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LEGISLATIVE ACTION

Senate

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House

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Floor: WD/2R

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05/05/2017 09:27 AM

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Senator Brandes moved the following:

1 **Senate Substitute for Amendment (655850) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

6 Section 1. Subsection (40) of section 440.02, Florida
7 Statutes, is amended to read:

8 440.02 Definitions.—When used in this chapter, unless the
9 context clearly requires otherwise, the following terms shall
10 have the following meanings:

11 (40) "Specificity" means information on the petition for



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

32 Section 2. Paragraph (c) of subsection (3) of section
33 440.105, Florida Statutes, is amended to read:

34 440.105 Prohibited activities; reports; penalties;
35 limitations.-

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

39 (c) Except for an attorney retained by or for an injured
40 worker receiving a fee or other consideration from or on behalf



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41 of an injured worker, it is unlawful for any ~~attorney or other~~
42 person, in his or her individual capacity or in his or her
43 capacity as a public or private employee, or for any firm,
44 corporation, partnership, or association to receive any fee or
45 other consideration or any gratuity from a person on account of
46 services rendered for a person in connection with any
47 proceedings arising under this chapter, unless such fee,
48 consideration, or gratuity is approved by a judge of
49 compensation claims or by the Deputy Chief Judge of Compensation
50 Claims.

51 Section 3. Paragraphs (d) and (i) of subsection (3) and
52 paragraphs (a) and (b) of subsection (12) of section 440.13,
53 Florida Statutes, are amended to read:

54 440.13 Medical services and supplies; penalty for
55 violations; limitations.—

56 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.—

57 (d) By telephone or in writing, a carrier must authorize or
58 deny ~~respond, by telephone or in writing,~~ to a request for
59 authorization from an authorized health care provider, or inform
60 the provider of material deficiencies that prevent authorization
61 or denial, by the close of the third business day after receipt
62 of the request. A carrier who fails to respond to a written
63 request for authorization for referral for medical treatment by
64 the close of the third business day after receipt of the request
65 consents to the medical necessity for such treatment. All such
66 requests must be made to the carrier. Notice to the employer
67 ~~carrier~~ does not include notice to the carrier ~~employer~~.

68 (i) Notwithstanding paragraph (d), a claim for specialist
69 consultations, surgical operations, physiotherapeutic or



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70 occupational therapy procedures, X-ray examinations, or special
71 diagnostic laboratory tests that cost more than \$1,000 and other
72 specialty services that the department identifies by rule is not
73 valid and reimbursable unless the services have been expressly
74 authorized by the carrier, unless the carrier has failed to
75 authorize or deny, or inform the provider of material
76 deficiencies that prevent authorization or denial, ~~respond~~
77 within 10 days after ~~to~~ a written request for authorization, or
78 unless emergency care is required. The insurer shall authorize
79 such consultation or procedure unless the health care provider
80 or facility is not authorized, unless such treatment is not in
81 accordance with practice parameters and protocols of treatment
82 established in this chapter, or unless a judge of compensation
83 claims has determined that the consultation or procedure is not
84 medically necessary, not in accordance with the practice
85 parameters and protocols of treatment established in this
86 chapter, or otherwise not compensable under this chapter.
87 Authorization of a treatment plan does not constitute express
88 authorization for purposes of this section, except to the extent
89 the carrier provides otherwise in its authorization procedures.
90 This paragraph does not limit the carrier's obligation to
91 identify and disallow overutilization or billing errors.

92 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
93 REIMBURSEMENT ALLOWANCES.—

94 (a)1. A three-member panel is created, consisting of the
95 Chief Financial Officer, or the Chief Financial Officer's
96 designee, and two members to be appointed by the Governor,
97 subject to confirmation by the Senate, one member who, on
98 account of present or previous vocation, employment, or



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99 affiliation, shall be classified as a representative of
100 employers, the other member who, on account of previous
101 vocation, employment, or affiliation, shall be classified as a
102 representative of employees. The Governor shall appoint a new
103 member to the panel within 120 days after a vacancy occurs. If
104 the Governor fails to fill such vacancy, the Chief Financial
105 Officer shall appoint a new member to the panel within 120 days
106 after the expiration of the Governor's opportunity to fill the
107 vacancy, subject to confirmation by the Senate.

108 2. Annually, the panel shall adopt determine statewide
109 schedules of maximum reimbursement allowances for medically
110 necessary treatment, care, and attendance provided by
111 physicians, hospitals, ambulatory surgical centers, work-
112 hardening programs, pain programs, and durable medical
113 equipment. ~~The maximum reimbursement allowances for inpatient~~
114 ~~hospital care shall be based on a schedule of per diem rates, to~~
115 ~~be approved by the three-member panel no later than March 1,~~
116 ~~1994, to be used in conjunction with a precertification manual~~
117 ~~as determined by the department, including maximum hours in~~
118 ~~which an outpatient may remain in observation status, which~~
119 ~~shall not exceed 23 hours. All compensable charges for hospital~~
120 ~~outpatient care shall be reimbursed at 75 percent of usual and~~
121 ~~customary charges, except as otherwise provided by this~~
122 ~~subsection. Annually, the three-member panel shall adopt~~
123 ~~schedules of maximum reimbursement allowances for physicians,~~
124 ~~hospital inpatient care, hospital outpatient care, ambulatory~~
125 ~~surgical centers, work-hardening programs, and pain programs. An~~
126 ~~individual physician, hospital, ambulatory surgical center, pain~~
127 ~~program, or work-hardening program shall be reimbursed either~~



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128 ~~the agreed-upon contract price or the maximum reimbursement~~
129 ~~allowance in the appropriate schedule.~~

130 (b) ~~It is the intent of the Legislature to increase the~~
131 ~~schedule of maximum reimbursement allowances for selected~~
132 ~~physicians effective January 1, 2004, and to pay for the~~
133 ~~increases through reductions in payments to hospitals. Revisions~~
134 ~~developed pursuant to this subsection are limited to the~~
135 ~~following:~~

136 1. Payments for outpatient physical, occupational, and
137 speech therapy provided by hospitals shall be reduced to the
138 schedule of maximum reimbursement allowances for these services
139 which apply ~~applies~~ to nonhospital providers.

