

Committee Substitute for House Bill No. 1643

An act relating to transferring and reassigning divisions, functions, and responsibilities of the Department of Labor and Employment Security; providing for a type two transfer of the Division of Workers' Compensation to the Department of Insurance; providing for a type two transfer of workers' compensation medical services to the Agency for Health Care Administration; providing for a type two transfer of workers' compensation rehabilitation and reemployment services to the Department of Education; providing for a type two transfer of the administration of child labor laws to the Department of Business and Professional Regulation; providing for comparable pay grades for the transferred positions; authorizing the Department of Insurance to reclassify and reorganize positions within the department and establish regional offices; authorizing the Department of Insurance to enter into contracts; providing for existing contracts to be subject to review and cancellation; providing for a type two transfer of certain functions of the Office of the Secretary and the Office of Administrative Services of the Department of Labor and Employment Security relating to labor organizations and migrant and farm labor registration to the Department of Business and Professional Regulation; providing for a type two transfer of other workplace regulation functions to the Department of Business and Professional Regulation; providing for the transfer of the Unemployment Appeals Commission to the Agency for Workforce Innovation by a type two transfer; providing for the transfer of the Office of Information Systems to the State Technology Office by a type two transfer; requiring the State Technology Office and the Department of Insurance to determine whether it is feasible to transfer ownership of the Workers' Compensation Integrated System to the Department of Insurance; providing for the continuation of contracts or agreements of the Department of Labor and Employment Security; providing for a successor department, agency, or entity to be substituted for the Department of Labor and Employment Security as a party in interest in pending proceedings; exempting specified state agencies, on a temporary basis, from provisions relating to procurement of property and services and leasing of space; authorizing specified state agencies to develop temporary emergency rules relating to the implementation of the act; amending s. 20.13, F.S.; establishing the Division of Workers' Compensation within the Department of Insurance; amending s. 20.50, F.S.; revising provisions relating to the Agency for Workforce Innovation to conform; revising responsibilities of certain offices within the agency; specifying that the Unemployment Appeals Commission is not subject to the agency; amending ss. 110.205, 112.19, 112.191, 121.125, 122.03, 238.06, and 440.015, F.S., to conform; amending s. 440.02, F.S.; providing a definition for the term "agency"; conforming definitions of "department" and "division" to the transfer of the Division of Workers' Compensation; amending ss. 440.021, 440.05, 440.09, 440.10, 440.102, 440.103, 440.104, 440.105, 440.106, 440.107,

440.108, 440.12, and 440.125, F.S.; conforming provisions to reflect the transfer of the Division of Workers' Compensation; amending s. 440.13, F.S., relating to medical services and supplies under the workers' compensation law; reassigning certain functions from the Division of Workers' Compensation to the Agency for Health Care Administration; conforming agency references to reflect the transfer of the Division of Workers' Compensation; amending ss. 440.134 and 440.14, F.S.; conforming provisions to changes made by the act; amending s. 440.15, F.S.; providing for the agency to specify certain forms and procedures governing wage loss and impairment benefits; conforming a cross reference; amending ss. 440.185, 440.191, 440.192, and 440.1925, F.S.; conforming provisions to changes made by the act; amending ss. 440.20, 440.207, and 440.211, F.S., relating to payment of compensation; conforming provisions to changes made by the act; amending s. 440.24, F.S.; providing for the sale of securities on deposit to satisfy a compensation order; amending ss. 440.25 and 440.271, F.S., relating to mediation, hearings, and appeals; conforming provisions to changes made by the act; amending ss. 440.345 and 440.35, F.S., relating to the reporting of attorney's fees and employer records of injury or death; conforming provisions to changes made by the act; amending s. 440.381, F.S., relating to audits of payroll and classifications; conforming provisions to reflect the transfer of the Division of Workers' Compensation; amending ss. 440.40, 440.41, and 440.42, F.S., relating to employers posting notice of compensation, substitution of carriers for employers with respect to notice and the effect of an order, and expiration of insurance policies, to conform; amending s. 440.44, F.S., relating to the administration of the Workers' Compensation Law; conforming provisions to reflect the transfer of the Division of Workers' Compensation; amending s. 440.45, F.S., relating to the Office of the Judges of Compensation Claims; clarifying the responsibilities of the director of the Division of Administrative Hearings as agency head of the Office of the Judges of Compensation Claims; amending s. 440.49, F.S., relating to the Special Disability Trust Fund; conforming provisions to reflect the transfer of the Division of Workers' Compensation; reassigning responsibility for a report on the Special Disability Trust Fund to the Department of Insurance; amending s. 440.491, F.S., relating to the reemployment of injured workers; conforming provisions to the transfer of rehabilitation and reemployment services to the Department of Education; amending ss. 440.50, 440.51, and 440.52, F.S., relating to the Workers' Compensation Administration Trust Fund, expenses of administration, and certain responsibilities of insurance carriers; conforming references to reflect the transfer of the Division of Workers' Compensation; amending s. 440.525, F.S., relating to the examination of carriers; conforming agency references to the transfer of programs from the Department of Labor and Employment Security to the Department of Insurance; amending s. 440.572, F.S., to conform; amending s. 440.59, F.S., relating to division reporting requirements; eliminating unnecessary reporting requirements; amending ss. 440.591 and 440.593, F.S., relating to authorization to self-insure, reporting requirements, and rulemaking authority; conforming provisions to changes

made by the act; amending s. 443.012, F.S.; providing for the Unemployment Appeals Commission to be created within the Agency for Workforce Innovation rather than the Department of Labor and Employment Security; conforming provisions; amending s. 443.036, F.S.; conforming the definition of “commission” to the transfer of the Unemployment Appeals Commission to the Agency for Workforce Innovation; amending s. 447.02, F.S.; conforming the definition of “department” to the transfer of the regulation of labor organizations to the Department of Business and Professional Regulation; amending s. 447.305, F.S.; providing that notification of registrations and renewals of registration shall be furnished to the Department of Business and Professional Regulation, to conform; amending s. 450.012, F.S.; conforming the definition of “department” to the transfer of the regulation of child labor to the Department of Business and Professional Regulation; amending s. 450.191, F.S., relating to the duties of the Executive Office of the Governor with respect to migrant labor; conforming provisions to changes made by the act; amending s. 450.28, F.S.; conforming the definition of “department” to the transfer of the regulation of farm labor to the Department of Business and Professional Regulation; amending s. 624.3161, F.S., relating to insurance market conduct examinations; conforming provisions to changes made by the act; amending s. 626.88, F.S., relating to self-insurance definitions; conforming provisions to changes made by the act; amending s. 626.989, F.S., relating to Division of Insurance Fraud reporting requirements; conforming provisions to changes made by the act and establishing reporting deadlines; amending s. 627.0915, F.S.; conforming departmental references to changes made by the act; amending s. 627.914, F.S., relating to reporting requirements by self-insurers; conforming provisions to changes made by the act; repealing s. 20.171, F.S., relating to the establishment and the authority and organizational structure of the Department of Labor and Employment Security; repealing s. 440.4416, F.S., relating to the Workers’ Compensation Oversight Board; providing for severability; providing effective dates.

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

Section 1. (1) All powers, duties, functions, rules, records, personnel, property, and unexpended balances of appropriations, allocations, and other funds of the Division of Workers’ Compensation are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Department of Labor and Employment Security to the Department of Insurance, except as otherwise provided in this subsection, as follows: the full-time equivalent positions and the associated funding for salaries, benefits, other capital outlay, and expenses related to oversight of medical services in workers’ compensation provider relations, dispute and complaint resolution, program evaluation, data management, and review of carrier medical bill payments are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Department of Labor and Employment Security to the Agency for Health Care Administration; the full-time equivalent positions and the associated funding for salaries, benefits, other capital outlay,

and expenses related to the rehabilitation and reemployment of injured workers are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Department of Labor and Employment Security to the Department of Education; and the full-time equivalent positions and the associated funding for salaries, benefits, other capital outlay, and expenses related to the administration of child labor laws under chapter 450, Florida Statutes, are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Department of Labor and Employment Security to the Department of Business and Professional Regulation. To the extent feasible, the positions transferred to the Department of Insurance will be reclassified to pay grades comparable to the positions established by the Department of Labor and Employment Security, based on the classification codes and specifications of the positions for work to be performed at the Department of Insurance. The number of positions the department establishes may not exceed the number of authorized positions and the salary and benefits that were authorized for the Division of Workers' Compensation within the Department of Labor and Employment Security prior to the transfer. The Department of Insurance is further authorized to reassign, reorganize, reclassify, or otherwise transfer positions to appropriate administrative subdivisions within the department and to establish such regional offices as are necessary to properly enforce and administer its responsibilities under the Florida Insurance Code and chapter 440, Florida Statutes. The department may also enter into contracts with public or private entities to administer its duties and responsibilities associated with the transfer of the Division of Workers' Compensation.

(2) All powers, duties, functions, rules, records, personnel, property, and unexpended balances of appropriations, allocations, and other funds of the Office of the Secretary and the Office of Administrative Services of the Department of Labor and Employment Security related to the regulation of labor organizations under chapter 447, Florida Statutes, and the administration of migrant labor and farm labor laws under chapter 450, Florida Statutes, are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Department of Labor and Employment Security to the Department of Business and Professional Regulation.

(3) Any other powers, duties, functions, rules, records, property, and unexpended balances of appropriations, allocations, and other funds of the Department of Labor and Employment Security not otherwise transferred by this act relating to workplace regulation and enforcement, including, but not limited to, those under chapter 448, Florida Statutes, are transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Department of Labor and Employment Security to the Department of Business and Professional Regulation. The Department of Business and Professional Regulation is authorized to reassign, reorganize, reclassify, or otherwise transfer positions to appropriate administrative subdivisions within the department to accomplish its workplace regulation responsibilities.

(4) All powers, duties, functions, rules, records, personnel, property, and unexpended balances of appropriations, allocations, and other funds of the Unemployment Appeals Commission relating to the commission's specified authority, powers, duties, and responsibilities are transferred by a type two

transfer, as defined in s. 20.06(2), Florida Statutes, to the Agency for Workforce Innovation.

(5) The Office of Information Systems is transferred by a type two transfer, as defined in s. 20.06(2), Florida Statutes, from the Department of Labor and Employment Security to the State Technology Office. Upon completion of this transfer, the State Technology Office and the Department of Insurance shall enter into discussions to determine whether it would be technologically feasible and cost effective to separate the workers' compensation related systems and transfer ownership of these systems to the Department of Insurance. If the Department of Insurance determines that it would be technologically feasible and cost effective to transfer ownership of the workers' compensation related systems from the State Technology Office to the Department of Insurance, the Department of Insurance shall submit a transfer plan and budget amendment requesting the transfer of these systems. The transfer plan and budget amendment must be approved by the Legislative Budget Commission.

(6)(a) The records, property, and unexpended balances of appropriations, allocations, and other funds and resources of the Office of the Secretary and the Office of Administrative Services of the Department of Labor and Employment Security which support the activities and functions transferred under subsection (1) to the Department of Insurance are transferred as provided in s. 20.06(2), Florida Statutes, to the Department of Insurance.

(b) The records, property, and unexpended balances of appropriations, allocations, and other funds and resources of the Office of the Secretary and the Office of Administrative Services of the Department of Labor and Employment Security which support the activities and functions transferred under subsection (1) to the Agency for Health Care Administration are transferred as provided in s. 20.06(2), Florida Statutes, to the Agency for Health Care Administration.

