearings and shall contain the~~
4394 ~~names of the judge of compensation claims and of the attorneys~~
4395 ~~involved and a brief explanation by the judge of compensation~~
4396 ~~claims as to the reason for such a delay in issuing a final~~
4397 ~~order.~~

4398 (f)~~(g)~~ Notwithstanding any other provision of this
4399 section, the judge of compensation claims may require the
4400 appearance of the parties and counsel before her or him without
4401 written notice for an emergency conference where there is a bona
4402 fide emergency involving the health, safety, or welfare of an
4403 employee. An emergency conference under this section may result
4404 in the entry of an order or the rendering of an adjudication by
4405 the judge of compensation claims.

4406 (g)~~(h)~~ To expedite dispute resolution and to enhance the
4407 self-executing features of the Workers' Compensation Law, the
4408 Deputy Chief Judge shall make provision by rule or order for the
4409 resolution of appropriate motions by judges of compensation



4410 claims without oral hearing upon submission of brief written
4411 statements in support and opposition, and for expedited
4412 discovery and docketing. Unless the judge of compensation
4413 claims, for good cause, orders a hearing under paragraph (h)~~(i)~~,
4414 each claim in a petition relating to the determination of the
4415 average weekly wage ~~pay~~ under s. 440.14 shall be resolved under
4416 this paragraph without oral hearing.

4417 (h)~~(i)~~ To further expedite dispute resolution and to
4418 enhance the self-executing features of the system, those
4419 petitions filed in accordance with s. 440.192 that involve a
4420 claim for benefits of \$5,000 or less shall, in the absence of
4421 compelling evidence to the contrary, be presumed to be
4422 appropriate for expedited resolution under this paragraph; and
4423 any other claim filed in accordance with s. 440.192, upon the
4424 written agreement of both parties and application by either
4425 party, may similarly be resolved under this paragraph. A claim
4426 in a petition or \$5,000 or less for medical benefits only or a
4427 petition for reimbursement for mileage for medical purposes
4428 shall, in the absence of compelling evidence to the contrary, be
4429 resolved through the expedited dispute resolution process
4430 provided in this paragraph. For purposes of expedited resolution
4431 pursuant to this paragraph, the Deputy Chief Judge shall make
4432 provision by rule or order for expedited and limited discovery
4433 and expedited docketing in such cases. At least 15 days prior to
4434 hearing, the parties shall exchange and file with the judge of
4435 compensation claims a pretrial outline of all issues, defenses,
4436 and witnesses on a form adopted by the Deputy Chief Judge;
4437 provided, in no event shall such hearing be held without 15



4438 days' written notice to all parties. No pretrial hearing shall
4439 be held and no mediation scheduled unless requested by a party.
4440 The judge of compensation claims shall limit all argument and
4441 presentation of evidence at the hearing to a maximum of 30
4442 minutes, and such hearings shall not exceed 30 minutes in
4443 length. Neither party shall be required to be represented by
4444 counsel. The employer or carrier may be represented by an
4445 adjuster or other qualified representative. The employer or
4446 carrier and any witness may appear at such hearing by telephone.
4447 The rules of evidence shall be liberally construed in favor of
4448 allowing introduction of evidence.

4449 (i)~~(j)~~ A judge of compensation claims may, upon the motion
4450 of a party or the judge's own motion, dismiss a petition for
4451 lack of prosecution if a petition, response, motion, order,
4452 request for hearing, or notice of deposition has not been filed
4453 during the previous 12 months unless good cause is shown. A
4454 dismissal for lack of prosecution is without prejudice and does
4455 not require a hearing.

4456 (j)~~(k)~~ A judge of compensation claims may not award
4457 interest on unpaid medical bills and the amount of such bills
4458 may not be used to calculate the amount of interest awarded.
4459 Regardless of the date benefits were initially requested,
4460 attorney's fees do not attach under this subsection until 30
4461 days after the date the carrier or self-insured employer
4462 receives the petition.

4463 (5)(a) Procedures with respect to appeals from orders of
4464 judges of compensation claims shall be governed by rules adopted
4465 by the Supreme Court. Such an order shall become final 30 days



4466 after mailing of copies of such order to the parties, unless
4467 appealed pursuant to such rules.

4468 (b) An appellant may be relieved of any necessary filing
4469 fee by filing a verified petition of indigency for approval as
4470 provided in s. 57.081(1) and may be relieved in whole or in part
4471 from the costs for preparation of the record on appeal if,
4472 within 15 days after the date notice of the estimated costs for
4473 the preparation is served, the appellant files with the judge of
4474 compensation claims a copy of the designation of the record on
4475 appeal, and a verified petition to be relieved of costs. A
4476 verified petition filed prior to the date of service of the
4477 notice of the estimated costs shall be deemed not timely filed.
4478 The verified petition relating to record costs shall contain a
4479 sworn statement that the appellant is insolvent and a complete,
4480 detailed, and sworn financial affidavit showing all the
4481 appellant's assets, liabilities, and income. Failure to state in
4482 the affidavit all assets and income, including marital assets
4483 and income, shall be grounds for denying the petition with
4484 prejudice. The Office of the Judges of Compensation Claims shall
4485 adopt rules as may be required pursuant to this subsection,
4486 including forms for use in all petitions brought under this
4487 subsection. The appellant's attorney, or the appellant if she or
4488 he is not represented by an attorney, shall include as a part of
4489 the verified petition relating to record costs an affidavit or
4490 affirmation that, in her or his opinion, the notice of appeal
4491 was filed in good faith and that there is a probable basis for
4492 the District Court of Appeal, First District, to find reversible
4493 error, and shall state with particularity the specific legal and



4494 factual grounds for the opinion. Failure to so affirm shall be
4495 grounds for denying the petition. A copy of the verified
4496 petition relating to record costs shall be served upon all
4497 interested parties. The judge of compensation claims shall
4498 promptly conduct a hearing on the verified petition relating to
4499 record costs, giving at least 15 days' notice to the appellant,
4500 the department, and all other interested parties, all of whom
4501 shall be parties to the proceedings. The judge of compensation
4502 claims may enter an order without such hearing if no objection
4503 is filed by an interested party within 20 days from the service
4504 date of the verified petition relating to record costs. Such
4505 proceedings shall be conducted in accordance with the provisions
4506 of this section and with the workers' compensation rules of
4507 procedure, to the extent applicable. In the event an insolvency
4508 petition is granted, the judge of compensation claims shall
4509 direct the department to pay record costs and filing fees from
4510 the Workers' Compensation Administration Trust Fund pending
4511 final disposition of the costs of appeal. The department may
4512 transcribe or arrange for the transcription of the record in any
4513 proceeding for which it is ordered to pay the cost of the
4514 record.