140 2. Payments for scheduled outpatient nonemergency
141 radiological and clinical laboratory services that are not
142 provided in conjunction with a surgical procedure shall be
143 reduced to the schedule of maximum reimbursement allowances for
144 these services which applies to nonhospital providers.

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

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

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

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157 The department, as requested, shall provide data to the panel,
158 including, but not limited to, utilization trends in the
159 workers' compensation health care delivery system. The
160 department shall provide the panel with an annual report
161 regarding the resolution of medical reimbursement disputes and
162 any actions pursuant to subsection (8). The department shall
163 provide administrative support and service to the panel to the
164 extent requested by the panel. For prescription medication
165 purchased under the requirements of this subsection, a
166 dispensing practitioner shall not possess such medication unless
167 payment has been made by the practitioner, the practitioner's
168 professional practice, or the practitioner's practice management
169 company or employer to the supplying manufacturer, wholesaler,
170 distributor, or drug repackager within 60 days of the dispensing
171 practitioner taking possession of that medication.

172 Section 4. Paragraph (a) of subsection (2), paragraph (d)
173 of subsection (3), paragraphs (a) and (e) of subsection (4), and
174 subsection (6) of section 440.15, Florida Statutes, are amended,
175 and subsection (13) is added to that section, to read:

176 440.15 Compensation for disability.—Compensation for
177 disability shall be paid to the employee, subject to the limits
178 provided in s. 440.12(2), as follows:

179 (2) TEMPORARY TOTAL DISABILITY.—

180 (a) Subject to subparagraph (3)(d)3. and subsections
181 ~~subsection (7) and (13)~~, in case of disability total in
182 character but temporary in quality, 66 2/3 or 66.67 percent of
183 the average weekly wages shall be paid to the employee during
184 the continuance thereof, ~~not to exceed 104 weeks~~ except as
185 provided in this subsection and, s. 440.12(1), ~~and s. 440.14(3).~~



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186 Once the employee reaches the maximum number of weeks allowed,
187 or the employee reaches overall ~~the date of~~ maximum medical
188 improvement, whichever occurs earlier, temporary disability
189 benefits shall cease and the injured worker's permanent
190 impairment shall be determined. If the employee reaches the
191 maximum number of weeks allowed, but has not reached overall
192 maximum medical improvement, benefits shall be provided pursuant
193 to subparagraph (3) (d)3.

194 (3) PERMANENT IMPAIRMENT BENEFITS.—

195 (d) After the employee has been certified by a doctor as
196 having reached maximum medical improvement or 6 weeks before the
197 expiration of temporary benefits, whichever occurs earlier, the
198 certifying doctor shall evaluate the condition of the employee
199 and assign an impairment rating, using the impairment schedule
200 referred to in paragraph (b). If the certification and
201 evaluation are performed by a doctor other than the employee's
202 treating doctor, the certification and evaluation must be
203 submitted to the treating doctor, the employee, and the carrier
204 within 10 days after the evaluation. The treating doctor must
205 indicate to the carrier agreement or disagreement with the other
206 doctor's certification and evaluation.

207 1. The certifying doctor shall issue a written report to
208 the employee and the carrier certifying that maximum medical
209 improvement has been reached, stating the impairment rating to
210 the body as a whole, and providing any other information
211 required by the department by rule. The carrier shall establish
212 an overall maximum medical improvement date and permanent
213 impairment rating, based upon all such reports.

214 2. Within 14 days after the carrier's knowledge of each



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215 maximum medical improvement date and impairment rating to the
216 body as a whole upon which the carrier is paying benefits, the
217 carrier shall report such maximum medical improvement date and,
218 when determined, the overall maximum medical improvement date
219 and associated impairment rating to the department in a format
220 as set forth in department rule. If the employee has not been
221 certified as having reached overall maximum medical improvement
222 before the expiration of 254 98 weeks after the date temporary
223 disability benefits begin to accrue, the carrier shall notify
224 the treating doctor of the requirements of this section.

225 3. If an employee receiving benefits under subsection (2)
226 has not reached overall maximum medical improvement before
227 receiving the maximum number of weeks of temporary disability
228 benefits, the maximum number of weeks are extended for up to an
229 additional 26 weeks. If the employee has not reached overall
230 maximum medical improvement after receiving the additional weeks
231 allowed under this subparagraph, a judge of compensation claims,
232 upon petition, must determine the employee's current eligibility
233 for benefits under this subsection and subsection (1).

234 4. If an employee receiving benefits under subsection (4)
235 has not reached overall maximum medical improvement before
236 receiving the maximum number of weeks of temporary disability
237 benefits, the employee shall receive benefits under this
238 subsection in accordance with the greatest single impairment
239 rating assigned to the employee. Impairment benefits received
240 under this subparagraph shall be credited against indemnity
241 benefits subsequently due to the employee.