(c) The records, property, and unexpended balances of appropriations, allocations, and other funds and resources of the Office of the Secretary and the Office of Administrative Services of the Department of Labor and Employment Security which support the activities and functions transferred under subsection (1) to the Department of Education are transferred as provided in s. 20.06(2), Florida Statutes, to the Department of Education.

(d) The records, property, and unexpended balances of appropriations, allocations, and other funds and resources of the Office of the Secretary and the Office of Administrative Services of the Department of Labor and Employment Security which support the activities and functions transferred under subsections (1), (2), and (3) to the Department of Business and Professional Regulation are transferred as provided in s. 20.06(2), Florida Statutes, to the Department of Business and Professional Regulation.

(e) The records, property, and unexpended balances of appropriations, allocations, and other funds and resources of the Office of the Secretary and the Office of Administrative Services of the Department of Labor and Employment Security which support the activities and functions transferred under subsection (4) to the Agency for Workforce Innovation are transferred

as provided in s. 20.06(2), Florida Statutes, to the Agency for Workforce Innovation.

(f) The records, property, and unexpended balances of appropriations, allocations, and other funds and resources of the Office of the Secretary and the Office of Administrative Services of the Department of Labor and Employment Security which support the activities and functions transferred under subsection (5) to the State Technology Office are transferred as provided in s. 20.06(2), Florida Statutes, to the State Technology Office.

(7) The Department of Management Services shall become the custodian of any property of the Department of Labor and Employment Security which is not otherwise transferred for the purposes of chapter 273, Florida Statutes. The Department of Management Services is authorized to permit the use of such property by organizations as necessary to implement the provisions of this act.

(8) Any binding contract or interagency agreement existing on or before July 1, 2002, between the Department of Labor and Employment Security, or an entity or agent of the department, and any other agency, entity, or person shall continue as a binding contract or agreement for the remainder of the term of such contract or agreement with the successor department, agency, or entity responsible for the program, activity, or functions relative to the contract or agreement.

(9) This act does not affect the validity of any judicial or administrative proceeding involving the Department of Labor and Employment Security which is pending as of the effective date of any transfer under this act. The successor department, agency, or entity responsible for the program, activity, or function relative to the proceeding shall be substituted, as of the effective date of the applicable transfer under this act, for the Department of Labor and Employment Security as a party in interest in any such proceedings.

(10) So that the farm labor, child labor, and workplace regulation programs may be fully integrated into the mission of the Department of Business and Professional Regulation in an effective manner, notwithstanding the provisions of ss. 216.292 and 216.351, Florida Statutes, upon this act becoming a law, the Department of Business and Professional Regulation is authorized to transfer resources between services and make revisions to the authorized budget as necessary to reengineer business processes for the purpose of reducing costs and increasing program efficiencies. These actions are subject to the review and approval provisions in s. 216.177, Florida Statutes.

Section 2. Paragraph (k) is added to subsection (2) of section 20.13, Florida Statutes, to read:

20.13 Department of Insurance.—There is created a Department of Insurance.

(2) The following divisions of the Department of Insurance are established:

(k) Division of Workers' Compensation.

Section 3. Subsections (2) and (3) of section 20.50, Florida Statutes, are amended to read:

20.50 Agency for Workforce Innovation.—There is created the Agency for Workforce Innovation within the Department of Management Services. The agency shall be a separate budget entity, and the director of the agency shall be the agency head for all purposes. The agency shall not be subject to control, supervision, or direction by the Department of Management Services in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

(2) The Agency for Workforce Innovation shall be the designated administrative agency for receipt of federal workforce development grants and other federal funds, and shall carry out the duties and responsibilities assigned by the Governor under each federal grant assigned to the agency. The agency shall be a separate budget entity and shall expend each revenue source as provided by federal and state law and as provided in plans developed by and agreements with Workforce Florida, Inc. The agency shall prepare and submit as a separate budget entity a unified budget request for workforce development, in accordance with chapter 216 for, and in conjunction with, Workforce Florida, Inc., and its board. The head of the agency is the director of Workforce Innovation, who shall be appointed by the Governor. Accountability and reporting functions of the agency shall be administered by the director or his or her designee. Included in these functions are budget management, financial management, audit, performance management standards and controls, assessing outcomes of service delivery, and financial administration of workforce programs pursuant to s. 445.004(5) and (9). Within the agency's overall organizational structure, the agency shall include the following offices which shall have the specified responsibilities:

(a) ~~The Office of Workforce Services shall administer state merit system program staff within the unemployment compensation program, the Rapid Response program, the Work Opportunity Tax Credit program, the Alien Labor Certification program, and any other programs that are delivered directly by agency staff rather than through the one-stop workforce service delivery system, pursuant to policies of Workforce Florida, Inc. The office shall be responsible for delivering services through the one-stop delivery system and for ensuring that participants in welfare transition programs receive case management services, diversion assistance, support services, including subsidized child care and transportation services, Medicaid services, and transition assistance to enable them to succeed in the workforce. The office shall be directed by the Deputy Director for Workforce Services, who shall be appointed by and serve at the pleasure of the director.~~

(b) ~~The Office of Program Support Workforce Investment and Accountability shall administer state merit system program staff within the workforce service delivery system, pursuant to policies of Workforce Florida, Inc. The office shall be responsible for delivering services through the one-stop delivery system and for ensuring that participants in welfare transition~~

programs receive case management services, diversion assistance, support services, including subsidized child care and transportation services, Medicaid services, and transition assistance to enable them to succeed in the workforce. The office shall also be responsible for program quality assurance, grants and contract management procurement, contracting, financial management, accounting, audits, and reporting verification. The office shall be directed by the Deputy Director for Program Support Workforce Investment and Accountability, who shall be appointed by and serve at the pleasure of the director. The office shall be responsible for:

~~1. Establishing standards and controls for reporting budgeting, expenditure, and performance information for assessing outcomes, service delivery, and financial administration of workforce programs pursuant to s. 445.004(5) and (9).~~

~~1.2. Establishing monitoring, quality assurance, and quality improvement systems that routinely assess the quality and effectiveness of contracted programs and services.~~

~~2.3. Annual review of each regional workforce board and administrative entity to ensure adequate systems of reporting and control are in place, and monitoring, quality assurance, and quality improvement activities are conducted routinely, and corrective action is taken to eliminate deficiencies.~~

(c) ~~The Office of Agency Support Workforce Information Services shall be responsible for procurement, human resource services, and information services including delivering deliver information on labor markets, employment, occupations, and performance, and shall implement and maintain information systems that are required for the effective operation of the one-stop delivery system and the school readiness services system, including, but not limited to, those systems described in s. 445.009. The office will be under the direction of the Deputy Director for Agency Support Workforce Information Services, who shall be appointed by and serve at the pleasure of the director. The office shall be responsible for establishing:~~

~~1. Information systems and controls that report reliable, timely and accurate fiscal and performance data for assessing outcomes, service delivery, and financial administration of workforce programs pursuant to s. 445.004(5) and (9).~~

~~2. Information systems that support service integration and case management by providing for case tracking for participants in welfare transition programs.~~

~~3. Information systems that support school readiness services.~~

(d) The Unemployment Appeals Commission, authorized by s. 443.012, shall not be subject to the control, supervision, or direction by the Agency for Workforce Innovation in the performance of its powers and duties but shall receive any and all support and assistance from the agency that may be required for the performance of its duties.

(3) The Agency for Workforce Innovation shall serve as the designated agency for purposes of each federal workforce development grant assigned

to it for administration. The agency shall carry out the duties assigned to it by the Governor, under the terms and conditions of each grant. The agency shall have the level of authority and autonomy necessary to be the designated recipient of each federal grant assigned to it, and shall disperse such grants pursuant to the plans and policies of Workforce Florida, Inc. The director may, upon delegation from the Governor and pursuant to agreement with Workforce Florida, Inc., sign contracts, grants, and other instruments as necessary to execute functions assigned to the agency. Notwithstanding other provisions of law, the following federal grants and other funds are assigned for administration to the Agency for Workforce Innovation:

(a) Programs authorized under Title I of the Workforce Investment Act of 1998, Pub. L. No. 105-220, except for programs funded directly by the United States Department of Labor under Title I, s. 167.

(b) Programs authorized under the Wagner-Peyser Act of 1933, as amended, 29 U.S.C. ss. 49 et seq.

(c) Welfare-to-work grants administered by the United States Department of Labor under Title IV, s. 403, of the Social Security Act, as amended.

(d) Activities authorized under Title II of the Trade Act of 1974, as amended, 2 U.S.C. ss. 2271 et seq., and the Trade Adjustment Assistance Program.

(e) Activities authorized under chapter 41 of Title 38 U.S.C., including job counseling, training, and placement for veterans.

(f) Employment and training activities carried out under the Community Services Block Grant Act, 42 U.S.C. ss. 9901 et seq.

(g) Employment and training activities carried out under funds awarded to this state by the United States Department of Housing and Urban Development.

(h) Designated state and local program expenditures under part A of Title IV of the Social Security Act for welfare transition workforce services associated with the Temporary Assistance for Needy Families Program.

(i) Programs authorized under the National and Community Service Act of 1990, 42 U.S.C. ss. 12501 et seq., and the Service-America programs, the National Service Trust programs, the Civilian Community Corps, the Corporation for National and Community Service, the American Conservation and Youth Service Corps, and the Points of Light Foundation programs, if such programs are awarded to the state.

(j) The Unemployment Compensation program provided pursuant to chapter 443.

(k)(j) Other programs funded by federal or state appropriations, as determined by the Legislature in the General Appropriations Act or by law.

Section 4. Paragraph (m) of subsection (2) of section 110.205, Florida Statutes, is amended to read:

110.205 Career service; exemptions.—

(2) EXEMPT POSITIONS.—The exempt positions that are not covered by this part include the following:

(m) All assistant division director, deputy division director, and bureau chief positions in any department, and those positions determined by the department to have managerial responsibilities comparable to such positions, which positions include, but are not limited to, positions in the Department of Health, the Department of Children and Family Services, and the Department of Corrections that are assigned primary duties of serving as the superintendent or assistant superintendent, or warden or assistant warden, of an institution; positions in the Department of Corrections that are assigned primary duties of serving as the circuit administrator or deputy circuit administrator; positions in the Department of Transportation that are assigned primary duties of serving as regional toll managers and managers of offices as defined in s. 20.23(3)(d)3. and (4)(d); positions in the Department of Environmental Protection that are assigned the duty of an Environmental Administrator or program administrator; ~~those positions described in s. 20.171 as included in the Senior Management Service;~~ and positions in the Department of Health that are assigned the duties of Environmental Administrator, Assistant County Health Department Director, and County Health Department Financial Administrator. Unless otherwise fixed by law, the department shall set the salary and benefits of these positions in accordance with the rules established for the Selected Exempt Service.