4515 (c) As a condition of filing a notice of appeal to the
4516 District Court of Appeal, First District, an employer who has
4517 not secured the payment of compensation under this chapter in
4518 compliance with s. 440.38 shall file with the notice of appeal a
4519 good and sufficient bond, as provided in s. 59.13, conditioned
4520 to pay the amount of the demand and any interest and costs
4521 payable under the terms of the order if the appeal is dismissed,



4522 or if the District Court of Appeal, First District, affirms the
4523 award in any amount. Upon the failure of such employer to file
4524 such bond with ~~the judge of compensation claims or~~ the District
4525 Court of Appeal, First District, along with the notice of
4526 appeal, the District Court of Appeal, First District, shall
4527 dismiss the notice of appeal.

4528 (6) An award of compensation for disability may be made
4529 after the death of an injured employee.

4530 ~~(7) An injured employee claiming or entitled to~~
4531 ~~compensation shall submit to such physical examination by a~~
4532 ~~certified expert medical advisor approved by the agency or the~~
4533 ~~judge of compensation claims as the agency or the judge of~~
4534 ~~compensation claims may require. The place or places shall be~~
4535 ~~reasonably convenient for the employee. Such physician or~~
4536 ~~physicians as the employee, employer, or carrier may select and~~
4537 ~~pay for may participate in an examination if the employee,~~
4538 ~~employer, or carrier so requests. Proceedings shall be suspended~~
4539 ~~and no compensation shall be payable for any period during which~~
4540 ~~the employee may refuse to submit to examination. Any interested~~
4541 party shall have the right in any case of death to require an
4542 autopsy, the cost thereof to be borne by the party requesting
4543 it; and the judge of compensation claims shall have authority to
4544 order and require an autopsy and may, in her or his discretion,
4545 withhold her or his findings and award until an autopsy is held.

4546 Section 26. Subsections (1), (2), and (3) of section
4547 440.34, Florida Statutes, are amended, and subsection (7) is
4548 added to said section, to read:

4549 440.34 Attorney's fees; costs.--



4550 (1) A fee, gratuity, or other consideration may not be
4551 paid for ~~services rendered for~~ a claimant in connection with any
4552 proceedings arising under this chapter, unless approved as
4553 reasonable by the judge of compensation claims or court having
4554 jurisdiction over such proceedings. ~~Except as provided by this~~
4555 ~~subsection,~~ Any attorney's fee approved by a judge of
4556 compensation claims for benefits secured on behalf of services
4557 ~~rendered to~~ a claimant must equal to 20 percent of the first
4558 \$5,000 of the amount of the benefits secured, 15 percent of the
4559 next \$5,000 of the amount of the benefits secured, 10 percent of
4560 the remaining amount of the benefits secured to be provided
4561 during the first 10 years after the date the claim is filed, and
4562 5 percent of the benefits secured after 10 years. The judge of
4563 compensation claims shall not approve a compensation order, a
4564 joint stipulation for lump-sum settlement, a stipulation or
4565 agreement between a claimant and his or her attorney, or any
4566 other agreement related to benefits under this chapter that
4567 provides for an attorney's fee in excess of the amount permitted
4568 by this section. The judge of compensation claims is not
4569 required to approve any retainer agreement between the claimant
4570 and his or her attorney. The retainer agreement as to fees and
4571 costs may not be for compensation in excess of the amount
4572 allowed under this section. However, ~~The judge of compensation~~
4573 ~~claims shall consider the following factors in each case and may~~
4574 ~~increase or decrease the attorney's fee if, in her or his~~
4575 ~~judgment, the circumstances of the particular case warrant such~~
4576 ~~action.~~



4577 ~~(a) The time and labor required, the novelty and~~
4578 ~~difficulty of the questions involved, and the skill requisite to~~
4579 ~~perform the legal service properly.~~

4580 ~~(b) The fee customarily charged in the locality for~~
4581 ~~similar legal services.~~

4582 ~~(c) The amount involved in the controversy and the~~
4583 ~~benefits resulting to the claimant.~~

4584 ~~(d) The time limitation imposed by the claimant or the~~
4585 ~~circumstances.~~

4586 ~~(e) The experience, reputation, and ability of the lawyer~~
4587 ~~or lawyers performing services.~~

4588 ~~(f) The contingency or certainty of a fee.~~

4589 (2) In awarding a reasonable claimant's attorney's fee,
4590 the judge of compensation claims shall consider only those
4591 benefits secured by ~~to the claimant that~~ the attorney is
4592 responsible for securing. An attorney is not entitled to
4593 attorney's fees for representation in any issue that was ripe,
4594 due, and owing and that reasonably could have been addressed,
4595 but was not addressed, during the pendency of other issues for
4596 the same injury. The amount, statutory basis, and type of
4597 benefits obtained through legal representation shall be listed
4598 on all attorney's fees awarded by the judge of compensation
4599 claims. For purposes of this section, the term "benefits
4600 secured" ~~means benefits obtained as a result of the claimant's~~
4601 ~~attorney's legal services rendered in connection with the claim~~
4602 ~~for benefits.~~ However, such term does not include future
4603 medical benefits to be provided on any date more than 5 years
4604 after the date the claim is filed. In the event an offer to



4605 settle an issue pending before a judge of compensation claims is
4606 communicated in writing to the claimant or the claimant's
4607 attorney at least 30 days prior to the trial date on such issue,
4608 benefits secured shall be only that amount awarded above that
4609 specified in the offer to settle. If multiple issues are pending
4610 before the judge of compensation claims, said offer of
4611 settlement shall address each issue pending and shall state
4612 explicitly whether or not the offer on each issue is severable.
4613 The written offer shall also unequivocally state whether or not
4614 it includes medical witness fees and expenses and all other
4615 costs associated with the claim.