242 (4) TEMPORARY PARTIAL DISABILITY.—

243 (a) Subject to subparagraph (3)(d)3. and subsections



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244 ~~subsection~~ (7) and (13), in case of temporary partial
245 disability, compensation shall be equal to 80 percent of the
246 difference between 80 percent of the employee's average weekly
247 wage and the salary, wages, and other remuneration the employee
248 is able to earn postinjury, as compared weekly; however, weekly
249 temporary partial disability benefits may not exceed an amount
250 equal to 66 2/3 or 66.67 percent of the employee's average
251 weekly wage at the time of accident. In order to simplify the
252 comparison of the preinjury average weekly wage with the salary,
253 wages, and other remuneration the employee is able to earn
254 postinjury, the department may by rule provide for payment of
255 the initial installment of temporary partial disability benefits
256 to be paid as a partial week so that payment for remaining weeks
257 of temporary partial disability can coincide as closely as
258 possible with the postinjury employer's work week. The amount
259 determined to be the salary, wages, and other remuneration the
260 employee is able to earn shall in no case be less than the sum
261 actually being earned by the employee, including earnings from
262 sheltered employment. Benefits shall be payable under this
263 subsection only if overall maximum medical improvement has not
264 been reached and the medical conditions resulting from the
265 accident create restrictions on the injured employee's ability
266 to return to work.

267 (e) Subject to subparagraph (3)(d)3. and subsections (7)
268 and (13), such benefits shall be paid during the continuance of
269 such disability, ~~not to exceed a period of 104 weeks,~~ as
270 provided by this subsection and subsection (2). ~~Once the injured~~
271 ~~employee reaches the maximum number of weeks, temporary~~
272 ~~disability benefits cease and the injured worker's permanent~~



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273 ~~impairment must be determined.~~ If the employee is terminated
274 from postinjury employment based on the employee's misconduct,
275 temporary partial disability benefits are not payable as
276 provided for in this section. The department shall by rule
277 specify forms and procedures governing the method and time for
278 payment of temporary disability benefits for dates of accidents
279 before January 1, 1994, and for dates of accidents on or after
280 January 1, 1994.

281 (6) EMPLOYEE REFUSES EMPLOYMENT.—If an injured employee
282 refuses employment suitable to the capacity thereof, offered to
283 or procured therefor, such employee shall not be entitled to any
284 compensation at any time during the continuance of such refusal
285 unless at any time in the opinion of the judge of compensation
286 claims such refusal is justifiable. ~~Time periods for the payment~~
287 ~~of benefits in accordance with this section shall be counted in~~
288 ~~determining the limitation of benefits as provided for in~~
289 ~~paragraphs (2) (a), (3) (c), and (4) (b).~~

290 (13) MAXIMUM BENEFITS ALLOWED.—The total number of weeks of
291 benefits received by an employee for temporary total disability
292 payable pursuant to subsection (2), temporary partial disability
293 payable pursuant to subsection (4), and temporary total
294 disability payable pursuant to s. 440.491 may not exceed 260
295 weeks, except as provided in subparagraph (3) (d) 3.

296 Section 5. Section 440.1915, Florida Statutes, is created
297 to read:

298 440.1915 Notice regarding payment of attorney fees.—An
299 injured employee or any other party making a claim for benefits
300 under this chapter through an attorney or other representative
301 shall provide his or her personal signature attesting that he or



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302 she has reviewed, understands, and acknowledges the following
303 statement, which must be in at least 14-point bold type, prior
304 to engaging an attorney or other representative for services
305 related to a petition for benefits under s. 440.192 or s.
306 440.25: "THE WORKERS' COMPENSATION LAW REQUIRES YOU TO PAY YOUR
307 OWN ATTORNEY FEES. YOUR EMPLOYER AND/OR ITS INSURANCE CARRIER
308 ARE NOT REQUIRED TO PAY YOUR ATTORNEY FEES, EXCEPT IN CERTAIN
309 CIRCUMSTANCES. EVEN THEN, YOU MAY BE RESPONSIBLE FOR PAYING
310 ATTORNEY FEES IN ADDITION TO ANY AMOUNT YOUR EMPLOYER OR ITS
311 CARRIER MAY BE REQUIRED TO PAY, DEPENDING ON THE DETAILS OF YOUR
312 AGREEMENT WITH YOUR ATTORNEY OR REPRESENTATIVE. CAREFULLY READ
313 AND MAKE SURE YOU UNDERSTAND ANY AGREEMENT OR RETAINER FOR
314 REPRESENTATION BEFORE YOU SIGN IT." If the injured employee or
315 other party does not sign or refuses to sign the document
316 attesting that he or she has reviewed, understands, and
317 acknowledges the statement, the injured employee or other party
318 making a claim under this chapter shall be prohibited from
319 proceeding with a petition for benefits under s. 440.192 or s.
320 440.25, except pro se, until such signature is obtained.

321 Section 6. Subsections (2), (4), (5), and (7) of section
322 440.192, Florida Statutes, are amended to read:

323 440.192 Procedure for resolving benefit disputes.—

324 (2) Upon receipt, the Office of the Judges of Compensation
325 Claims shall review each petition and shall dismiss each
326 petition or any portion of such a petition that does not on its
327 face meet the requirements of this section and the definition of
328 specificity under s. 440.02, and specifically identify or
329 itemize the following:

330 (a) The name, address, and telephone number, ~~and social~~



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331 ~~security number~~ of the employee.

332 (b) The name, address, and telephone number of the
333 employer.

334 (c) A detailed description of the injury and cause of the
335 injury, including the Florida county or, if outside of Florida,
336 the state location of the occurrence and the date or dates of
337 the accident.

338 (d) A detailed description of the employee's job, work
339 responsibilities, and work the employee was performing when the
340 injury occurred.

341 (e) The specific time period for which compensation and the
342 specific classification of compensation were not timely
343 provided.

344 (f) The specific date of maximum medical improvement,
345 character of disability, and specific statement of all benefits
346 or compensation that the employee is seeking. A claim for
347 permanent benefits must include the specific date of maximum
348 medical improvement and the specific date that such permanent
349 benefits are claimed to begin.

350 (g) All specific travel costs to which the employee
351 believes she or he is entitled, including dates of travel and
352 purpose of travel, means of transportation, and mileage and
353 including the date the request for mileage was filed with the
354 carrier and a copy of the request filed with the carrier.