Section 5. Paragraph (h) of subsection (2) of section 112.19, Florida Statutes, is amended to read:

112.19 Law enforcement, correctional, and correctional probation officers; death benefits.—

(2)

(h)1. Any employer who employs a full-time law enforcement, correctional, or correctional probation officer who, on or after January 1, 1995, suffers a catastrophic injury, as defined in ~~s. 440.02 s. 440.02(37)~~, in the line of duty shall pay the entire premium of the employer's health insurance plan for the injured employee, the injured employee's spouse, and for each dependent child of the injured employee until the child reaches the age of majority or until the end of the calendar year in which the child reaches the age of 25 if the child continues to be dependent for support, or the child is a full-time or part-time student and is dependent for support. The term "health insurance plan" does not include supplemental benefits that are not part of the basic group health insurance plan. If the injured employee subsequently dies, the employer shall continue to pay the entire health insurance premium for the surviving spouse until remarried, and for the dependent children, under the conditions outlined in this paragraph. However:

a. Health insurance benefits payable from any other source shall reduce benefits payable under this section.

b. It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with, or urge another to make, or cause to be made, any false, fraudulent, or misleading oral or written statement to obtain health insurance coverage as provided under this paragraph. A person who violates this sub-subparagraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

c. In addition to any applicable criminal penalty, upon conviction for a violation as described in sub-subparagraph b., a law enforcement, correctional, or correctional probation officer or other beneficiary who receives or seeks to receive health insurance benefits under this paragraph shall forfeit the right to receive such health insurance benefits, and shall reimburse the employer for all benefits paid due to the fraud or other prohibited activity. For purposes of this sub-subparagraph, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

2. In order for the officer, spouse, and dependent children to be eligible for such insurance coverage, the injury must have occurred as the result of the officer's response to fresh pursuit, the officer's response to what is reasonably believed to be an emergency, or an unlawful act perpetrated by another. Except as otherwise provided herein, nothing in this paragraph shall be construed to limit health insurance coverage for which the officer, spouse, or dependent children may otherwise be eligible, except that a person who qualifies under this section shall not be eligible for the health insurance subsidy provided under chapter 121, chapter 175, or chapter 185.

Section 6. Paragraph (g) of subsection (2) of section 112.191, Florida Statutes, is amended to read:

112.191 Firefighters; death benefits.—

(2)

(g)1. Any employer who employs a full-time firefighter who, on or after January 1, 1995, suffers a catastrophic injury, as defined in s. 440.02 s. 440.02(37), in the line of duty shall pay the entire premium of the employer's health insurance plan for the injured employee, the injured employee's spouse, and for each dependent child of the injured employee until the child reaches the age of majority or until the end of the calendar year in which the child reaches the age of 25 if the child continues to be dependent for support, or the child is a full-time or part-time student and is dependent for support. The term "health insurance plan" does not include supplemental benefits that are not part of the basic group health insurance plan. If the injured employee subsequently dies, the employer shall continue to pay the entire health insurance premium for the surviving spouse until remarried, and for the dependent children, under the conditions outlined in this paragraph. However:

a. Health insurance benefits payable from any other source shall reduce benefits payable under this section.

b. It is unlawful for a person to willfully and knowingly make, or cause to be made, or to assist, conspire with, or urge another to make, or cause to be made, any false, fraudulent, or misleading oral or written statement to obtain health insurance coverage as provided under this paragraph. A person who violates this sub-subparagraph commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

c. In addition to any applicable criminal penalty, upon conviction for a violation as described in sub-subparagraph b., a firefighter or other beneficiary who receives or seeks to receive health insurance benefits under this paragraph shall forfeit the right to receive such health insurance benefits, and shall reimburse the employer for all benefits paid due to the fraud or other prohibited activity. For purposes of this sub-subparagraph, "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

2. In order for the firefighter, spouse, and dependent children to be eligible for such insurance coverage, the injury must have occurred as the result of the firefighter's response to what is reasonably believed to be an emergency involving the protection of life or property, or an unlawful act perpetrated by another. Except as otherwise provided herein, nothing in this paragraph shall be construed to limit health insurance coverage for which the firefighter, spouse, or dependent children may otherwise be eligible, except that a person who qualifies for benefits under this section shall not be eligible for the health insurance subsidy provided under chapter 121, chapter 175, or chapter 185.

Notwithstanding any provision of this section to the contrary, the death benefits provided in paragraphs (b), (c), and (f) shall also be applicable and paid in cases where a firefighter received bodily injury prior to July 1, 1993, and subsequently died on or after July 1, 1993, as a result of such in-line-of-duty injury.

Section 7. Section 121.125, Florida Statutes, is amended to read:

121.125 Credit for workers' compensation payment periods.—A member of the retirement system created by this chapter who has been eligible or becomes eligible to receive workers' compensation payments for an injury or illness occurring during his or her employment while a member of any state retirement system shall, upon return to active employment with a covered employer for 1 calendar month or upon approval for disability retirement in accordance with s. 121.091(4), receive full retirement credit for the period prior to such return to active employment or disability retirement for which the workers' compensation payments were received. However, no member may receive retirement credit for any such period occurring after the earlier of the date of maximum medical improvement has been attained as defined in s. 440.02 ~~s. 440.02(9)~~ or the date termination has occurred as defined in s. 121.021(39). The employer of record at the time of the worker's compensation injury or illness shall make the required retirement contributions based

on the member's rate of monthly compensation immediately prior to his or her receiving workers' compensation payments for retirement credit received by the member.

Section 8. Subsection (7) of section 122.03, Florida Statutes, is amended to read:

122.03 Contributions; participants; prior service credit.—

(7) A member of the retirement system created by this chapter who has been eligible or becomes eligible to receive workers' compensation payments for an injury or illness occurring during his or her employment while a member of any state retirement system shall, upon his or her return to active employment with a covered employer for 1 calendar month or upon his or her approval for disability retirement in accordance with s. 122.09, receive full retirement credit for the period prior to such return to active employment or disability retirement for which the workers' compensation payments were received. However, no member may receive retirement credit for any such period occurring after the earlier of the date of maximum medical improvement ~~has been attained~~ as defined in ~~s. 440.02~~ s. 440.02(9) or the date termination has occurred as defined in s. 121.021(39). The employer of record at the time of the worker's compensation injury or illness shall make the required employee and employer retirement contributions based on the member's rate of monthly compensation immediately prior to receipt of workers' compensation payments.

Section 9. Subsection (10) of section 238.06, Florida Statutes, is amended to read:

238.06 Membership application, creditable service, and time for making contributions.—

(10) A member of the retirement system created by this chapter who has been eligible or becomes eligible to receive workers' compensation payments for an injury or illness occurring during his or her employment while a member of any state retirement system shall, upon his or her return to active employment with a covered employer for 1 calendar month or upon his or her approval for disability retirement in accordance with s. 238.07, receive full retirement credit for the period prior to such return to active employment or disability retirement for which the workers' compensation payments were received. However, no member may receive retirement credit for any such period occurring after the earlier of the date of maximum medical improvement ~~has been attained~~ as defined in ~~s. 440.02~~ s. 440.02(9) or the date termination has occurred as defined in s. 121.021(39). The employer of record at the time of the worker's compensation injury or illness shall make the required employee and employer retirement contributions based on the member's rate of monthly compensation immediately prior to his or her receiving workers' compensation payments.

Section 10. Section 440.015, Florida Statutes, is amended to read:

440.015 Legislative intent.—It is the intent of the Legislature that the Workers' Compensation Law be interpreted so as to assure the quick and

efficient delivery of disability and medical benefits to an injured worker and to facilitate the worker's return to gainful reemployment at a reasonable cost to the employer. It is the specific intent of the Legislature that workers' compensation cases shall be decided on their merits. The workers' compensation system in Florida is based on a mutual renunciation of common-law rights and defenses by employers and employees alike. In addition, it is the intent of the Legislature that the facts in a workers' compensation case are not to be interpreted liberally in favor of either the rights of the injured worker or the rights of the employer. Additionally, the Legislature hereby declares that disputes concerning the facts in workers' compensation cases are not to be given a broad liberal construction in favor of the employee on the one hand or of the employer on the other hand, and the laws pertaining to workers' compensation are to be construed in accordance with the basic principles of statutory construction and not liberally in favor of either employee or employer. It is the intent of the Legislature to ensure the prompt delivery of benefits to the injured worker. Therefore, an efficient and self-executing system must be created which is not an economic or administrative burden. The department, agency, the Department of Education, and the Division of Administrative Hearings ~~Division of Workers' Compensation~~ shall administer the Workers' Compensation Law in a manner which facilitates the self-execution of the system and the process of ensuring a prompt and cost-effective delivery of payments.

Section 11. Subsections (3) through (39) of section 440.02, Florida Statutes, are renumbered as subsections (4) through (40), respectively, a new subsection (3) is added to that section, and present subsections (11), (13), and (14) of said section are amended, to read:

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

(3) “Agency” means the Agency for Health Care Administration.

~~(12)(11)~~ “Department” means the Department of Insurance Labor and Employment Security.

~~(14)(13)~~ “Division” means the Division of Workers' Compensation of the Department of Insurance Labor and Employment Security.

~~(15)(14)(a)~~ “Employee” means any person engaged in any employment under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes, but is not limited to, aliens and minors.

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

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

2. As to officers of a corporation who are actively engaged in the construction industry, no more than three officers may elect to be exempt from this chapter by filing written notice of the election with the department ~~division~~ as provided in s. 440.05.

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

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

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

(d) "Employee" does not include:

1. An independent contractor, if:

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

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

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

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

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

- f. The independent contractor receives compensation for work or services performed for a commission or on a per-job or competitive-bid basis and not on any other basis;
- g. The independent contractor may realize a profit or suffer a loss in connection with performing work or services;
- h. The independent contractor has continuing or recurring business liabilities or obligations; and
- i. The success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

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

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

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

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

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

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

a. Persons who serve in private nonprofit agencies and who receive no compensation other than expenses in an amount less than or equivalent to the standard mileage and per diem expenses provided to salaried employees in the same agency or, if such agency does not have salaried employees who

receive mileage and per diem, then such volunteers who receive no compensation other than expenses in an amount less than or equivalent to the customary mileage and per diem paid to salaried workers in the community as determined by the department division; and

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

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

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

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

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

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

Section 12. Section 440.021, Florida Statutes, is amended to read:

440.021 Exemption of workers' compensation from chapter 120.—Workers' compensation adjudications by judges of compensation claims are exempt from chapter 120, and no judge of compensation claims shall be considered an agency or a part thereof. Communications of the result of investigations by the department division pursuant to s. 440.185(4) are exempt from chapter 120. In all instances in which the department division institutes action to collect a penalty or interest which may be due pursuant to this chapter, the penalty or interest shall be assessed without hearing, and the party against which such penalty or interest is assessed shall be given written notice of such assessment and shall have the right to protest within

20 days of such notice. Upon receipt of a timely notice of protest and after such investigation as may be necessary, the ~~department division~~ shall, if it agrees with such protest, notify the protesting party that the assessment has been revoked. If the ~~department division~~ does not agree with the protest, it shall refer the matter to the judge of compensation claims for determination pursuant to s. 440.25(2)-(5). Such action of the ~~department division~~ is exempt from the provisions of chapter 120.

Section 13. Section 440.05, Florida Statutes, is amended to read:

440.05 Election of exemption; revocation of election; notice; certification.—

(1) Each corporate officer who elects not to accept the provisions of this chapter or who, after electing such exemption, revokes that exemption shall mail to the ~~department division~~ in Tallahassee notice to such effect in accordance with a form to be prescribed by the ~~department division~~.

(2) Each sole proprietor or partner who elects to be included in the definition of “employee” or who, after such election, revokes that election must mail to the ~~department division~~ in Tallahassee notice to such effect, in accordance with a form to be prescribed by the ~~department division~~.