4616 (3) If any party ~~the claimant~~ should prevail in any
4617 proceedings before a judge of compensation claims or court,
4618 there shall be taxed against the nonprevailing party ~~employer~~
4619 the reasonable costs of such proceedings, not to include ~~the~~
4620 attorney's fees ~~of the claimant~~. A claimant shall be
4621 responsible for the payment of her or his own attorney's fees,
4622 except that a claimant shall be entitled to recover a reasonable
4623 attorney's fee from a carrier or employer:

4624 (a) Against whom she or he successfully asserts a petition
4625 for medical benefits only, if the claimant has not filed or is
4626 not entitled to file at such time a claim for disability,
4627 permanent impairment, wage-loss, or death benefits, arising out
4628 of the same accident;

4629 (b) In any case in which the employer or carrier files a
4630 response to petition denying benefits with the Office of the
4631 Judges of Compensation Claims and the injured person has



4632 employed an attorney in the successful prosecution of the
4633 petition;

4634 (c) In a proceeding in which a carrier or employer denies
4635 that an accident occurred for which compensation benefits are
4636 payable, and the claimant prevails on the issue of
4637 compensability; or

4638 (d) In cases where the claimant successfully prevails in
4639 proceedings filed under s. 440.24 or s. 440.28.

4640

4641 Regardless of the date benefits were initially requested,
4642 attorney's fees shall not attach under this subsection until 30
4643 days after the date the carrier or employer, if self-insured,
4644 receives the petition. ~~In applying the factors set forth in~~
4645 ~~subsection (1) to cases arising under paragraphs (a), (b), (c),~~
4646 ~~and (d), the judge of compensation claims must only consider~~
4647 ~~only such benefits and the time reasonably spent in obtaining~~
4648 ~~them as were secured for the claimant within the scope of~~
4649 ~~paragraphs (a), (b), (c), and (d).~~

4650 (7) If an attorney's fee is owed under paragraph (3)(a),
4651 the judge of compensation claims may approve an alternative
4652 attorney's fee not to exceed \$1,500 only once per accident,
4653 based on a maximum hourly rate of \$150 per hour, if the judge of
4654 compensation claims expressly finds that the attorney's fee
4655 amount provided for in subsection (1), based on benefits
4656 secured, fails to fairly compensate the attorney for disputed
4657 medical-only claims as provided in paragraph (3)(a) and the
4658 circumstances of the particular case warrant such action.



4659 Section 27. Subsection (7) is added to section 440.38,
4660 Florida Statutes, to read:

4661 440.38 Security for compensation; insurance carriers and
4662 self-insurers.—

4663 (7) Any employer who meets the requirements of subsection
4664 (1) through a policy of insurance issued outside of this state
4665 must at all times, with respect to all employees working in this
4666 state, maintain the required coverage under a Florida
4667 endorsement using Florida rates and rules pursuant to payroll
4668 reporting that accurately reflects the work performed in this
4669 state by such employees.

4670 Section 28. Subsections (2) and (6) of section 440.381,
4671 Florida Statutes, are amended to read:

4672 440.381 Application for coverage; reporting payroll;
4673 payroll audit procedures; penalties.--

4674 (2) Submission of an application that contains false,
4675 misleading, or incomplete information provided with the purpose
4676 of avoiding or reducing the amount of premiums for workers'
4677 compensation coverage is a felony of the second degree,
4678 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4679 The application must contain a statement that the filing of an
4680 application containing false, misleading, or incomplete
4681 information provided with the purpose of avoiding or reducing
4682 the amount of premiums for workers' compensation coverage is a
4683 felony of the third degree, punishable as provided in s.
4684 775.082, s. 775.083, or s. 775.084. The application must contain
4685 a sworn statement by the employer attesting to the accuracy of
4686 the information submitted and acknowledging the provisions of



4687 former s. 440.37(4). The application must contain a sworn
4688 statement by the agent attesting that the agent explained to the
4689 employer or officer the classification codes that are used for
4690 premium calculations.

4691 (6)(a) If an employer understates or conceals payroll, or
4692 misrepresents or conceals employee duties so as to avoid proper
4693 classification for premium calculations, or misrepresents or
4694 conceals information pertinent to the computation and
4695 application of an experience rating modification factor, the
4696 employer, or the employer's agent or attorney, shall pay to the
4697 insurance carrier a penalty of 10 times the amount of the
4698 difference in premium paid and the amount the employer should
4699 have paid and reasonable attorney's fees. The penalty may be
4700 enforced in the circuit courts of this state.

4701 (b) If the department determines that an employer has
4702 materially understated or concealed payroll, has materially
4703 misrepresented or concealed employee duties so as to avoid
4704 proper classification for premium calculations, or has
4705 materially misrepresented or concealed information pertinent to
4706 the computation and application of an experience rating
4707 modification factor, the department shall immediately notify the
4708 employer's carrier of such determination. The carrier shall
4709 commence a physical onsite audit of the employer within 30 days
4710 after receiving notification from the department. If the carrier
4711 fails to commence the audit as required by this section, the
4712 department shall contract with auditing professionals to conduct
4713 the audit at the carrier's expense. A copy of the carrier's
4714 audit of the employer shall be provided to the department upon



4715 completion. The carrier is not required to conduct the physical
4716 onsite audit of the employer as set forth in this paragraph if
4717 the carrier gives written notice of cancellation to the employer
4718 within 30 days after receiving notification from the department
4719 of the material misrepresentation, understatement, or
4720 concealment and an audit is conducted in conjunction with the
4721 cancellation.