355 (h) A specific listing of all medical charges alleged
356 unpaid, including the name and address of the medical provider,
357 the amounts due, and the specific dates of treatment.

358 (i) The type or nature of treatment care or attendance
359 sought and the justification for such treatment. If the employee



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360 is under the care of a physician for an injury identified under
361 paragraph (c), a copy of the physician's request, authorization,
362 or recommendation for treatment, care, or attendance must
363 accompany the petition.

364 (j) The specific amount of compensation claimed and the
365 methodology used to calculate the average weekly wage, if the
366 average weekly wage calculated by the employer or carrier is
367 disputed; otherwise, the average weekly wage and corresponding
368 compensation calculated by the employer or carrier are presumed
369 to be accurate.

370 (k)(j) A specific explanation of any other disputed issue
371 that a judge of compensation claims will be called to rule upon.

372 (l) The signed attestation required pursuant to s.
373 440.1915.

374 (m) Evidence of a good faith attempt to resolve the dispute
375 pursuant to subsection (4).

376
377 The dismissal of any petition or portion of such a petition
378 under this subsection ~~section~~ is without prejudice and does not
379 require a hearing.

380 (4) Prior to filing a petition, the claimant or, if the
381 claimant is represented by counsel, the claimant's attorney must
382 make a good faith effort to resolve the dispute. The petition
383 must include evidence that a certification by the claimant or,
384 if the claimant is represented by counsel, the claimant's
385 attorney, stating that the claimant, or attorney if the claimant
386 is represented by counsel, has made a good faith effort to
387 resolve the dispute and that the claimant or attorney was unable
388 to resolve the dispute with the carrier or employer, if self-



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389 insured. If the petition is not dismissed under subsection (2),
390 the judge of compensation claims must review the evidence
391 required under this subsection and determine, in her or his
392 independent discretion, whether a good faith effort to resolve
393 the dispute was made by the claimant or the claimant's attorney.
394 Upon a determination that the claimant or the claimant's
395 attorney has not made a good faith effort to resolve the
396 dispute, the judge of compensation claims must dismiss the
397 petition and may impose sanctions to ensure compliance with this
398 subsection, which may include an order to pay to the other party
399 or parties the amount of the reasonable expenses incurred
400 because of the filing of the petition, including attorney fees,
401 not to exceed \$150 per hour, based on the number of necessary
402 hours related to the determination that the claimant or, if the
403 claimant is represented by counsel, the claimant's attorney has
404 not made a good faith effort to resolve the dispute.

405 (5)(a) All motions to dismiss must state with particularity
406 the basis for the motion. The judge of compensation claims shall
407 enter an order upon such motions without hearing, unless good
408 cause for hearing is shown. Dismissal of any petition or portion
409 of a petition under this subsection is without prejudice.

410 (b) Upon motion that a petition or portion of a petition be
411 dismissed for lack of specificity, a judge of compensation
412 claims shall enter an order on the motion, unless stipulated in
413 writing by the parties, within 10 days after the motion is filed
414 or, if good cause for hearing is shown, within 20 days after
415 hearing on the motion. When any petition or portion of a
416 petition is dismissed for lack of specificity under this
417 subsection, the claimant must be allowed 20 days after the date



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418 of the order of dismissal in which to file an amended petition.
419 Any grounds for dismissal for lack of specificity under this
420 section which are not asserted within 30 days after receipt of
421 the petition for benefits are thereby waived.

422 (7) Notwithstanding ~~the provisions of~~ s. 440.34, a judge of
423 compensation claims may not award attorney ~~attorney's~~ fees
424 payable by the employer or carrier for services expended or
425 costs incurred before ~~prior to~~ the filing of a petition ~~that~~
426 ~~does not meet the requirements of this section.~~

427 Section 7. Paragraphs (a), (c), (h), and (j) of subsection
428 (4) of section 440.25, Florida Statutes, are amended to read:

429 440.25 Procedures for mediation and hearings.—

430 (4)

431 (a) If the parties fail to agree to written submission of
432 pretrial stipulations, the judge of compensation claims shall
433 conduct a live pretrial hearing. The judge of compensation
434 claims shall give the interested parties at least 14 days'
435 advance notice of the pretrial hearing by mail or by electronic
436 means approved by the Deputy Chief Judge. At least 5 days before
437 the pretrial hearing, the claimant's attorney must file with the
438 judge of compensation claims, and serve on all interested
439 parties, a personal attestation detailing his or her hours to
440 date, which specifically allocates the hours by each benefit
441 claimed, and accounting for hours relating to multiple benefits
442 in a manner that apportions such hours by percentage, in whole
443 numbers, to each benefit.

444 (c) The judge of compensation claims shall give the
445 interested parties at least 14 days' advance notice of the final
446 hearing, served upon the interested parties by mail or by



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447 electronic means approved by the Deputy Chief Judge. At least 5
448 days before the final hearing, the claimant's attorney must file
449 with the judge of compensation claims, and serve on all
450 interested parties, a personal attestation detailing his or her
451 hours to date, which specifically allocates the hours by each
452 benefit claimed, and accounting for hours relating to multiple
453 benefits in a manner that apportions such hours by percentage,
454 in whole numbers, to each benefit.