(3) Each sole proprietor, partner, or officer of a corporation who is actively engaged in the construction industry and who elects an exemption from this chapter or who, after electing such exemption, revokes that exemption, must mail a written notice to such effect to the ~~department division~~ on a form prescribed by the ~~department division~~. The notice of election to be exempt from the provisions of this chapter must be notarized and under oath. The notice of election to be exempt which is submitted to the ~~department division~~ by the sole proprietor, partner, or officer of a corporation must list the name, federal tax identification number, social security number, all certified or registered licenses issued pursuant to chapter 489 held by the person seeking the exemption, a copy of relevant documentation as to employment status filed with the Internal Revenue Service as specified by the ~~department division~~, a copy of the relevant occupational license in the primary jurisdiction of the business, and, for corporate officers and partners, the registration number of the corporation or partnership filed with the Division of Corporations of the Department of State. The notice of election to be exempt must identify each sole proprietorship, partnership, or corporation that employs the person electing the exemption and must list the social security number or federal tax identification number of each such employer and the additional documentation required by this section. In addition, the notice of election to be exempt must provide that the sole proprietor, partner, or officer electing an exemption is not entitled to benefits under this chapter, must provide that the election does not exceed exemption limits for officers and partnerships provided in s. 440.02, and must certify that any employees of the sole proprietor, partner, or officer electing an exemption are covered by workers’ compensation insurance. Upon receipt of the notice of the election to be exempt, receipt of all application fees, and a determination by the ~~department division~~ that the notice meets the requirements of this subsection, the ~~department division~~ shall issue a certification of the election to the

sole proprietor, partner, or officer, unless the department division determines that the information contained in the notice is invalid. The department division shall revoke a certificate of election to be exempt from coverage upon a determination by the department division that the person does not meet the requirements for exemption or that the information contained in the notice of election to be exempt is invalid. The certificate of election must list the names of the sole proprietorship, partnership, or corporation listed in the request for exemption. A new certificate of election must be obtained each time the person is employed by a new sole proprietorship, partnership, or corporation that is not listed on the certificate of election. A copy of the certificate of election must be sent to each workers' compensation carrier identified in the request for exemption. Upon filing a notice of revocation of election, a sole proprietor, partner, or officer who is a subcontractor must notify her or his contractor. Upon revocation of a certificate of election of exemption by the department division, the department division shall notify the workers' compensation carriers identified in the request for exemption.

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

(5) A notice given under subsection (1), subsection (2), or subsection (3) shall become effective when issued by the department division or 30 days after an application for an exemption is received by the department division, whichever occurs first. However, if an accident or occupational disease occurs less than 30 days after the effective date of the insurance policy under which the payment of compensation is secured or the date the employer qualified as a self-insurer, such notice is effective as of 12:01 a.m. of the day following the date it is mailed to the department division in Tallahassee.

(6) A construction industry certificate of election to be exempt which is issued in accordance with this section shall be valid for 2 years after the effective date stated thereon. Both the effective date and the expiration date must be listed on the face of the certificate by the department division. The construction industry certificate must expire at midnight, 2 years from its issue date, as noted on the face of the exemption certificate. Any person who has received from the division a construction industry certificate of election to be exempt which is in effect on December 31, 1998, shall file a new notice of election to be exempt by the last day in his or her birth month following December 1, 1998. A construction industry certificate of election to be exempt may be revoked before its expiration by the sole proprietor, partner, or officer for whom it was issued or by the department division for the reasons stated in this section. At least 60 days prior to the expiration date of a construction industry certificate of exemption issued after December 1, 1998, the department division shall send notice of the expiration date and

an application for renewal to the certificateholder at the address on the certificate.

(7) Any contractor responsible for compensation under s. 440.10 may register in writing with the workers' compensation carrier for any subcontractor and shall thereafter be entitled to receive written notice from the carrier of any cancellation or nonrenewal of the policy.

(8)(a) ~~The department division~~ must assess a fee of \$50 with each request for a construction industry certificate of election to be exempt or renewal of election to be exempt under this section.

(b) The funds collected by the ~~department division~~ shall be used to administer this section, to audit the businesses that pay the fee for compliance with any requirements of this chapter, and to enforce compliance with the provisions of this chapter.

(9) The ~~department division~~ may by rule prescribe forms and procedures for filing an election of exemption, revocation of election to be exempt, and notice of election of coverage for all employers and require specified forms to be submitted by all employers in filing for the election of exemption. The ~~department division~~ may by rule prescribe forms and procedures for issuing a certificate of the election of exemption.

Section 14. Paragraph (d) of subsection (7) of section 440.09, Florida Statutes, is amended to read:

440.09 Coverage.—

(7)

(d) The ~~agency division~~ shall provide by rule for the authorization and regulation of drug-testing policies, procedures, and methods. Testing of injured employees shall not commence until such rules are adopted.

Section 15. Paragraphs (f) and (g) of subsection (1) of section 440.10, Florida Statutes, are amended to read:

440.10 Liability for compensation.—

(1)

(f) If an employer willfully fails to secure compensation as required by this chapter, the ~~department division~~ may assess against the employer a penalty not to exceed \$5,000 for each employee of that employer who is classified by the employer as an independent contractor but who is found by the ~~department division~~ to not meet the criteria for an independent contractor that are set forth in s. 440.02.

(g) For purposes of this section, a person is conclusively presumed to be an independent contractor if:

1. The independent contractor provides the general contractor with an affidavit stating that he or she meets all the requirements of s. 440.02(14)(d); and

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

A sole proprietor, partner, or officer of a corporation who elects exemption from this chapter by filing a certificate of election under s. 440.05 may not recover benefits or compensation under this chapter. An independent contractor who provides the general contractor with both an affidavit stating that he or she meets the requirements of s. 440.02(14)(d) and a certificate of exemption is not an employee under s. 440.02(14)(e) and may not recover benefits under this chapter. For purposes of determining the appropriate premium for workers' compensation coverage, carriers may not consider any person who meets the requirements of this paragraph to be an employee.

Section 16. Subsection (2), paragraph (a) of subsection (3), and paragraph (g) of subsection (7) of section 440.102, Florida Statutes, are amended to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(2) DRUG TESTING.—An employer may test an employee or job applicant for any drug described in paragraph (1)(c). In order to qualify as having established a drug-free workplace program which affords an employer the ability to qualify for the discounts provided under s. 627.0915 and deny medical and indemnity benefits, under this chapter all drug testing conducted by employers shall be in conformity with the standards and procedures established in this section and all applicable rules adopted pursuant to this section. However, an employer does not have a legal duty under this section to request an employee or job applicant to undergo drug testing. If an employer fails to maintain a drug-free workplace program in accordance with the standards and procedures established in this section and in applicable rules, the employer shall not be eligible for discounts under s. 627.0915. All employers qualifying for and receiving discounts provided under s. 627.0915 must be reported annually by the insurer to the department ~~division~~.

(3) NOTICE TO EMPLOYEES AND JOB APPLICANTS.—prior to his or her receiving workers' compensation payments.

(a) One time only, prior to testing, an employer shall give all employees and job applicants for employment a written policy statement which contains:

1. A general statement of the employer's policy on employee drug use, which must identify:

a. The types of drug testing an employee or job applicant may be required to submit to, including reasonable-suspicion drug testing or drug testing conducted on any other basis.

b. The actions the employer may take against an employee or job applicant on the basis of a positive confirmed drug test result.

2. A statement advising the employee or job applicant of the existence of this section.

3. A general statement concerning confidentiality.

4. Procedures for employees and job applicants to confidentially report to a medical review officer the use of prescription or nonprescription medications to a medical review officer both before and after being tested.

5. A list of the most common medications, by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. A list of such medications as developed by the Agency for Health Care Administration shall be available to employers through the ~~Division of Workers' Compensation of the department of Labor and Employment Security.~~

6. The consequences of refusing to submit to a drug test.

7. A representative sampling of names, addresses, and telephone numbers of employee assistance programs and local drug rehabilitation programs.

8. A statement that an employee or job applicant who receives a positive confirmed test result may contest or explain the result to the medical review officer within 5 working days after receiving written notification of the test result; that if an employee's or job applicant's explanation or challenge is unsatisfactory to the medical review officer, the medical review officer shall report a positive test result back to the employer; and that a person may contest the drug test result pursuant to law or to rules adopted by the Agency for Health Care Administration.

9. A statement informing the employee or job applicant of his or her responsibility to notify the laboratory of any administrative or civil action brought pursuant to this section.

10. A list of all drugs for which the employer will test, described by brand name or common name, as applicable, as well as by chemical name.

11. A statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the Public Employees Relations Commission or applicable court.

12. A statement notifying employees and job applicants of their right to consult with a medical review officer for technical information regarding prescription or nonprescription medication.

(7) EMPLOYER PROTECTION.—

(g) This section does not prohibit an employer from conducting medical screening or other tests required, permitted, or not disallowed by any statute, rule, or regulation for the purpose of monitoring exposure of employees

to toxic or other unhealthy substances in the workplace or in the performance of job responsibilities. Such screening or testing is limited to the specific substances expressly identified in the applicable statute, rule, or regulation, unless prior written consent of the employee is obtained for other tests. Such screening or testing need not be in compliance with the rules adopted by the Agency for Health Care Administration under this chapter or under s. 112.0455. A public employer may, through the use of an unbiased selection procedure, conduct random drug tests of employees occupying safety-sensitive or special-risk positions if the testing is performed in accordance with drug-testing rules adopted by the Agency for Health Care Administration and the department of Labor and Employment Security. If applicable, random drug testing must be specified in a collective bargaining agreement as negotiated by the appropriate certified bargaining agent before such testing is implemented.

Section 17. Section 440.103, Florida Statutes, is amended to read:

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

Section 18. Subsection (1) of section 440.104, Florida Statutes, is amended to read:

440.104 Competitive bidder; civil actions.—

(1) Any person engaged in the construction industry, as provided in s. 440.02 ~~s. 440.02(7)~~, who loses a competitive bid for a contract shall have a cause of action for damages against the person awarded the contract for which the bid was made, if the person making the losing bid establishes that the winning bidder knew or should have known that he or she was in violation of s. 440.10, s. 440.105, or s. 440.38 while performing the work under the contract.

Section 19. Paragraph (a) of subsection (2) of section 440.105, Florida Statutes, is amended to read:

440.105 Prohibited activities; reports; penalties; limitations.—

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

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

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

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

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

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

Section 20. Subsections (3) and (4) of section 440.106, Florida Statutes, are amended to read:

440.106 Civil remedies; administrative penalties.—

(3) Whenever any group or individual self-insurer, carrier, rating bureau, or agent or other representative of any carrier or rating bureau is determined to have violated s. 440.105, the department of ~~Insurance~~ may revoke or suspend the authority or certification of any group or individual self-insurer, carrier, agent, or broker.

(4) The department division shall report any contractor determined in violation of requirements of this chapter to the appropriate state licensing board for disciplinary action.

Section 21. Section 440.107, Florida Statutes, is amended to read:

440.107 Department Division powers to enforce employer compliance with coverage requirements.—

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

(2) The department division and its authorized representatives may enter and inspect any place of business at any reasonable time for the limited purpose of investigating compliance with workers' compensation coverage requirements under this chapter. Each employer shall keep true and accurate business records that contain such information as the department division prescribes by rule. The business records must contain information necessary for the department division to determine compliance with workers' compensation coverage requirements and must be maintained within this state by the business, in such a manner as to be accessible within

a reasonable time upon request by the ~~department division~~. The business records must be open to inspection and be available for copying by the ~~department division~~ at any reasonable time and place and as often as necessary. The ~~department division~~ may require from any employer any sworn or unsworn reports, pertaining to persons employed by that employer, deemed necessary for the effective administration of the workers' compensation coverage requirements.

(3) In discharging its duties, the ~~department division~~ may administer oaths and affirmations, certify to official acts, issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary by the ~~department division~~ as evidence in order to ensure proper compliance with the coverage provisions of this chapter.