4722 Section 29. Subsection (3) of section 440.42, Florida
4723 Statutes, is amended to read:

4724 440.42 Insurance policies; liability.--

4725 (3) No contract or policy of insurance issued by a carrier
4726 under this chapter shall expire or be canceled until at least 30
4727 days have elapsed after a notice of cancellation has been sent
4728 to the department and to the employer in accordance with the
4729 provisions of s. 440.185(7). For cancellation due to nonpayment
4730 of premium, the insurer shall mail notification to the employer
4731 at least 10 days prior to the effective date of the
4732 cancellation. However, when duplicate or dual coverage exists by
4733 reason of two different carriers having issued policies of
4734 insurance to the same employer securing the same liability, it
4735 shall be presumed that only that policy with the later effective
4736 date shall be in force and that the earlier policy terminated
4737 upon the effective date of the latter. In the event that both
4738 policies carry the same effective date, one of the policies may
4739 be canceled instanter upon filing a notice of cancellation with
4740 the department and serving a copy thereof upon the employer in
4741 such manner as the department prescribes by rule. The department
4742 may by rule prescribe the content of the notice of retroactive



4743 cancellation and specify the time, place, and manner in which
4744 the notice of cancellation is to be served.

4745 Section 30. Paragraph (a) of subsection (4) of section
4746 440.49, Florida Statutes, is amended to read:

4747 440.49 Limitation of liability for subsequent injury
4748 through Special Disability Trust Fund.--

4749 (4) PERMANENT IMPAIRMENT OR PERMANENT TOTAL DISABILITY,
4750 TEMPORARY BENEFITS, MEDICAL BENEFITS, OR ATTENDANT CARE AFTER
4751 OTHER PHYSICAL IMPAIRMENT.--

4752 (a) *Permanent impairment.*--If an employee who has a
4753 preexisting permanent physical impairment incurs a subsequent
4754 permanent impairment from injury or occupational disease arising
4755 out of, and in the course of, her or his employment which merges
4756 with the preexisting permanent physical impairment to cause a
4757 permanent impairment, the employer shall, in the first instance,
4758 pay all benefits provided by this chapter; but, subject to the
4759 limitations specified in subsection (6), such employer shall be
4760 reimbursed from the Special Disability Trust Fund created by
4761 subsection (9) for 50 percent of all impairment benefits which
4762 the employer has been required to provide pursuant to s.
4763 440.15(3)~~(a)~~ as a result of the subsequent accident or
4764 occupational disease.

4765 Section 31. Subsection (6) of section 440.491, Florida
4766 Statutes, is amended to read:

4767 440.491 Reemployment of injured workers; rehabilitation.--

4768 (6) TRAINING AND EDUCATION.--

4769 (a) Upon referral of an injured employee by the carrier,
4770 or upon the request of an injured employee, the department shall



4771 | conduct a training and education screening to determine whether
4772 | it should refer the employee for a vocational evaluation and, if
4773 | appropriate, approve training and education or other vocational
4774 | services for the employee. The department may not approve formal
4775 | training and education programs unless it determines, after
4776 | consideration of the reemployment assessment, pertinent
4777 | reemployment status reviews or reports, and such other relevant
4778 | factors as it prescribes by rule, that the reemployment plan is
4779 | likely to result in return to suitable gainful employment. The
4780 | department is authorized to expend moneys from the Workers'
4781 | Compensation Administration Trust Fund, established by s.
4782 | 440.50, to secure appropriate training and education at a
4783 | community college established under part III of chapter 240 or
4784 | at a vocational-technical school established under s. 230.63, or
4785 | to secure other vocational services when necessary to satisfy
4786 | the recommendation of a vocational evaluator. As used in this
4787 | paragraph, "appropriate training and education" includes
4788 | securing a general education diploma (GED), if necessary. The
4789 | department shall establish training and education standards
4790 | pertaining to employee eligibility, course curricula and
4791 | duration, and associated costs.

4792 | (b) When ~~it appears that~~ an employee who has attained
4793 | maximum medical improvement is unable to earn at least 80
4794 | percent of the compensation rate and requires training and
4795 | education to obtain suitable gainful employment, the employer or
4796 | carrier shall pay the employee additional training and education
4797 | temporary total compensation benefits while the employee
4798 | receives such training and education for a period not to exceed



4799 104 weeks. The benefits provided under this paragraph shall not
4800 be in addition to the 104 weeks as specified in s. 440.15(2) 26
4801 weeks, which period may be extended for an additional 26 weeks
4802 or less, if such extended period is determined to be necessary
4803 and proper by a judge of compensation claims. However, a carrier
4804 or employer is not precluded from voluntarily paying additional
4805 temporary total disability compensation beyond that period. If
4806 an employee requires temporary residence at or near a facility
4807 or an institution providing training and education which is
4808 located more than 50 miles away from the employee's customary
4809 residence, the reasonable cost of board, lodging, or travel must
4810 be borne by the department from the Workers' Compensation
4811 Administration Trust Fund established by s. 440.50. An employee
4812 who refuses to accept training and education that is recommended
4813 by the vocational evaluator and considered necessary by the
4814 department will forfeit any additional training and education
4815 benefits and any additional payment for lost wages under this
4816 chapter. The department shall adopt rules to implement this
4817 section, which shall include requirements placed upon the
4818 carrier to notify the injured employee of the availability of
4819 training and education benefits as specified in this chapter.
4820 The department shall also include information regarding the
4821 eligibility for training and education benefits in informational
4822 materials specified in ss. 440.207 and 440.40 is subject to a
4823 50-percent reduction in weekly compensation benefits, including
4824 wage loss benefits, as determined under s. 440.15(3)(b).