455 (h) To further expedite dispute resolution and to enhance
456 the self-executing features of the system, those petitions filed
457 in accordance with s. 440.192 that involve a claim for benefits
458 of \$5,000 or less shall, in the absence of compelling evidence
459 to the contrary, be presumed to be appropriate for expedited
460 resolution under this paragraph; and any other claim filed in
461 accordance with s. 440.192, upon the written agreement of both
462 parties and application by either party, may similarly be
463 resolved under this paragraph. A claim in a petition of \$5,000
464 or less for medical benefits only or a petition for
465 reimbursement for mileage for medical purposes shall, in the
466 absence of compelling evidence to the contrary, be resolved
467 through the expedited dispute resolution process provided in
468 this paragraph. For purposes of expedited resolution pursuant to
469 this paragraph, the Deputy Chief Judge shall make provision by
470 rule or order for expedited and limited discovery and expedited
471 docketing in such cases. At least 15 days prior to hearing, the
472 parties shall exchange and file with the judge of compensation
473 claims a pretrial outline of all issues, defenses, and
474 witnesses, including a personal attestation detailing his or her
475 hours to date, which specifically allocates the hours by each



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476 benefit claimed, and accounting for hours relating to multiple
477 benefits in a manner that apportions such hours by percentage,
478 in whole numbers, to each benefit, on a form adopted by the
479 Deputy Chief Judge; provided, in no event shall such hearing be
480 held without 15 days' written notice to all parties. No pretrial
481 hearing shall be held and no mediation scheduled unless
482 requested by a party. The judge of compensation claims shall
483 limit all argument and presentation of evidence at the hearing
484 to a maximum of 30 minutes, and such hearings shall not exceed
485 30 minutes in length. Neither party shall be required to be
486 represented by counsel. The employer or carrier may be
487 represented by an adjuster or other qualified representative.
488 The employer or carrier and any witness may appear at such
489 hearing by telephone. The rules of evidence shall be liberally
490 construed in favor of allowing introduction of evidence.

491 (j) A judge of compensation claims may not award interest
492 on unpaid medical bills and the amount of such bills may not be
493 used to calculate the amount of interest awarded. Regardless of
494 the date benefits were initially requested, attorney ~~attorney's~~
495 fees do not attach under this subsection until 45 ~~30~~ days after
496 the date the carrier ~~or self-insured employer~~ receives the
497 petition.

498 Section 8. Section 440.34, Florida Statutes, is amended to
499 read:

500 440.34 Attorney ~~Attorney's~~ fees; costs.-

501 (1) A judge of compensation claims may award attorney fees
502 payable to the claimant pursuant to this section to be paid by
503 the employer or carrier. An employer or carrier may not pay a
504 fee, gratuity, or other consideration ~~may not be paid~~ for a



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505 claimant in connection with any proceedings arising under this
506 chapter, unless approved by the judge of compensation claims or
507 court having jurisdiction over such proceedings. Attorney fees
508 awarded ~~Any attorney's fee approved~~ by a judge of compensation
509 claims for benefits secured on behalf of a claimant must equal
510 ~~to~~ 20 percent of the first \$5,000 of the amount of the benefits
511 secured, 15 percent of the next \$5,000 of the amount of the
512 benefits secured, 10 percent of the remaining amount of the
513 benefits secured to be provided during the first 10 years after
514 the date the claim is filed, and 5 percent of the benefits
515 secured after 10 years. A ~~The judge of compensation claims shall~~
516 ~~not approve a compensation order, a joint stipulation for lump-~~
517 ~~sum settlement, a stipulation or agreement between a claimant~~
518 ~~and his or her attorney, or any other agreement related to~~
519 ~~benefits under this chapter which provides for an attorney's fee~~
520 ~~in excess of the amount permitted by this section. The judge of~~
521 ~~compensation claims is not required to approve any retainer~~
522 ~~agreement between the claimant and his or her attorney~~ is not
523 subject to approval by a judge of compensation claims but must
524 be filed with the Office of the Judges of Compensation Claims.
525 Attorney fees are a lien upon compensation payable to the
526 claimant, notwithstanding s. 440.22. A retainer agreement may
527 not place any portion of the employee's compensation into an
528 escrow account until benefits are secured. ~~The retainer~~
529 ~~agreement as to fees and costs may not be for compensation in~~
530 ~~excess of the amount allowed under this subsection or subsection~~
531 ~~(7).~~

532 (2) In awarding a claimant's attorney fees ~~attorney's fee,~~
533 a ~~the~~ judge of compensation claims must ~~shall~~ consider only



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534 those benefits secured by the attorney. ~~An Attorney is not~~
535 ~~entitled to attorney's fees~~ are not due for representation in
536 any issue that was ripe, due, and owing and that reasonably
537 could have been addressed, but was not addressed, during the
538 pendency of other issues for the same injury or on claimant
539 attorney hours reasonably related to a benefit upon which the
540 claimant did not prevail. The amount, statutory basis, and type
541 of benefits obtained through legal representation shall be
542 listed on all attorney ~~attorney's~~ fees awarded by a ~~the~~ judge of
543 compensation claims. For purposes of this section, the term
544 "benefits secured" does not include future medical benefits to
545 be provided ~~on any date~~ more than 5 years after the date the
546 petition claim is filed. In the event an offer to settle an
547 issue pending before a judge of compensation claims, including
548 attorney ~~attorney's~~ fees ~~as provided for in this section~~, is
549 communicated in writing to the claimant or the claimant's
550 attorney at least 30 days before ~~prior to~~ the trial date on such
551 issue, for purposes of calculating the amount of attorney
552 ~~attorney's~~ fees to be taxed against the employer or carrier, the
553 term "benefits secured" includes ~~shall be deemed to include~~ only
554 that amount awarded to the claimant above the amount specified
555 in the offer to settle. If multiple issues are pending before a
556 ~~the~~ judge of compensation claims, said offer of settlement must
557 ~~shall~~ address each issue pending and ~~shall~~ state explicitly
558 whether or not the offer on each issue is severable. The written
559 offer must ~~shall~~ also unequivocally state whether or not it
560 includes medical witness fees and expenses and all other costs
561 associated with the claim.