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

(5) Whenever the ~~department division~~ determines that an employer who is required to secure the payment to his or her employees of the compensation provided for by this chapter has failed to do so, such failure shall be deemed an immediate serious danger to public health, safety, or welfare sufficient to justify service by the ~~department division~~ of a stop-work order on the employer, requiring the cessation of all business operations at the place of employment or job site. The order shall take effect upon the date of service upon the employer, unless the employer provides evidence satisfactory to the ~~department division~~ of having secured any necessary insurance or self-insurance and pays a civil penalty to the ~~department division~~, to be deposited by the ~~department division~~ into the Workers' Compensation Administration Trust Fund, in the amount of \$100 per day for each day the employer was not in compliance with this chapter.

(6) The ~~department division~~ may file a complaint in the circuit court in and for Leon County to enjoin any employer, who has failed to secure compensation as required by this chapter, from employing individuals and from conducting business until the employer presents evidence satisfactory to the ~~department division~~ of having secured payment for compensation and pays a civil penalty to the ~~department division~~, to be deposited by the ~~department division~~ into the Workers' Compensation Administration Trust Fund, in the amount of \$100 per day for each day the employer was not in compliance with this chapter.

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

- (a) Twice the amount the employer would have paid during periods it illegally failed to secure payment of compensation in the preceding 3-year period based on the employer's payroll during the preceding 3-year period; or
- (b) One thousand dollars, whichever is greater.

Any penalty assessed under this subsection is due within 30 days after the date on which the employer is notified, except that, if the department division has posted a stop-work order or obtained injunctive relief against the employer, payment is due, in addition to those conditions set forth in this section, as a condition to relief from a stop-work order or an injunction. Interest shall accrue on amounts not paid when due at the rate of 1 percent per month.

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

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

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

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

Section 22. Subsection (1) of section 440.108, Florida Statutes, is amended to read:

440.108 Investigatory records relating to workers' compensation employer compliance; confidentiality.—

(1) All investigatory records of the ~~department~~ Division of Workers' Compensation made or received pursuant to s. 440.107 and any records necessary to complete an investigation are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the investigation is completed or ceases to be active. For purposes of this section, an investigation is considered "active" while such investigation is being conducted by the ~~department~~ division with a reasonable, good faith belief that it may lead to the filing of administrative, civil, or criminal proceedings. An investigation does not cease to be active if the agency is proceeding with reasonable dispatch and there is a good faith belief that action may be initiated by the agency or other administrative or law enforcement agency. After an investigation is completed or ceases to be active, records relating to the investigation remain confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution if disclosure would:

- (a) Jeopardize the integrity of another active investigation;
- (b) Reveal a trade secret, as defined in s. 688.002;
- (c) Reveal business or personal financial information;
- (d) Reveal the identity of a confidential source;
- (e) Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or
- (f) Reveal investigative techniques or procedures.

Section 23. Subsection (2) of section 440.12, Florida Statutes, is amended to read:

440.12 Time for commencement and limits on weekly rate of compensation.—

(2) Compensation for disability resulting from injuries which occur after December 31, 1974, shall not be less than \$20 per week. However, if the employee's wages at the time of injury are less than \$20 per week, he or she shall receive his or her full weekly wages. If the employee's wages at the time of the injury exceed \$20 per week, compensation shall not exceed an amount per week which is:

- (a) Equal to 100 percent of the statewide average weekly wage, determined as hereinafter provided for the year in which the injury occurred; however, the increase to 100 percent from 66 $\frac{2}{3}$ percent of the statewide average weekly wage shall apply only to injuries occurring on or after August 1, 1979; and

(b) Adjusted to the nearest dollar.

For the purpose of this subsection, the “statewide average weekly wage” means the average weekly wage paid by employers subject to the Florida Unemployment Compensation Law as reported to the Agency for Workforce Innovation department for the four calendar quarters ending each June 30, which average weekly wage shall be determined by the Agency for Workforce Innovation department on or before November 30 of each year and shall be used in determining the maximum weekly compensation rate with respect to injuries occurring in the calendar year immediately following. The statewide average weekly wage determined by the Agency for Workforce Innovation department shall be reported annually to the Legislature.

Section 24. Section 440.125, Florida Statutes, is amended to read:

440.125 Medical records and reports; identifying information in employee medical bills; confidentiality.—

(1) Any medical records and medical reports of an injured employee and any information identifying an injured employee in medical bills which are provided to the ~~department, Division of Workers’ Compensation of the Department of Labor and Employment Security~~ pursuant to s. 440.13 are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except as otherwise provided by this chapter. The department may share any such confidential and exempt records, reports, or information received pursuant to s. 440.13 with the Agency for Health Care Administration and the Department of Education in furtherance of their official duties under ss. 440.13 and 440.134. The agency and the department shall maintain the confidential and exempt status of such records, reports, and information received.

~~(2) The Legislature finds that it is a public necessity that an injured employee’s medical records and medical reports and information identifying the employee in medical bills held by the Division of Workers’ Compensation pursuant to s. 440.13 be confidential and exempt from the public records law. Public access to such information is an invasion of the injured employee’s right to privacy in that personal, sensitive information would be revealed, and public knowledge of such information could lead to discrimination against the employee by coworkers and others. Additionally, there is little utility in providing public access to such information in that the effectiveness and efficiency of the workers’ compensation program can be otherwise adequately monitored and evaluated.~~

Section 25. Subsections (1), (3), (4), (5), (6), (7), (8), (9), (11), (12), (13), and (15) of section 440.13, Florida Statutes, are amended to read:

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

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

(a) “Alternate medical care” means a change in treatment or health care provider.

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

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

(d) “Catastrophic injury” means an injury as defined in s. 440.02.

(e) “Certified health care provider” means a health care provider who has been certified by the agency division or who has entered an agreement with a licensed managed care organization to provide treatment to injured workers under this section. Certification of such health care provider must include documentation that the health care provider has read and is familiar with the portions of the statute, impairment guides, and rules which govern the provision of remedial treatment, care, and attendance.

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

(g) “Emergency services and care” means emergency services and care as defined in s. 395.002.

(h) “Health care facility” means any hospital licensed under chapter 395 and any health care institution licensed under chapter 400.

(i) “Health care provider” means a physician or any recognized practitioner who provides skilled services pursuant to a prescription or under the supervision or direction of a physician and who has been certified by the agency division as a health care provider. The term “health care provider” includes a health care facility.

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

(k) “Independent medical examination” means an objective evaluation of the injured employee’s medical condition, including, but not limited to, impairment or work status, performed by a physician or an expert medical advisor at the request of a party, a judge of compensation claims, or the agency division to assist in the resolution of a dispute arising under this chapter.

(l) “Instance of overutilization” means a specific inappropriate service or level of service provided to an injured employee.

(m) “Medically necessary” means any medical service or medical supply which is used to identify or treat an illness or injury, is appropriate to the

patient's diagnosis and status of recovery, and is consistent with the location of service, the level of care provided, and applicable practice parameters. The service should be widely accepted among practicing health care providers, based on scientific criteria, and determined to be reasonably safe. The service must not be of an experimental, investigative, or research nature, except in those instances in which prior approval of the Agency for Health Care Administration has been obtained. The Agency for Health Care Administration shall adopt rules providing for such approval on a case-by-case basis when the service or supply is shown to have significant benefits to the recovery and well-being of the patient.

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

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

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

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

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

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

(t) "Utilization control" means a systematic process of implementing measures that assure overall management and cost containment of services delivered.

(u) "Utilization review" means the evaluation of the appropriateness of both the level and the quality of health care and health services provided to a patient, including, but not limited to, evaluation of the appropriateness of treatment, hospitalization, or office visits based on medically accepted standards. Such evaluation must be accomplished by means of a system that identifies the utilization of medical services based on medically accepted

standards as established by medical consultants with qualifications similar to those providing the care under review, and that refers patterns and practices of overutilization to the agency division.

(3) PROVIDER ELIGIBILITY; AUTHORIZATION.—

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

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

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

(d) A carrier must respond, by telephone or in writing, to a request for authorization by the close of the third business day after receipt of the request. A carrier who fails to respond to a written request for authorization for referral for medical treatment by the close of the third business day after receipt of the request consents to the medical necessity for such treatment. All such requests must be made to the carrier. Notice to the carrier does not include notice to the employer.

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

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

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

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

(i) Notwithstanding paragraph (d), a claim for specialist consultations, surgical operations, physiotherapeutic or occupational therapy procedures, X-ray examinations, or special diagnostic laboratory tests that cost more than \$1,000 and other specialty services that the agency division identifies by rule is not valid and reimbursable unless the services have been expressly authorized by the carrier, or unless the carrier has failed to respond within 10 days to a written request for authorization, or unless emergency care is required. The insurer shall not refuse to authorize such consultation or procedure unless the health care provider or facility is not authorized or certified or unless an expert medical advisor has determined that the consultation or procedure is not medically necessary or otherwise compensable under this chapter. Authorization of a treatment plan does not constitute express authorization for purposes of this section, except to the extent the carrier provides otherwise in its authorization procedures. This paragraph does not limit the carrier's obligation to identify and disallow overutilization or billing errors.

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

(4) NOTICE OF TREATMENT TO CARRIER; FILING WITH DEPARTMENT DIVISION.—

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

(b) Upon the request of the department or agency Division of Workers' Compensation, each medical report or bill obtained or received by the employer, the carrier, or the injured employee, or the attorney for the employer,

carrier, or injured employee, with respect to the remedial treatment, care, and attendance of the injured employee, including any report of an examination, diagnosis, or disability evaluation, must be filed with the department or agency Division of Workers' Compensation pursuant to rules adopted by the department in consultation with the agency division. The health care provider shall also furnish to the injured employee or to his or her attorney, on demand, a copy of his or her office chart, records, and reports, and may charge the injured employee an amount authorized by the department division for the copies. Each such health care provider shall provide to the agency or department division information about the remedial treatment, care, and attendance which the agency or department division reasonably requests.

(c) It is the policy for the administration of the workers' compensation system that there be reasonable access to medical information by all parties to facilitate the self-executing features of the law. Notwithstanding the limitations in s. 456.057 and subject to the limitations in s. 381.004, upon the request of the employer, the carrier, an authorized qualified rehabilitation provider, or the attorney for the employer or carrier, the medical records of an injured employee must be furnished to those persons and the medical condition of the injured employee must be discussed with those persons, if the records and the discussions are restricted to conditions relating to the workplace injury. Any such discussions may be held before or after the filing of a claim without the knowledge, consent, or presence of any other party or his or her agent or representative. A health care provider who willfully refuses to provide medical records or to discuss the medical condition of the injured employee, after a reasonable request is made for such information pursuant to this subsection, shall be subject by the agency division to one or more of the penalties set forth in paragraph (8)(b).

(5) INDEPENDENT MEDICAL EXAMINATIONS.—

(a) In any dispute concerning overutilization, medical benefits, compensability, or disability under this chapter, the carrier or the employee may select an independent medical examiner. The examiner may be a health care provider treating or providing other care to the employee. An independent medical examiner may not render an opinion outside his or her area of expertise, as demonstrated by licensure and applicable practice parameters.

(b) Each party is bound by his or her selection of an independent medical examiner and is entitled to an alternate examiner only if:

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

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

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

4. The parties agree to an alternate examiner.

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

(c) The carrier may, at its election, contact the claimant directly to schedule a reasonable time for an independent medical examination. The carrier must confirm the scheduling agreement in writing within 5 days and notify claimant's counsel, if any, at least 7 days before the date upon which the independent medical examination is scheduled to occur. An attorney representing a claimant is not authorized to schedule independent medical evaluations under this subsection.