4825 Section 32. Section 440.525, Florida Statutes, is amended
4826 to read:



4827 440.525 Audit, examination, and examination of carriers
4828 and claims-handling entities.--

4829 (1) The Office of Insurance Regulation ~~department~~ may
4830 audit, examine, or investigate any each carrier, third-party
4831 administrator, servicing agent, or other claims-handling entity
4832 as often as is warranted to ensure that it is carriers are
4833 fulfilling its their obligations under this chapter ~~the law. The~~
4834 ~~examination may cover any period of the carrier's operations~~
4835 ~~since the last previous examination.~~

4836 (2) An audit or examination may cover any period of the
4837 carrier's, third-party administrator's, servicing agent's, or
4838 other claims-handling entity's operations since the last
4839 previous audit or examination. An investigation based upon a
4840 reasonable belief by the office that a material violation of
4841 this chapter has occurred may cover any time period, but may not
4842 predate the last audit by more than 5 years. The Financial
4843 Services Commission may by rule establish procedures, standards,
4844 and protocols for audits, examinations, and investigations. If
4845 the office finds any violation of this chapter, it may impose
4846 administrative penalties pursuant to this chapter. If the office
4847 finds any self-insurer in violation of this chapter, it may take
4848 action pursuant s. 440.38(3). Audits, examinations, or
4849 investigations by the office may address, but are not limited to
4850 addressing, unfair or unreasonable claims-handling techniques;
4851 patterns or practices of unreasonable denial of claims or
4852 unreasonable delay in claims handling; timeliness and accuracy
4853 of payments and reports under ss. 440.13, 440.16, and 440.185;
4854 proper application of practice parameters and protocols in



4855 paying medical benefits; or patterns or practices of harassment,
4856 coercion, or intimidation of claimants. The commission may also
4857 specify by rule the documentation to be maintained for each
4858 claim file.

4859 (3) As to any audit, examination, or investigation
4860 conducted under this chapter, the office shall have the power to
4861 conduct onsite inspections of claims records and documentation
4862 of a carrier, third-party administrator, servicing agent, or
4863 other claims-handling entity, and conduct interviews, both sworn
4864 and unsworn, of claims-handling personnel. Carriers, third-party
4865 administrators, servicing agents, and other claims-handling
4866 entities shall make all claims records, documentation,
4867 communication, and correspondence available to office personnel
4868 during regular business hours. If any person fails to comply
4869 with an office request for production of records or documents or
4870 fails to produce an employee for interview, the office may
4871 compel production or attendance by subpoena. The results of an
4872 audit, examination, or investigation shall be provided to the
4873 carrier, third-party administrator, servicing agent, or other
4874 claims-handling entity in a written report setting forth the
4875 basis for any violations that are asserted. Such report is
4876 agency action for purposes of chapter 120, and the aggrieved
4877 party may request a proceeding under s. 120.57 with regard to
4878 the findings and conclusion of the report.

4879 (4) If the office finds that violations of this chapter
4880 have occurred, the office may impose an administrative penalty
4881 upon the offending entity or entities. For each offending
4882 entity, such penalties shall not exceed \$2,500 for each pattern



4883 or practice constituting nonwillful violation and shall not
4884 exceed an aggregate amount of \$10,000 for all nonwillful
4885 violations arising out of the same action. If the office finds a
4886 pattern of practice that constitutes a willful violation, the
4887 office may impose an administrative penalty upon each offending
4888 entity not to exceed \$20,000 for each willful pattern or
4889 practice. Such fines shall not exceed \$100,000 for all willful
4890 violations arising out of the same action. No penalty assessed
4891 under this section may be recouped by any carrier in the rate
4892 base, the premium, or any rate filing. Any administrative
4893 penalty imposed under this section for a nonwillful violation
4894 shall not duplicate an administrative penalty imposed under
4895 another provision of this chapter. The commission may adopt
4896 rules to implement this section. The commission shall adopt
4897 penalty guidelines by rule to set penalties under this chapter.

4898 (5) The department shall provide such assistance as may be
4899 requested by the office to enable the office to carry out its
4900 powers and duties under this section.

4901 Section 33. Subsection (2) of section 627.162, Florida
4902 Statutes, is amended to read:

4903 627.162 Requirements for premium installments;
4904 delinquency, collection, and check return charges; attorney's
4905 fees.--

4906 (2) Insurers providing workers' compensation coverage
4907 under chapter 440 may charge the insured a delinquency and
4908 collection fee on each installment in default for a period of
4909 not less than 5 days in an amount not to exceed \$25 ~~\$10~~ or 5
4910 percent of the delinquent installment, whichever is greater.



4911 Only one such delinquency and collection fee may be collected on
4912 any such installment regardless of the period during which it
4913 remains in default.

4914 Section 34. Paragraphs (c) and (d) of subsection (4) of
4915 section 627.311, Florida Statutes, are amended to read

4916 627.311 Joint underwriters and joint reinsurers.--

4917 (4)

4918 (c) The operation of the plan shall be governed by a plan
4919 of operation that is prepared at the direction of the board of
4920 governors. The plan of operation may be changed at any time by
4921 the board of governors or upon request of the department. The
4922 plan of operation and all changes thereto are subject to the
4923 approval of the department. The plan of operation shall:

4924 1. Authorize the board to engage in the activities
4925 necessary to implement this subsection, including, but not
4926 limited to, borrowing money.

4927 2. Develop criteria for eligibility for coverage by the
4928 plan, including, but not limited to, documented rejection by at
4929 least two insurers which reasonably assures that insureds
4930 covered under the plan are unable to acquire coverage in the
4931 voluntary market. Any insured may voluntarily elect to accept
4932 coverage from an insurer for a premium equal to or greater than
4933 the plan premium if the insurer writing the coverage adheres to
4934 the provisions of s. 627.171.

4935 3. Require notice from the agent to the insured at the
4936 time of the application for coverage that the application is for
4937 coverage with the plan and that coverage may be available
4938 through an insurer, group self-insurers' fund, commercial self-



4939 insurance fund, or assessable mutual insurer through another
4940 agent at a lower cost.

4941 4. Establish programs to encourage insurers to provide
4942 coverage to applicants of the plan in the voluntary market and
4943 to insureds of the plan, including, but not limited to:

4944 a. Establishing procedures for an insurer to use in
4945 notifying the plan of the insurer's desire to provide coverage
4946 to applicants to the plan or existing insureds of the plan and
4947 in describing the types of risks in which the insurer is
4948 interested. The description of the desired risks must be on a
4949 form developed by the plan.

4950 b. Developing forms and procedures that provide an insurer
4951 with the information necessary to determine whether the insurer
4952 wants to write particular applicants to the plan or insureds of
4953 the plan.