562 (3) If a ~~any~~ party prevails ~~should prevail~~ in any



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563 proceedings before a judge of compensation claims or court,
564 there shall be taxed against the nonprevailing party the
565 reasonable costs of such proceedings, not to include attorney
566 ~~attorney's~~ fees. A claimant is responsible for the payment of
567 her or his own attorney ~~attorney's~~ fees, except that a claimant
568 is entitled to recover attorney fees ~~an attorney's fee~~ in an
569 amount equal to the amount provided for in subsection (1),
570 subsection (5), or subsection (6) ~~(7)~~ from a carrier or
571 employer:

572 (a) Against whom she or he successfully asserts a petition
573 for medical benefits only, if the claimant has not filed or is
574 not entitled to file at such time a claim for disability,
575 permanent impairment, ~~wage-loss~~, or death benefits, arising out
576 of the same accident;

577 (b) In a ~~any~~ case in which the employer or carrier files a
578 response to petition denying benefits with the Office of the
579 Judges of Compensation Claims and the injured person has
580 employed an attorney in the successful prosecution of the
581 petition;

582 (c) In a proceeding in which a carrier or employer denies
583 that an accident occurred for which compensation benefits are
584 payable, and the claimant prevails on the issue of
585 compensability; or

586 (d) In cases in which ~~where~~ the claimant successfully
587 prevails in proceedings filed under s. 440.24 or s. 440.28.

588
589 Regardless of the date benefits were initially requested,
590 attorney ~~attorney's~~ fees do ~~shall~~ not attach under this
591 subsection until 45 ~~30~~ days after the date the carrier or



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592 employer, ~~if self-insured,~~ receives the petition.

593 ~~(4) In such cases in which the claimant is responsible for~~
594 ~~the payment of her or his own attorney's fees, such fees are a~~
595 ~~lien upon compensation payable to the claimant, notwithstanding~~
596 ~~s. 440.22.~~

597 ~~(4)~~(5) If ~~any~~ proceedings are had for review of a ~~any~~
598 claim, award, or compensation order before any court, the court
599 may, in its discretion, award the injured employee or dependent
600 attorney fees ~~an attorney's fee~~ to be paid by the employer or
601 carrier, ~~in its discretion,~~ which shall be paid as the court may
602 direct.

603 (5) (a) As used in this subsection, the term:

604 1. "Attorney hours" means the number of hours necessary for
605 the claimant's attorney to obtain the benefits secured as
606 determined by a judge of compensation claims. The term does not
607 include the volume of hours expended by the claimant's attorney
608 which were devoted to claimed benefits upon which the claimant
609 did not prevail.

610 2. "Customary fee" means the average hourly rate that an
611 attorney for an employer or carrier customarily charges in the
612 same locality for similar legal services in defense of claims
613 under this chapter as determined by a judge of compensation
614 claims.

615 3. "Departure fee" means the amount of attorney fees
616 calculated by a judge of compensation claims in place of the fee
617 allowed under subsection (1) when attorney fees are due under
618 this section.

619 (b) A departure fee under this subsection is in place of,
620 not in addition to, the amount allowed under subsection (1) or



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621 subsection (6).

622 (c) Upon a petition, a judge of compensation claims may
623 depart from the attorney fees amount set forth in subsection (1)
624 upon a finding that the attorney fees provided for in that
625 subsection are less than 40 percent or greater than 125 percent
626 of the customary fee when the amount allowed under subsection
627 (1) is converted to an hourly rate by dividing that amount by
628 the attorney hours necessary to obtain the benefits secured.

629 (d) When resolving a petition for a departure fee under
630 this subsection, a judge of compensation claims must:

631 1. Determine the number of attorney hours and make specific
632 detailed findings specifically allocating the attorney hours to
633 each benefit claimed, which must account for hours relating to
634 multiple benefits in a manner that, in the independent
635 discretion of the judge of compensation claims, apportions such
636 hours by percentage, in whole numbers, to each benefit claimed;

637 2. Specify the number of hours claimed by the claimant's
638 attorney that, in the independent discretion of the judge of
639 compensation claims, reasonably relate to benefits upon which
640 the claimant did not prevail; and

641 3. Reduce the number of attorney hours if he or she
642 determines, in her or his independent discretion, that the
643 number of attorney hours are excessive.

644 (e) A judge of compensation claims may determine the
645 locality and is not limited to an average hourly rate or number
646 of attorney hours pled by a party, but may not exceed the amount
647 or hours pled by the claimant's attorney, and may rely on
648 evidence or take notice of credible data, including attorney fee
649 data on file with the office of the judges of compensation



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650 claims or the Florida Bar.

651 (f) If a departure is permitted pursuant to paragraph (c),
652 a judge of compensation claims must consider the following
653 factors when departing from the amount set forth in subsection
654 (1):

655 1. Whether the departure fee sought by the claimant's
656 attorney is excessive.

657 2. The time and labor reasonably required, the novelty and
658 difficulty of the questions involved, and the skill required to
659 properly perform the legal services as established by evidence
660 or as independently determined by the judge of compensation
661 claims.

662 3. The customary fee.

663 4. Whether the total fee available under this section in
664 relation to the amount involved in the controversy is excessive.

665 5. Whether the total fee available under this section in
666 relation to the amount of benefits secured is excessive.

667 6. The time limits imposed by the circumstances.

668 7. The contingency or certainty of a claimant's attorney
669 fee, taking into account any retainer agreement filed under this
670 section.

671 8. The volume of hours expended by the claimant's attorney
672 that were devoted to issues upon which the claimant did not
673 prevail.

674 9. Whether the departure fee sought by the claimant's
675 attorney shocks the conscience as excessive.

676 (g) Based on the considerations of the factors in paragraph
677 (f), a judge of compensation claims shall determine the hourly
678 rate used to compute the departure fee awarded under this



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679 subsection, in \$1 increments, which may not exceed \$150 per
680 hour. A judge of compensation claims is not limited to an hourly
681 rate pled by a party.