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

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

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

(6) UTILIZATION REVIEW.—Carriers shall review all bills, invoices, and other claims for payment submitted by health care providers in order to identify overutilization and billing errors, and may hire peer review consultants or conduct independent medical evaluations. Such consultants, including peer review organizations, are immune from liability in the execution of their functions under this subsection to the extent provided in s. 766.101. If a carrier finds that overutilization of medical services or a billing error has occurred, it must disallow or adjust payment for such services or error without order of a judge of compensation claims or the agency division, if the carrier, in making its determination, has complied with this section and rules adopted by the agency division.

- (7) UTILIZATION AND REIMBURSEMENT DISPUTES.—

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

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

(c) Within 60 days after receipt of all documentation, the agency division must provide to the petitioner, the carrier, and the affected parties a written determination of whether the carrier properly adjusted or disallowed payment. The agency division must be guided by standards and policies set forth in this chapter, including all applicable reimbursement schedules, in rendering its determination.

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

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

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

1. Repayment of the appropriate amount to the health care provider.
2. An administrative fine assessed by the agency division in an amount not to exceed \$5,000 per instance of improperly disallowing or reducing payments.
3. Award of the health care provider's costs, including a reasonable attorney's fee, for prosecuting the petition.

(8) **PATTERN OR PRACTICE OF OVERUTILIZATION.—**

(a) Carriers must report to the agency division all instances of overutilization including, but not limited to, all instances in which the carrier disallows or adjusts payment. The agency division shall determine whether a pattern or practice of overutilization exists.

(b) If the agency division determines that a health care provider has engaged in a pattern or practice of overutilization or a violation of this chapter or rules adopted by the agency division, it may impose one or more of the following penalties:

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

(9) EXPERT MEDICAL ADVISORS.—

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

(b) The agency division shall contract with or employ expert medical advisors to provide peer review or medical consultation to the agency division or to a judge of compensation claims in connection with resolving disputes relating to reimbursement, differing opinions of health care providers, and health care and physician services rendered under this chapter. Expert medical advisors contracting with the agency division shall, as a term of such contract, agree to provide consultation or services in accordance with the timetables set forth in this chapter and to abide by rules adopted by the agency division, including, but not limited to, rules pertaining to procedures for review of the services rendered by health care providers and preparation of reports and recommendations for submission to the agency division.

(c) If there is disagreement in the opinions of the health care providers, if two health care providers disagree on medical evidence supporting the employee's complaints or the need for additional medical treatment, or if two health care providers disagree that the employee is able to return to work, the agency division may, and the judge of compensation claims shall, upon

his or her own motion or within 15 days after receipt of a written request by either the injured employee, the employer, or the carrier, order the injured employee to be evaluated by an expert medical advisor. The opinion of the expert medical advisor is presumed to be correct unless there is clear and convincing evidence to the contrary as determined by the judge of compensation claims. The expert medical advisor appointed to conduct the evaluation shall have free and complete access to the medical records of the employee. An employee who fails to report to and cooperate with such evaluation forfeits entitlement to compensation during the period of failure to report or cooperate.

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

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

(f) If the agency division or a judge of compensation claims determines that the services of a certified expert medical advisor are required to resolve a dispute under this section, the carrier must compensate the advisor for his or her time in accordance with a schedule adopted by the agency division. The agency division may assess a penalty not to exceed \$500 against any carrier that fails to timely compensate an advisor in accordance with this section.

(11) AUDITS BY AGENCY FOR HEALTH CARE ADMINISTRATION AND THE DEPARTMENT OF INSURANCE DIVISION; JURISDICTION.—

(a) The Agency for Health Care Administration Division of Workers' Compensation of the Department of Labor and Employment Security may investigate health care providers to determine whether providers are complying with this chapter and with rules adopted by the agency division, whether the providers are engaging in overutilization, and whether providers are engaging in improper billing practices. If the agency division finds that a health care provider has improperly billed, overutilized, or failed to comply with agency division rules or the requirements of this chapter it must notify the provider of its findings and may determine that the health care provider may not receive payment from the carrier or may impose penalties as set forth in subsection (8) or other sections of this chapter. If the health care provider has received payment from a carrier for services that were improperly billed or for overutilization, it must return those payments to the carrier. The agency division may assess a penalty not to exceed \$500 for each overpayment that is not refunded within 30 days after notification of overpayment by the agency division or carrier.

(b) The department division shall monitor and audit carriers as provided in s. 624.3161, to determine if medical bills are paid in accordance with this

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

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

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

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

(a) A three-member panel is created, consisting of the Insurance Commissioner, or the Insurance Commissioner's designee, and two members to be appointed by the Governor, subject to confirmation by the Senate, one member who, on account of present or previous vocation, employment, or affiliation, shall be classified as a representative of employers, the other member who, on account of previous vocation, employment, or affiliation, shall be classified as a representative of employees. The panel shall determine statewide schedules of maximum reimbursement allowances for medically necessary treatment, care, and attendance provided by physicians, hospitals, ambulatory surgical centers, work-hardening programs, pain programs, and durable medical equipment. The maximum reimbursement allowances for inpatient hospital care shall be based on a schedule of per diem rates, to be approved by the three-member panel no later than March 1, 1994, to be used in conjunction with a precertification manual as determined by the ~~agency division~~. All compensable charges for hospital outpatient care shall be reimbursed at 75 percent of usual and customary charges. Until the three-member panel approves a schedule of per diem rates for inpatient hospital care and it becomes effective, all compensable charges for hospital inpatient care must be reimbursed at 75 percent of their usual and customary charges. Annually, the three-member panel shall adopt schedules of maximum reimbursement allowances for physicians, hospital inpatient

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

(b) As to reimbursement for a prescription medication, the reimbursement amount for a prescription shall be the average wholesale price times 1.2 plus \$4.18 for the dispensing fee, except where the carrier has contracted for a lower amount. Fees for pharmaceuticals and pharmaceutical services shall be reimbursable at the applicable fee schedule amount. Where the employer or carrier has contracted for such services and the employee elects to obtain them through a provider not a party to the contract, the carrier shall reimburse at the schedule, negotiated, or contract price, whichever is lower.

(c) Reimbursement for all fees and other charges for such treatment, care, and attendance, including treatment, care, and attendance provided by any hospital or other health care provider, ambulatory surgical center, work-hardening program, or pain program, must not exceed the amounts provided by the uniform schedule of maximum reimbursement allowances as determined by the panel or as otherwise provided in this section. This subsection also applies to independent medical examinations performed by health care providers under this chapter. Until the three-member panel approves a uniform schedule of maximum reimbursement allowances and it becomes effective, all compensable charges for treatment, care, and attendance provided by physicians, ambulatory surgical centers, work-hardening programs, or pain programs shall be reimbursed at the lowest maximum reimbursement allowance across all 1992 schedules of maximum reimbursement allowances for the services provided regardless of the place of service. In determining the uniform schedule, the panel shall first approve the data which it finds representative of prevailing charges in the state for similar treatment, care, and attendance of injured persons. Each health care provider, health care facility, ambulatory surgical center, work-hardening program, or pain program receiving workers' compensation payments shall maintain records verifying their usual charges. In establishing the uniform schedule of maximum reimbursement allowances, the panel must consider:

1. The levels of reimbursement for similar treatment, care, and attendance made by other health care programs or third-party providers;
2. The impact upon cost to employers for providing a level of reimbursement for treatment, care, and attendance which will ensure the availability of treatment, care, and attendance required by injured workers;
3. The financial impact of the reimbursement allowances upon health care providers and health care facilities, including trauma centers as defined in s. 395.4001, and its effect upon their ability to make available to

injured workers such medically necessary remedial treatment, care, and attendance. The uniform schedule of maximum reimbursement allowances must be reasonable, must promote health care cost containment and efficiency with respect to the workers' compensation health care delivery system, and must be sufficient to ensure availability of such medically necessary remedial treatment, care, and attendance to injured workers; and

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

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

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

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

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

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

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

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

(g) Engaged in a pattern of practice of overutilization or a violation of this chapter or rules adopted by the agency division.

(15) **PRACTICE PARAMETERS.**—

(a) The Agency for Health Care Administration, in conjunction with the department division and appropriate health professional associations and health-related organizations shall develop and may adopt by rule scientifically sound practice parameters for medical procedures relevant to workers' compensation claimants. Practice parameters developed under this section must focus on identifying effective remedial treatments and promoting the appropriate utilization of health care resources. Priority must be given to those procedures that involve the greatest utilization of resources either because they are the most costly or because they are the most frequently performed. Practice parameters for treatment of the 10 top procedures asso-

ciated with workers' compensation injuries including the remedial treatment of lower-back injuries must be developed by December 31, 1994.

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

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

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

Section 26. Subsection (23) of section 440.134, Florida Statutes, is amended to read:

440.134 Workers' compensation managed care arrangement.—

(23) The agency shall immediately notify the ~~department of Insurance and the Department of Labor and Employment Security~~ whenever it issues an administrative complaint or an order or otherwise initiates legal proceedings resulting in, or which may result in, suspension or revocation of an insurer's authorization.

Section 27. Subsections (3) and (4) of section 440.14, Florida Statutes, are amended to read:

440.14 Determination of pay.—

(3) The ~~department division~~ shall establish by rule a form which shall contain a simplified checklist of those items which may be included as "wage" for determining the average weekly wage.

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

Section 28. Paragraphs (d) and (f) of subsection (1), paragraphs (c) and (d) of subsection (2), subsections (3), (4), and (6), and paragraphs (b) and (c) of subsection (10) of section 440.15, Florida Statutes, are amended to read:

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

(1) PERMANENT TOTAL DISABILITY.—

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

(f1. If permanent total disability results from injuries that occurred subsequent to June 30, 1955, and for which the liability of the employer for compensation has not been discharged under s. 440.20(11), the injured employee shall receive additional weekly compensation benefits equal to 5 percent of her or his weekly compensation rate, as established pursuant to the law in effect on the date of her or his injury, multiplied by the number of calendar years since the date of injury. The weekly compensation payable and the additional benefits payable under this paragraph, when combined, may not exceed the maximum weekly compensation rate in effect at the time of payment as determined pursuant to s. 440.12(2). Entitlement to these supplemental payments shall cease at age 62 if the employee is eligible for social security benefits under 42 U.S.C. ss. 402 and 423, whether or not the employee has applied for such benefits. These supplemental benefits shall be paid by the department division out of the Workers' Compensation Administration Trust Fund when the injury occurred subsequent to June 30, 1955, and before July 1, 1984. These supplemental benefits shall be paid by the employer when the injury occurred on or after July 1, 1984. Supplemental benefits are not payable for any period prior to October 1, 1974.

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

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

3. When an injured employee receives a full or partial lump-sum advance of the employee's permanent total disability compensation benefits, the em-

ployee's benefits under this paragraph shall be computed on the employee's weekly compensation rate as reduced by the lump-sum advance.

(2) TEMPORARY TOTAL DISABILITY.—

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

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

(3) PERMANENT IMPAIRMENT AND WAGE-LOSS BENEFITS.—

(a) Impairment benefits.—

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

2. The three-member panel, in cooperation with the ~~department division~~, shall establish and use a uniform permanent impairment rating schedule. This schedule must be based on medically or scientifically demonstrable findings as well as the systems and criteria set forth in the American Medical Association's Guides to the Evaluation of Permanent Impairment; the Snellen Charts, published by American Medical Association Committee for Eye Injuries; and the Minnesota Department of Labor and Industry Disability Schedules. The schedule should be based upon objective findings. The schedule shall be more comprehensive than the AMA Guides to the Evaluation of Permanent Impairment and shall expand the areas already addressed and address additional areas not currently contained in the guides. On August 1, 1979, and pending the adoption, by rule, of a permanent schedule, Guides to the Evaluation of Permanent Impairment, copyright 1977, 1971, 1988, by the American Medical Association, shall be the temporary schedule and shall be used for the purposes hereof. For injuries after July 1, 1990, pending the adoption by ~~division~~ rule of a uniform disability rating agency schedule, the Minnesota Department of Labor and Industry Disability Schedule shall be used unless that schedule does not address an injury. In such case, the Guides to the Evaluation of Permanent Impairment by the American Medical Association shall be used. Determination of permanent impairment under this schedule must be made by a physician licensed

under chapter 458, a doctor of osteopathic medicine licensed under chapters 458 and 459, a chiropractic physician licensed under chapter 460, a podiatric physician licensed under chapter 461, an optometrist licensed under chapter 463, or a dentist licensed under chapter 466, as appropriate considering the nature of the injury. No other persons are authorized to render opinions regarding the existence of or the extent of permanent impairment.