4954 c. Developing procedures for notice to the plan and the
4955 applicant to the plan or insured of the plan that an insurer
4956 will insure the applicant or the insured of the plan, and notice
4957 of the cost of the coverage offered; and developing procedures
4958 for the selection of an insuring entity by the applicant or
4959 insured of the plan.

4960 d. Provide for a market-assistance plan to assist in the
4961 placement of employers. All applications for coverage in the
4962 plan received 45 days before the effective date for coverage
4963 shall be processed through the market-assistance plan. A market-
4964 assistance plan specifically designed to serve the needs of
4965 small good policyholders as defined by the board must be
4966 finalized by January 1, 1994.



4967 5. Provide for policy and claims services to the insureds
4968 of the plan of the nature and quality provided for insureds in
4969 the voluntary market.

4970 6. Provide for the review of applications for coverage
4971 with the plan for reasonableness and accuracy, using any
4972 available historic information regarding the insured.

4973 7. Provide for procedures for auditing insureds of the
4974 plan which are based on reasonable business judgment and are
4975 designed to maximize the likelihood that the plan will collect
4976 the appropriate premiums.

4977 8. Authorize the plan to terminate the coverage of and
4978 refuse future coverage for any insured that submits a fraudulent
4979 application to the plan or provides fraudulent or grossly
4980 erroneous records to the plan or to any service provider of the
4981 plan in conjunction with the activities of the plan.

4982 9. Establish service standards for agents who submit
4983 business to the plan.

4984 10. Establish criteria and procedures to prohibit any
4985 agent who does not adhere to the established service standards
4986 from placing business with the plan or receiving, directly or
4987 indirectly, any commissions for business placed with the plan.

4988 11. Provide for the establishment of reasonable safety
4989 programs for all insureds in the plan. All insureds of the plan
4990 must participate in the safety program.

4991 12. Authorize the plan to terminate the coverage of and
4992 refuse future coverage to any insured who fails to pay premiums
4993 or surcharges when due; who, at the time of application, is
4994 delinquent in payments of workers' compensation or employer's



4995 liability insurance premiums or surcharges owed to an insurer,
4996 group self-insurers' fund, commercial self-insurance fund, or
4997 assessable mutual insurer licensed to write such coverage in
4998 this state; or who refuses to substantially comply with any
4999 safety programs recommended by the plan.

5000 13. Authorize the board of governors to provide the
5001 services required by the plan through staff employed by the
5002 plan, through reasonably compensated service providers who
5003 contract with the plan to provide services as specified by the
5004 board of governors, or through a combination of employees and
5005 service providers.

5006 14. Provide for service standards for service providers,
5007 methods of determining adherence to those service standards,
5008 incentives and disincentives for service, and procedures for
5009 terminating contracts for service providers that fail to adhere
5010 to service standards.

5011 15. Provide procedures for selecting service providers and
5012 standards for qualification as a service provider that
5013 reasonably assure that any service provider selected will
5014 continue to operate as an ongoing concern and is capable of
5015 providing the specified services in the manner required.

5016 16. Provide for reasonable accounting and data-reporting
5017 practices.

5018 17. Provide for annual review of costs associated with the
5019 administration and servicing of the policies issued by the plan
5020 to determine alternatives by which costs can be reduced.

5021 18. Authorize the acquisition of such excess insurance or
5022 reinsurance as is consistent with the purposes of the plan.



5023 19. Provide for an annual report to the department on a
5024 date specified by the department and containing such information
5025 as the department reasonably requires.

5026 20. Establish multiple rating plans for various
5027 classifications of risk which reflect risk of loss, hazard
5028 grade, actual losses, size of premium, and compliance with loss
5029 control. At least one of such plans must be a preferred-rating
5030 plan to accommodate small-premium policyholders with good
5031 experience as defined in sub-subparagraph 22.a.

5032 21. Establish agent commission schedules.

5033 22. Establish four ~~three~~ subplans as follows:

5034 a. Subplan "A" must include those insureds whose annual
5035 premium does not exceed \$2,500 and who have neither incurred any
5036 lost-time claims nor incurred medical-only claims exceeding 50
5037 percent of their premium for the immediate 2 years.

5038 b. Subplan "B" must include insureds that are employers
5039 identified by the board of governors as high-risk employers due
5040 solely to the nature of the operations being performed by those
5041 insureds and for whom no market exists in the voluntary market,
5042 and whose experience modifications are less than 1.00.

5043 c. Subplan "C" must include all ~~other~~ insureds within the
5044 plan that are not eligible for subplan "A," subplan "B," or
5045 subplan "D."

5046 d. Subplan "D" must include any employer with 50 or fewer
5047 employees, except that an employer who is eligible for subplan
5048 "D" and another subplan may elect the subplan in which it will
5049 participate. The rate plan for subplan "D" shall be the same
5050 rate plan as the plan approved under ss. 627.091-627.151 and



5051 each participant in subplan "D" shall pay the premium determined
5052 under such rate plan, plus a surcharge determined by the board
5053 to be sufficient to ensure that the plan does not compete with
5054 the voluntary market rate for any participant, but not to exceed
5055 25 percent.

5056 23. Provide for a depopulation program to reduce the
5057 number of insureds in subplan "D." If an employer insured
5058 through subplan "D" is offered coverage from a voluntary market
5059 carrier:

5060 a. During the first 30 days of coverage under the subplan;

5061 b. Before a policy is issued under the subplan;

5062 c. By issuance of a policy upon expiration or cancellation
5063 of the policy under the subplan; or

5064 d. By assumption of the subplan's obligation with respect
5065 to an in-force policy,

5066
5067 that employer is no longer eligible for coverage through the
5068 plan. The premium for risks assumed by the voluntary market
5069 carrier must be the same premium plus, for the first 2 years,
5070 the surcharge as determined in sub-subparagraph 22.d. A premium
5071 under this subparagraph, including surcharge, is deemed approved
5072 and is not an excess premium for purposes of s. 627.171.