682 (h) Using the hourly rate determined under paragraph (g)
683 and number of attorney hours determined under paragraph (d), a
684 judge of compensation claims must determine the amount of the
685 departure fee under this subsection by multiplying the hourly
686 rate by the number of attorney hours. The claimant is
687 responsible for attorney fees pursuant to his or her retainer
688 agreement that exceed the departure fee.

689 (i) The employer or carrier may contest the departure fee
690 amount awarded under this section within 20 calendar days after
691 the entry of the departure fee award. Upon the filing of a
692 request by the employer or carrier, the departure fee award must
693 be vacated and reviewed de novo upon the existing record by a
694 judge of compensation claims in another district as assigned by
695 the Deputy Chief Judge of Compensation Claims if the number of
696 attorney hours determined by the presiding judge of compensation
697 claims under paragraph (d) exceeds 125 percent of the number of
698 hours the employer's or carrier's attorney attests were devoted
699 by him or her to the defense of the benefits secured. The
700 reviewing judge of compensation claims must issue an order
701 determining the amount of the departure fee under this paragraph
702 making all determinations and findings required under this
703 subsection. The judge of compensation claims must issue the
704 order within 30 calendar days after receiving the assignment.
705 This paragraph does not apply to cases settled under s.
706 440.20(11) or if a stipulation has been filed resolving the
707 claimant's attorney fees.



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708 ~~(6) A judge of compensation claims may not enter an order~~
709 ~~approving the contents of a retainer agreement that permits~~
710 ~~placing any portion of the employee's compensation into an~~
711 ~~escrow account until benefits have been secured.~~

712 ~~(7) If an attorney attorney's fee is owed under paragraph~~
713 ~~(3) (a), a the judge of compensation claims may approve an~~
714 ~~alternative attorney attorney's fee not to exceed \$1,500 only~~
715 ~~once per accident, based on a maximum hourly rate of \$150 per~~
716 ~~hour, if the judge of compensation claims expressly finds that~~
717 ~~the attorney attorney's fee amount provided for in subsection~~
718 ~~(1), based on benefits secured, results in an effective hourly~~
719 ~~rate of less than \$150 per hour fails to fairly compensate the~~
720 ~~attorney for disputed medical-only claims as provided in~~
721 ~~paragraph (3) (a) and the circumstances of the particular case~~
722 ~~warrant such action. The attorney fees under this subsection are~~
723 ~~in place of, not in addition to, any attorney fees available~~
724 ~~under this section.~~

725 Section 9. Section 440.345, Florida Statutes, is amended to
726 read:

727 440.345 Reporting of attorney attorney's fees.—All fees
728 paid to attorneys for services rendered under this chapter shall
729 be reported to the Office of the Judges of Compensation Claims
730 as the Division of Administrative Hearings requires by rule. A
731 carrier must specify in its report the total amount of attorney
732 fees paid for and the total number of attorney hours spent on
733 services related to the defense of petitions, and the total
734 amount of attorney fees paid for services unrelated to the
735 defense of petitions.

736 Section 10. Paragraph (b) of subsection (6) of section



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737 440.491, Florida Statutes, is amended to read:
738 440.491 Reemployment of injured workers; rehabilitation.—
739 (6) TRAINING AND EDUCATION.—
740 (b) When an employee who has attained maximum medical
741 improvement is unable to earn at least 80 percent of the
742 compensation rate and requires training and education to obtain
743 suitable gainful employment, the employer or carrier shall pay
744 the employee additional training and education temporary total
745 compensation benefits while the employee receives such training
746 and education for a period not to exceed 26 weeks, which period
747 may be extended for an additional 26 weeks or less, if such
748 extended period is determined to be necessary and proper by a
749 judge of compensation claims. The benefits provided under this
750 paragraph are shall not ~~be~~ in addition to the maximum number of
751 ~~104~~ weeks as specified in s. 440.15(2). However, a carrier or
752 employer is not precluded from voluntarily paying additional
753 temporary total disability compensation beyond that period. If
754 an employee requires temporary residence at or near a facility
755 or an institution providing training and education which is
756 located more than 50 miles away from the employee's customary
757 residence, the reasonable cost of board, lodging, or travel must
758 be borne by the department from the Workers' Compensation
759 Administration Trust Fund established by s. 440.50. An employee
760 who refuses to accept training and education that is recommended
761 by the vocational evaluator and considered necessary by the
762 department will forfeit any additional training and education
763 benefits and any additional compensation ~~payment for lost wages~~
764 under this chapter. The carrier shall notify the injured
765 employee of the availability of training and education benefits



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766 as specified in this chapter. The Department of Financial
767 Services shall include information regarding the eligibility for
768 training and education benefits in informational materials
769 specified in ss. 440.207 and 440.40.

770 Section 11. Subsection (1) of section 627.211, Florida
771 Statutes, is amended, and subsection (7) is added to that
772 section, to read:

773 627.211 Deviations and departures; workers' compensation
774 and employer's liability insurances.—

775 (1) Except as provided in subsection (7), every member or
776 subscriber to a rating organization shall, as to workers'
777 compensation or employer's liability insurance, adhere to the
778 filings made on its behalf by such organization; except that any
779 such insurer may make written application to the office for
780 permission to file a uniform percentage decrease or increase to
781 be applied to the premiums produced by the rating system so
782 filed for a kind of insurance, for a class of insurance which is
783 found by the office to be a proper rating unit for the
784 application of such uniform percentage decrease or increase, or
785 for a subdivision of workers' compensation or employer's
786 liability insurance:

787 (a) Comprised of a group of manual classifications which is
788 treated as a separate unit for ratemaking purposes; or

789 (b) For which separate expense provisions are included in
790 the filings of the rating organization.

791
792 Such application shall specify the basis for the modification
793 and shall be accompanied by the data upon which the applicant
794 relies. A copy of the application and data shall be sent



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795 simultaneously to the rating organization.