3. All impairment income benefits shall be based on an impairment rating using the impairment schedule referred to in subparagraph 2. Impairment income benefits are paid weekly at the rate of 50 percent of the employee's average weekly temporary total disability benefit not to exceed the maximum weekly benefit under s. 440.12. An employee's entitlement to impairment income benefits begins the day after the employee reaches maximum medical improvement or the expiration of temporary benefits, whichever occurs earlier, and continues until the earlier of:

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

b. The death of the employee.

4. After the employee has been certified by a doctor as having reached maximum medical improvement or 6 weeks before the expiration of temporary benefits, whichever occurs earlier, the certifying doctor shall evaluate the condition of the employee and assign an impairment rating, using the impairment schedule referred to in subparagraph 2. Compensation is not payable for the mental, psychological, or emotional injury arising out of depression from being out of work. If the certification and evaluation are performed by a doctor other than the employee's treating doctor, the certification and evaluation must be submitted to the treating doctor, and the treating doctor must indicate agreement or disagreement with the certification and evaluation. The certifying doctor shall issue a written report to the ~~department division~~, the employee, and the carrier certifying that maximum medical improvement has been reached, stating the impairment rating, and providing any other information required by the department by rule division. If the employee has not been certified as having reached maximum medical improvement before the expiration of 102 weeks after the date temporary total disability benefits begin to accrue, the carrier shall notify the treating doctor of the requirements of this section.

5. The carrier shall pay the employee impairment income benefits for a period based on the impairment rating.

6. The department division may by rule specify forms and procedures governing the method of payment of wage loss and impairment benefits for dates of accidents before January 1, 1994, and for dates of accidents on or after January 1, 1994.

(b) Supplemental benefits.—

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

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

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

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

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

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

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

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

3. If an employee earns wages that are at least 80 percent of the employee's average weekly wage for a period of at least 90 days during which the employee is receiving supplemental benefits, the employee ceases to be entitled to supplemental benefits for the filing period. Supplemental benefits that have been terminated shall be reinstated when the employee satisfies the conditions enumerated in subparagraph 2. and files the statement required under subparagraph 5. Notwithstanding any other provision, if an employee is not entitled to supplemental benefits for 12 consecutive months, the employee ceases to be entitled to any additional income benefits for the compensable injury. If the employee is discharged within 12 months after losing entitlement under this subsection, benefits may be reinstated if the employee was discharged at that time with the intent to deprive the employee of supplemental benefits.

~~4. During the period that impairment income benefits or supplemental income benefits are being paid, the carrier has the affirmative duty to determine at least annually whether any extended unemployment or underemployment is a direct result of the employee's impairment. To accomplish this purpose, the division may require periodic reports from the employee and the carrier, and it may, at the carrier's expense, require any physical or other examinations, vocational assessments, or other tests or diagnoses necessary to verify that the carrier is performing its duty. Not more than once in each 12 calendar months, the employee and the carrier may each request that the division review the status of the employee and determine whether the carrier has performed its duty with respect to whether the employee's unemployment or underemployment is a direct result of impairment from the compensable injury.~~

4.5. After the initial determination of supplemental benefits, the employee must file a statement with the carrier stating that the employee has

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

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

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

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

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

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

(4) TEMPORARY PARTIAL DISABILITY.—

(a) In case of temporary partial disability, compensation shall be equal to 80 percent of the difference between 80 percent of the employee's average weekly wage and the salary, wages, and other remuneration the employee is able to earn, as compared weekly; however, the weekly benefits may not exceed an amount equal to $66\frac{2}{3}$ percent of the employee's average weekly wage at the time of injury. In order to simplify the comparison of the preinjury average weekly wage with the salary, wages, and other remuneration the employee is able to earn, the department division may by rule provide

for the modification of the weekly comparison so as to coincide as closely as possible with the injured worker's pay periods. The amount determined to be the salary, wages, and other remuneration the employee is able to earn shall in no case be less than the sum actually being earned by the employee, including earnings from sheltered employment.

(b) Such benefits shall be paid during the continuance of such disability, not to exceed a period of 104 weeks, as provided by this subsection and subsection (2). Once the injured employee reaches the maximum number of weeks, temporary disability benefits cease and the injured worker's permanent impairment must be determined. The department division may by rule specify forms and procedures governing the method of payment of temporary disability benefits for dates of accidents before January 1, 1994, and for dates of accidents on or after January 1, 1994.

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

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

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

(c) No disability compensation benefits payable for any week, including those benefits provided by paragraph (1)(f), shall be reduced pursuant to this subsection until the Social Security Administration determines the amount otherwise payable to the employee under 42 U.S.C. ss. 402 and 423 and the employee has begun receiving such social security benefit payments. The employee shall, upon demand by the department division, the employer, or the carrier, authorize the Social Security Administration to release disability information relating to her or him and authorize the Division of Unemployment Compensation to release unemployment compensation informa-

tion relating to her or him, in accordance with rules to be adopted promulgated by the department division prescribing the procedure and manner for requesting the authorization and for compliance by the employee. Neither the department division nor the employer or carrier shall make any payment of benefits for total disability or those additional benefits provided by paragraph (1)(f) for any period during which the employee willfully fails or refuses to authorize the release of information in the manner and within the time prescribed by such rules. The authority for release of disability information granted by an employee under this paragraph shall be effective for a period not to exceed 12 months, such authority to be renewable as the department division may prescribe by rule.

Section 29. Subsections (2), (3), (4), (5), (7), and (10) of section 440.185, Florida Statutes, are amended to read:

440.185 Notice of injury or death; reports; penalties for violations.—

(2) Within 7 days after actual knowledge of injury or death, the employer shall report such injury or death to its carrier, in a format prescribed by the department division, and shall provide a copy of such report to the employee or the employee's estate. The report of injury shall contain the following information:

- (a) The name, address, and business of the employer;
- (b) The name, social security number, street, mailing address, telephone number, and occupation of the employee;
- (c) The cause and nature of the injury or death;
- (d) The year, month, day, and hour when, and the particular locality where, the injury or death occurred; and
- (e) Such other information as the department division may require.

The carrier shall, within 14 days after the employer's receipt of the form reporting the injury, file the information required by this subsection with the department division in Tallahassee. However, the department division may by rule provide for a different reporting system for those types of injuries which it determines should be reported in a different manner and for those cases which involve minor injuries requiring professional medical attention in which the employee does not lose more than 7 days of work as a result of the injury and is able to return to the job immediately after treatment and resume regular work.

(3) In addition to the requirements of subsection (2), the employer shall notify the department division within 24 hours by telephone or telegraph of any injury resulting in death. However, this special notice shall not be required when death results subsequent to the submission to the department division of a previous report of the injury pursuant to subsection (2).

(4) Within 3 days after the employer or the employee informs the carrier of an injury the carrier shall mail to the injured worker an informational

brochure approved by the ~~department division~~ which sets forth in clear and understandable language an explanation of the rights, benefits, procedures for obtaining benefits and assistance, criminal penalties, and obligations of injured workers and their employers under the Florida Workers' Compensation Law. Annually, the carrier or its third-party administrator shall mail to the employer an informational brochure approved by the ~~department division~~ which sets forth in clear and understandable language an explanation of the rights, benefits, procedures for obtaining benefits and assistance, criminal penalties, and obligations of injured workers and their employers under the Florida Workers' Compensation Law. All such informational brochures shall contain a notice that clearly states in substance the following: "Any person who, knowingly and with intent to injure, defraud, or deceive any employer or employee, insurance company, or self-insured program, files a statement of claim containing any false or misleading information commits a felony of the third degree."

(5) Additional reports with respect to such injury and of the condition of such employee, including copies of medical reports, funeral expenses, and wage statements, shall be filed by the employer or carrier to the ~~department division~~ at such times and in such manner as the ~~department division~~ may prescribe by rule. In carrying out its responsibilities under this chapter, the ~~department or agency division~~ may by rule provide for the obtaining of any medical records relating to medical treatment provided pursuant to this chapter, notwithstanding the provisions of ss. 90.503 and 395.3025(4).

(7) Every carrier shall file with the ~~department division~~ within 21 days after the issuance of a policy or contract of insurance such policy information as the ~~department division~~ requires, including notice of whether the policy is a minimum premium policy. Notice of cancellation or expiration of a policy as set out in s. 440.42(3) shall be mailed to the ~~department division~~ in accordance with rules adopted by the ~~department division~~ under chapter 120. The ~~department division~~ may contract with a private entity for the collection of policy information required to be filed by carriers under this subsection and the receipt of notices of cancellation or expiration of a policy required to be filed by carriers under s. 440.42(3). The submission of policy information or notices of cancellation or expiration to the contracted private entity satisfies the filing requirements of this subsection and s. 440.42(3).

(10) The ~~department division~~ may by rule prescribe forms and procedures governing the submission of the change in claims administration report and the risk class code and standard industry code report for all lost time and denied lost-time cases. The ~~department division~~ may by rule define terms that are necessary for the effective administration of this section.

Section 30. Subsection (1) and paragraph (d) of subsection (2) of section 440.191, Florida Statutes, are amended to read:

440.191 Employee Assistance and Ombudsman Office.—

(1)(a) In order to effect the self-executing features of the Workers' Compensation Law, this chapter shall be construed to permit injured employees and employers or the employer's carrier to resolve disagreements without undue expense, costly litigation, or delay in the provisions of benefits. It is

the duty of all who participate in the workers' compensation system, including, but not limited to, carriers, service providers, health care providers, attorneys, employers, and employees, to attempt to resolve disagreements in good faith and to cooperate with the department's division's efforts to resolve disagreements between the parties. The department division may by rule prescribe definitions that are necessary for the effective administration of this section.

(b) An Employee Assistance and Ombudsman Office is created within the department Division of Workers' Compensation to inform and assist injured workers, employers, carriers, and health care providers in fulfilling their responsibilities under this chapter. The department division may by rule specify forms and procedures for administering requests for assistance provided by this section.

(c) The Employee Assistance and Ombudsman Office, ~~Division of Workers' Compensation~~, shall be a resource available to all employees who participate in the workers' compensation system and shall take all steps necessary to educate and disseminate information to employees and employers.

(2)

(d) The Employee Assistance and Ombudsman Office may assign an ombudsman to assist the employee in resolving the dispute. If the dispute is not resolved within 30 days after the employee contacts the office, the ombudsman shall, at the employee's request, assist the employee in drafting a petition for benefits and explain the procedures for filing petitions. The department division may by rule determine the method used to calculate the 30-day period. The Employee Assistance and Ombudsman Office may not represent employees before the judges of compensation claims. An employer or carrier may not pay any attorneys' fees on behalf of the employee for services rendered or costs incurred in connection with this section, unless expressly authorized elsewhere in this chapter.