5073 24. Require that policies issued under subplan "D" and
5074 applications for such policies must include a notice that the
5075 policy issued under subplan "D" could be replaced by a policy
5076 issued from a voluntary market carrier and that if an offer of
5077 coverage is obtained from a voluntary market carrier, the
5078 policyholder is no longer eligible for coverage through subplan



5079 "D." The notice must also specify that acceptance of coverage
5080 under subplan "D" creates a conclusive presumption that the
5081 applicant or policyholder is aware of this potential. With
5082 respect to any employer organized as a not-for-profit
5083 corporation and tax-exempt under s. 501(c)(3) of the Internal
5084 Revenue Code, the surcharge shall be sufficient to ensure that
5085 the subplan does not compete with the voluntary market but does
5086 not exceed 10 percent.

5087 (d)1. The plan must be funded through actuarially sound
5088 premiums charged to insureds of the plan.

5089 2. The plan may issue assessable policies only to those
5090 insureds in subplan "C" and subplan "D." Assessments levied
5091 against subplan "C" participants shall cover only the excess
5092 losses attributable to subplan "C," and assessments levied
5093 against subplan "D" participants shall cover only the excess
5094 losses attributable to subplan "D." In no event may the plan
5095 levy assessments against any person or entity except as
5096 authorized by this paragraph. Those assessable policies must be
5097 clearly identified as assessable by containing, in contrasting
5098 color and in not less than 10-point type, the following
5099 statements: "This is an assessable policy. If the plan is unable
5100 to pay its obligations, policyholders will be required to
5101 contribute on a pro rata earned premium basis the money
5102 necessary to meet any assessment levied."

5103 3. The plan may issue assessable policies with differing
5104 terms and conditions to different groups within subplan "C" and
5105 subplan "D" ~~the plan~~ when a reasonable basis exists for the
5106 differentiation.



5107 | 4. The plan may offer rating, dividend plans, and other
 5108 | plans to encourage loss prevention programs.

5109 | Section 35. Paragraphs (c) and (e) of subsection (3) of
 5110 | section 921.0022, Florida Statutes, are amended to read:

5111 | 921.0022 Criminal Punishment Code; offense severity
 5112 | ranking chart.--

5113 | (3) OFFENSE SEVERITY RANKING CHART

Florida	Felony	
Statute	Degree	Description

5114 | (c) LEVEL 3

5115 | 316.193(2)(b) 3rd Felony DUI, 3rd conviction.

5116 | 316.1935(2) 3rd Fleeing or attempting to elude law
 enforcement officer in marked patrol
 vehicle with siren and lights
 activated.

5117 | 319.30(4) 3rd Possession by junkyard of motor vehicle
 with identification number plate
 removed.

5118 | 319.33(1)(a) 3rd Alter or forge any certificate of title
 to a motor vehicle or mobile home.

5119 | 319.33(1)(c) 3rd Procure or pass title on stolen
 vehicle.

5120 | 319.33(4) 3rd With intent to defraud, possess, sell,



			etc., a blank, forged, or unlawfully obtained title or registration.
5121	327.35(2)(b)	3rd	Felony BUI.
5122	328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
5123	328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
5124	376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.
5125	<u>440.105(3)(b)</u>	<u>3rd</u>	<u>Receipt of fee or consideration without approval by judge of compensation claims.</u>
5126	<u>440.1051(3)</u>	<u>3rd</u>	<u>False report of workers' compensation fraud or retaliation for making such a report.</u>
5127	501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
5128	697.08	3rd	Equity skimming.
5129			



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5130	790.15(3)	3rd	Person directs another to discharge firearm from a vehicle.
5131	796.05(1)	3rd	Live on earnings of a prostitute.
5132	806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
5133	806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
5134	810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
5135	812.014(2)(c)2.	3rd	Grand theft; \$5,000 or more but less than \$10,000.
5136	812.0145(2)(c)	3rd	Theft from person 65 years of age or older; \$300 or more but less than \$10,000.
5137	815.04(4)(b)	2nd	Computer offense devised to defraud or obtain property.
5138	817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less than \$20,000.
	817.233	3rd	Burning to defraud insurer.



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5139	817.234(8)&(9)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
5140	817.234(11)(a)	3rd	Insurance fraud; property value less than \$20,000.
5141	817.505(4)	3rd	Patient brokering.
5142	828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
5143	831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a counterfeit payment instrument.
5144	831.29	2nd	Possession of instruments for counterfeiting drivers' licenses or identification cards.
5145	838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
5146	843.19	3rd	Injure, disable, or kill police dog or horse.
5147	870.01(2)	3rd	Riot; inciting or encouraging.
5148	893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1.,



(2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6.,
 (2)(c)7., (2)(c)8., (2)(c)9., (3), or
 (4) drugs).

5149

893.13(1)(d)2. 2nd

Sell, manufacture, or deliver s.
 893.03(1)(c), (2)(c)1., (2)(c)2.,
 (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,
 (2)(c)8., (2)(c)9., (3), or (4) drugs
 within 200 feet of university or public
 park.

5150

893.13(1)(f)2. 3rd

Sell, manufacture, or deliver s.
 893.03(1)(c), (2)(c)1., (2)(c)2.,
 (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,
 (2)(c)8., (2)(c)9., (3), or (4) drugs
 within 200 feet of public housing
 facility.

5151

893.13(6)(a) 3rd

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

5152

893.13(7)(a)8. 3rd

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

5153

893.13(7)(a)9. 3rd

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



misrepresentation, etc.

5154

893.13(7)(a)10. 3rd Affix false or forged label to package of controlled substance.

5155

893.13(7)(a)11. 3rd Furnish false or fraudulent material information on any document or record required by chapter 893.

5156

893.13(8)(a)1. 3rd Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.

5157

893.13(8)(a)2. 3rd Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.

5158

893.13(8)(a)3. 3rd Knowingly write a prescription for a controlled substance for a fictitious person.

5159

893.13(8)(a)4. 3rd Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary



benefit for the practitioner.

5160

918.13(1)(a) 3rd Alter, destroy, or conceal
investigation evidence.

5161

944.47(1)(a)1.- 3rd Introduce contraband to correctional
2. facility.

5162

944.47(1)(c) 2nd Possess contraband while upon the
grounds of a correctional institution.