796 (7) Without approval of the office, a member or subscriber
797 to a rating organization may depart from the filings made on its
798 behalf by a rating organization for a period of 12 months by a
799 uniform decrease of up to 5 percent to be applied uniformly to
800 the premiums resulting from the approved rates for the policy
801 period. The member or subscriber must file an informational
802 departure statement with the office within 30 days after initial
803 use of such departure specifying the percentage of the departure
804 from the approved rates and an explanation of how the departure
805 will be applied. If the departure is to be applied over a
806 subsequent 12-month period, the member or subscriber must file a
807 supplemental informational departure statement pursuant to this
808 subsection at least 30 days before the end of the current
809 period. If the office determines that a departure violates the
810 applicable principles for ratemaking under ss. 627.062 and
811 627.072, would result in predatory pricing, or imperils the
812 financial condition of the member or subscriber, the office must
813 issue an order specifying its findings and stating the time
814 period within which the departure expires, which must be within
815 a reasonable time period after the order is issued. The order
816 does not affect an insurance contract or policy made or issued
817 before the departure expiration period set forth in the order.

818 Section 12. (1) The Department of Financial Services, in
819 consultation with the three-member panel, shall contract with an
820 independent consultant to evaluate Florida's current
821 reimbursement methodology for medical services provided by
822 hospitals and ambulatory surgical centers pursuant to s. 440.13,
823 Florida Statutes. The study must evaluate the feasibility of



824 adopting other reimbursement methods, including group health
825 outpatient reimbursement rates. The study must include an
826 evaluation of the payments, prices, utilization, and outcomes
827 associated with each of the reimbursement methods. The
828 consultant shall submit a report with findings and
829 recommendations to the Speaker of the House of Representatives
830 and the President of the Senate by November 1, 2017.

831 (2) Effective July 1, 2017, the sum of \$50,000 in
832 nonrecurring funds from the Workers' Compensation Administration
833 Trust Fund is appropriated to the Department of Financial
834 Services for the purpose of funding the study.

835 Section 13. This act shall take effect July 1, 2017.

836
837 ===== T I T L E A M E N D M E N T =====

838 And the title is amended as follows:

839 Delete everything before the enacting clause
840 and insert:

841 A bill to be entitled
842 An act relating to workers' compensation; amending s.
843 440.02, F.S.; redefining the term "specificity";
844 amending s. 440.105, F.S.; authorizing certain
845 attorneys to receive fees or other consideration for
846 services related to Workers' Compensation Law;
847 amending s. 440.13, F.S.; requiring carriers to take
848 specified actions by telephone or in writing relating
849 to a request for authorization; specifying that a
850 notice to the employer is not a notice to the carrier;
851 conforming a provision to changes made by the act;
852 requiring the Governor, or the Chief Financial Officer



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853 in certain circumstances, to appoint a member to fill
854 a vacancy on the three-member panel within a specified
855 timeframe; deleting provisions relating to maximum
856 reimbursement allowances for inpatient hospital care;
857 deleting a provision relating to compensable charges
858 for hospital outpatient care; deleting a provision
859 requiring the three-member panel to adopt specified
860 schedules; deleting a provision specifying the
861 reimbursement for certain programs; deleting a
862 provision providing legislative intent; amending s.
863 440.15, F.S.; extending the timeframe in which certain
864 employees may receive temporary total disability
865 benefits; providing conditions under which employees
866 may receive permanent impairment benefits; extending
867 the timeframe in which carriers must notify treating
868 doctors of certain requirements; deleting a provision
869 relating to the calculation of time periods for
870 payment of benefits; conforming provisions; creating
871 s. 440.1915, F.S.; requiring claimants to sign an
872 attestation before engaging the services of an
873 attorney or other representation related to a workers'
874 compensation claim; providing requirements; amending
875 s. 440.192, F.S.; revising conditions under which the
876 Office of the Judges of Compensation Claims must
877 dismiss petitions for benefits; revising requirements
878 for such petitions; requiring a good faith effort to
879 resolve a dispute; requiring dismissal of a petition
880 for failure to make such good faith effort; revising
881 construction relating to dismissals of petitions or



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882 portions thereof; requiring judges of compensation
883 claims to enter orders on certain motions to dismiss
884 within specified timeframes; revising a restriction on
885 awarding attorney fees; amending s. 440.25, F.S.;
886 requiring the filing of an attestation detailing a
887 claimant's attorney hours before pretrial and final
888 hearings; extending the timeframe in which attorney
889 fees attach; amending s. 440.34, F.S.; revising
890 provisions relating to awarding attorney fees;
891 providing that retainer agreements do not require
892 approval by a judge of compensation claims but are
893 required to be filed with the Office of the Judges of
894 Compensation Claims; conforming a cross-reference;
895 extending the timeframe in which attorney fees attach;
896 authorizing a judge of compensation claims to depart
897 from the attorney fees schedule under certain
898 circumstances; requiring a judge to consider certain
899 factors when awarding attorney fees that depart from
900 such schedule; defining terms; limiting the amount of
901 such fee; amending s. 440.345, F.S.; providing
902 requirements for a carrier's report; amending s.
903 440.491, F.S.; specifying that training and education
904 benefits provided to a claimant are not in addition to
905 the maximum number of weeks in which a claimant may
906 receive temporary benefits; amending s. 627.211, F.S.;
907 authorizing a member of or subscriber to a rating
908 organization to depart from the rates set by such
909 organization under certain circumstances; providing
910 requirements for such departure; requiring the



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911 Department of Financial Services, in consultation with
912 the three-member panel, to contract with an
913 independent consultant for a specified study;
914 requiring the consultant to submit a report to the
915 Legislature by a specified date; providing an
916 appropriation; providing an effective date.