5163

985.3141 3rd Escapes from a juvenile facility
(secure detention or residential
commitment facility).

5164

(e) LEVEL 5

5165

316.027(1)(a) 3rd Accidents involving personal injuries,
failure to stop; leaving scene.

5166

316.1935(4) 2nd Aggravated fleeing or eluding.

5167

322.34(6) 3rd Careless operation of motor vehicle
with suspended license, resulting in
death or serious bodily injury.

5168

327.30(5) 3rd Vessel accidents involving personal
injury; leaving scene.

5169

381.0041(11)(b) 3rd Donate blood, plasma, or organs knowing
HIV positive.



5170			
5171	<u>440.10(1)(g)</u>	<u>2nd</u>	<u>Failure to obtain workers' compensation coverage.</u>
5172	<u>440.105(5)</u>	<u>2nd</u>	<u>Unlawful solicitation for the purpose of making workers' compensation claims.</u>
5173	<u>440.381(2)</u>	<u>2nd</u>	<u>Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers' compensation premiums.</u>
5174	790.01(2)	3rd	Carrying a concealed firearm.
5175	790.162	2nd	Threat to throw or discharge destructive device.
5176	790.163(1)	2nd	False report of deadly explosive or weapon of mass destruction.
5177	790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
5178	790.23	2nd	Felons in possession of firearms or electronic weapons or devices.
5179	800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years.
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5181	800.04(7)(c)	2nd	Lewd or lascivious exhibition; offender 18 years or older.
5182	806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
5183	812.0145(2)(b)	2nd	Theft from person 65 years of age or older; \$10,000 or more but less than \$50,000.
5184	812.015(8)	3rd	Retail theft; property stolen is valued at \$300 or more and one or more specified acts.
5185	812.019(1)	2nd	Stolen property; dealing in or trafficking in.
5186	812.131(2)(b)	3rd	Robbery by sudden snatching.
5187	812.16(2)	3rd	Owning, operating, or conducting a chop shop.
5188	817.034(4)(a)2.	2nd	Communications fraud, value \$20,000 to \$50,000.
5189	817.234(11)(b)	2nd	Insurance fraud; property value \$20,000 or more but less than \$100,000.
	817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of



benefit, services received, payment avoided, or amount of injury or fraud, \$75,000 or more.

5190 817.625(2)(b) 2nd Second or subsequent fraudulent use of scanning device or reencoder.

5191 825.1025(4) 3rd Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.

5192 827.071(4) 2nd Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.

5193 839.13(2)(b) 2nd Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or death.

5194 843.01 3rd Resist officer with violence to person; resist arrest with violence.

5195 874.05(2) 2nd Encouraging or recruiting another to join a criminal street gang; second or subsequent offense.

5196 893.13(1)(a)1. 2nd Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.



drugs).

5197

893.13(1)(c)2. 2nd

Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility or school.

5198

893.13(1)(d)1. 1st

Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 200 feet of university or public park.

5199

893.13(1)(e)2. 2nd

Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.

5200

893.13(1)(f)1. 1st

Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 200 feet of public housing facility.



5201 893.13(4)(b) 2nd Deliver to minor cannabis (or other s.
 893.03(1)(c), (2)(c)1., (2)(c)2.,
 (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7.,
 (2)(c)8., (2)(c)9., (3), or (4) drugs).

5202
 5203 Section 36. Report to the Legislature regarding
 5204 outstanding enforcement issues.--The Department of Financial
 5205 Services shall, no later than January 1, 2004, provide a report
 5206 to the President of the Senate, the Speaker of the House of
 5207 Representatives, the minority leaders of the Senate and the
 5208 House of Representatives, and the chairs of the standing
 5209 committees of the Senate and the House of Representatives having
 5210 jurisdiction over insurance issues, containing the following
 5211 information:

5212 (1) Any provision of chapter 440, Florida Statutes,
 5213 relating to workers' compensation carrier compliance and
 5214 enforcement, that the department finds it is unable to enforce.

5215 (2) Any administrative rule relating to workers'
 5216 compensation carrier compliance and enforcement that the
 5217 department finds it is unable to enforce.

5218 (3) Any other impediment to enforcement of chapter 440,
 5219 Florida Statutes, resulting from the transfer of activities from
 5220 the former Department of Labor and Employment Security to the
 5221 department or the reorganization of the former Department of
 5222 Insurance into the department.

5223 Section 37. Subsection (2) of section 946.523, Florida
 5224 Statutes, is amended to read:

5225 946.523 Prison industry enhancement (PIE) programs.--



5226 (2) Notwithstanding any other law to the contrary,
5227 including s. 440.15~~(8)(9)~~, private sector employers shall
5228 provide workers' compensation coverage to inmates who
5229 participate in prison industry enhancement (PIE) programs under
5230 subsection (1). However, inmates are not entitled to
5231 unemployment compensation.

5232 Section 38. Paragraph (c) of subsection (5) of section
5233 985.315, Florida Statutes, is amended to read:

5234 985.315 Educational/technical and vocational work-related
5235 programs.--

5236 (5)

5237 (c) Notwithstanding any other law to the contrary,
5238 including s. 440.15~~(8)(9)~~, private sector employers shall
5239 provide juveniles participating in juvenile work programs under
5240 paragraph (b) with workers' compensation coverage, and juveniles
5241 shall be entitled to the benefits of such coverage. Nothing in
5242 this subsection shall be construed to allow juveniles to
5243 participate in unemployment compensation benefits.

5244 Section 39. Section 440.1925, Florida Statutes, is
5245 repealed.

5246 Section 40. The amendments to ss. 440.02 and 440.15,
5247 Florida Statutes, which are made by this act shall not be
5248 construed to affect any determination of disability under s.
5249 112.18, s. 112.181, or s. 112.19, Florida Statutes.

5250 Section 41. If any law amended by this act was also
5251 amended by a law enacted at the 2003 Regular Session of the
5252 Legislature, such laws shall be construed as if they had been



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5253 | enacted at the same session of the Legislature, and full effect
5254 | shall be given to each if possible.

5255 | Section 42. Except as otherwise provided herein, this act
5256 | shall take effect October 1, 2003.