Section 31. Subsection (1) of section 440.192, Florida Statutes, is amended to read:

440.192 Procedure for resolving benefit disputes.—

(1) Subject to s. 440.191, any employee who has not received a benefit to which the employee believes she or he is entitled under this chapter shall file by certified mail, or by electronic means approved by the Deputy Chief Judge, with the Office of the Judges of Compensation Claims a petition for benefits which meets the requirements of this section. The department division shall inform employees of the location of the Office of the Judges of Compensation Claims for purposes of filing a petition for benefits. The employee shall also serve copies of the petition for benefits by certified mail, or by electronic means approved by the Deputy Chief Judge, upon the employer and the employer's carrier. The Deputy Chief Judge shall refer the petitions to the judges of compensation claims.

Section 32. Subsections (1), (3), and (4) of section 440.1925, Florida Statutes, are amended to read:

440.1925 Procedure for resolving maximum medical improvement or permanent impairment disputes.—

(1) Notwithstanding the limitations on carrier independent medical examinations in s. 440.13, an employee or carrier who wishes to obtain an opinion other than the opinion of the treating physician or an agency a division advisor on the issue of permanent impairment may obtain one independent medical examination, except that the employee or carrier who selects the treating physician is not entitled to obtain an alternate opinion on the issue of permanent impairment, unless the parties otherwise agree. This section and s. 440.13(2) do not permit an employee or a carrier to obtain an additional medical opinion on the issue of permanent impairment by requesting an alternate treating physician pursuant to s. 440.13.

(3) Disputes shall be resolved under this section when:

(a) A carrier that is entitled to obtain a determination of an employee's date of maximum medical improvement or permanent impairment has done so;

(b) The independent medical examiner's opinion on the date of the employee's maximum medical improvement and degree or permanent impairment differs from the opinion of the employee's treating physician on either of those issues, or from the opinion of the expert medical advisor appointed by the agency division on the degree of permanent impairment; or

(c) The carrier denies any portion of an employee's claim petition for benefits due to disputed maximum medical improvement or permanent impairment issues.

(4) Only opinions of the employee's treating physician, an agency a division medical advisor, or an independent medical examiner are admissible in proceedings before a judge of compensation claims to resolve maximum medical improvement or impairment disputes.

Section 33. Subsections (3), (6), (8), (9), (10), (11), (12), (15), (16), and (17) of section 440.20, Florida Statutes, are amended to read:

440.20 Time for payment of compensation; penalties for late payment.—

(3) Upon making payment, or upon suspension or cessation of payment for any reason, the carrier shall immediately notify the department division that it has commenced, suspended, or ceased payment of compensation. The department division may require such notification in any format and manner it deems necessary to obtain accurate and timely reporting.

(6) If any installment of compensation for death or dependency benefits, disability, permanent impairment, or wage loss payable without an award is not paid within 7 days after it becomes due, as provided in subsection (2), subsection (3), or subsection (4), there shall be added to such unpaid installment a punitive penalty of an amount equal to 20 percent of the unpaid installment or \$5, which shall be paid at the same time as, but in addition to, such installment of compensation, unless notice is filed under subsection

(4) or unless such nonpayment results from conditions over which the employer or carrier had no control. When any installment of compensation payable without an award has not been paid within 7 days after it became due and the claimant concludes the prosecution of the claim before a judge of compensation claims without having specifically claimed additional compensation in the nature of a penalty under this section, the claimant will be deemed to have acknowledged that, owing to conditions over which the employer or carrier had no control, such installment could not be paid within the period prescribed for payment and to have waived the right to claim such penalty. However, during the course of a hearing, the judge of compensation claims shall on her or his own motion raise the question of whether such penalty should be awarded or excused. The ~~department division~~ may assess without a hearing the punitive penalty against either the employer or the insurance carrier, depending upon who was at fault in causing the delay. The insurance policy cannot provide that this sum will be paid by the carrier if the ~~department division~~ or the judge of compensation claims determines that the punitive penalty should be made by the employer rather than the carrier. Any additional installment of compensation paid by the carrier pursuant to this section shall be paid directly to the employee.

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

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

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

(c) In order to ensure carrier compliance under this chapter and provisions of the Florida Insurance Code, the ~~department division~~ shall monitor the performance of carriers by conducting market conduct examinations, as provided in s. 624.3161, and conducting investigations, as provided in s. 624.317. The ~~department division~~ shall establish by rule minimum performance standards for carriers to ensure that a minimum of 90 percent of all compensation benefits are timely paid. The ~~department division~~ shall fine a carrier as provided in s. 440.13(11)(b) up to \$50 for each late payment of compensation that is below the minimum 90 percent performance standard. This paragraph does not affect the imposition of any penalties or interest due to the claimant. If a carrier contracts with a servicing agent to fulfill its

administrative responsibilities under this chapter, the payment practices of the servicing agent are deemed the payment practices of the carrier for the purpose of assessing penalties against the carrier.

(9) The ~~department division~~ may upon its own initiative at any time in a case in which payments are being made without an award investigate same and shall, in any case in which the right to compensation is controverted, or in which payments of compensation have been stopped or suspended, upon receipt of notice from any person entitled to compensation or from the employer that the right to compensation is controverted or that payments of compensation have been stopped or suspended, make such investigations, cause such medical examination to be made, or hold such hearings, and take such further action as it considers will properly protect the rights of all parties.

(10) Whenever the ~~department division~~ deems it advisable, it may require any employer to make a deposit with the Treasurer to secure the prompt and convenient payments of such compensation; and payments therefrom upon any awards shall be made upon order of the ~~department division~~ or judge of compensation claims.

(11)(a) When a claimant is not represented by counsel, upon joint petition of all interested parties, a lump-sum payment in exchange for the employer's or carrier's release from liability for future medical expenses, as well as future payments of compensation expenses and any other benefits provided under this chapter, shall be allowed at any time in any case in which the employer or carrier has filed a written notice of denial within 120 days after the employer receives notice of the injury, and the judge of compensation claims at a hearing to consider the settlement proposal finds a justiciable controversy as to legal or medical compensability of the claimed injury or the alleged accident. The employer or carrier may not pay any attorney's fees on behalf of the claimant for any settlement under this section unless expressly authorized elsewhere in this chapter. Upon the joint petition of all interested parties and after giving due consideration to the interests of all interested parties, the judge of compensation claims may enter a compensation order approving and authorizing the discharge of the liability of the employer for compensation and remedial treatment, care, and attendance, as well as rehabilitation expenses, by the payment of a lump sum. Such a compensation order so entered upon joint petition of all interested parties is not subject to modification or review under s. 440.28. If the settlement proposal together with supporting evidence is not approved by the judge of compensation claims, it shall be considered void. Upon approval of a lump-sum settlement under this subsection, the judge of compensation claims shall send a report to the Chief Judge of the amount of the settlement and a statement of the nature of the controversy. The Chief Judge shall keep a record of all such reports filed by each judge of compensation claims and shall submit to the Legislature a summary of all such reports filed under this subsection annually by September 15.

(b) When a claimant is not represented by counsel, upon joint petition of all interested parties, a lump-sum payment in exchange for the employer's or carrier's release from liability for future medical expenses, as well as

future payments of compensation and rehabilitation expenses, and any other benefits provided under this chapter, may be allowed at any time in any case after the injured employee has attained maximum medical improvement. An employer or carrier may not pay any attorney's fees on behalf of the claimant for any settlement, unless expressly authorized elsewhere in this chapter. A compensation order so entered upon joint petition of all interested parties shall not be subject to modification or review under s. 440.28. However, a judge of compensation claims is not required to approve any award for lump-sum payment when it is determined by the judge of compensation claims that the payment being made is in excess of the value of benefits the claimant would be entitled to under this chapter. The judge of compensation claims shall make or cause to be made such investigations as she or he considers necessary, in each case in which the parties have stipulated that a proposed final settlement of liability of the employer for compensation shall not be subject to modification or review under s. 440.28, to determine whether such final disposition will definitely aid the rehabilitation of the injured worker or otherwise is clearly for the best interests of the person entitled to compensation and, in her or his discretion, may have an investigation made by the ~~Rehabilitation Section of the Division of Workers' Compensation~~. The joint petition and the report of any investigation so made will be deemed a part of the proceeding. An employer shall have the right to appear at any hearing pursuant to this subsection which relates to the discharge of such employer's liability and to present testimony at such hearing. The carrier shall provide reasonable notice to the employer of the time and date of any such hearing and inform the employer of her or his rights to appear and testify. The probability of the death of the injured employee or other person entitled to compensation before the expiration of the period during which such person is entitled to compensation shall, in the absence of special circumstances making such course improper, be determined in accordance with the most recent United States Life Tables published by the National Office of Vital Statistics of the United States Department of Health and Human Services. The probability of the happening of any other contingency affecting the amount or duration of the compensation, except the possibility of the remarriage of a surviving spouse, shall be disregarded. As a condition of approving a lump-sum payment to a surviving spouse, the judge of compensation claims, in the judge of compensation claims' discretion, may require security which will ensure that, in the event of the remarriage of such surviving spouse, any unaccrued future payments so paid may be recovered or recouped by the employer or carrier. Such applications shall be considered and determined in accordance with s. 440.25.

(c) Notwithstanding s. 440.21(2), when a claimant is represented by counsel, the claimant may waive all rights to any and all benefits under this chapter by entering into a settlement agreement releasing the employer and the carrier from liability for workers' compensation benefits in exchange for a lump-sum payment to the claimant. The settlement agreement requires approval by the judge of compensation claims only as to the attorney's fees paid to the claimant's attorney by the claimant. The parties need not submit any information or documentation in support of the settlement, except as needed to justify the amount of the attorney's fees. Neither the employer nor the carrier is responsible for any attorney's fees relating to the settlement

and release of claims under this section. Payment of the lump-sum settlement amount must be made within 14 days after the date the judge of compensation claims mails the order approving the attorney's fees. Any order entered by a judge of compensation claims approving the attorney's fees as set out in the settlement under this subsection is not considered to be an award and is not subject to modification or review. The judge of compensation claims shall report these settlements to the Deputy Chief Judge in accordance with the requirements set forth in paragraphs (a) and (b). Settlements entered into under this subsection are valid and apply to all dates of accident.

(d)1. With respect to any lump-sum settlement under this subsection, a judge of compensation claims must consider at the time of the settlement, whether the settlement allocation provides for the appropriate recovery of child support arrearages.

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

(e) This section applies to all claims that the parties have not previously settled, regardless of the date of accident.

(12)(a) Liability of an employer for future payments of compensation may not be discharged by advance payment unless prior approval of a judge of compensation claims or the department ~~division~~ has been obtained as hereinafter provided. The approval shall not constitute an adjudication of the claimant's percentage of disability.

(b) When the claimant has reached maximum recovery and returned to her or his former or equivalent employment with no substantial reduction in wages, such approval of a reasonable advance payment of a part of the compensation payable to the claimant may be given informally by letter by a judge of compensation claims or, by the department ~~division~~ ~~director~~, ~~or~~ ~~by the administrator of claims of the division~~.

(c) In the event the claimant has not returned to the same or equivalent employment with no substantial reduction in wages or has suffered a substantial loss of earning capacity or a physical impairment, actual or apparent:

1. An advance payment of compensation not in excess of \$2,000 may be approved informally by letter, without hearing, by any judge of compensation claims or the Chief Judge.

2. An advance payment of compensation not in excess of \$2,000 may be ordered by any judge of compensation claims after giving the interested parties an opportunity for a hearing thereon pursuant to not less than 10 days' notice by mail, unless such notice is waived, and after giving due consideration to the interests of the person entitled thereto. When the parties have stipulated to an advance payment of compensation not in excess

of \$2,000, such advance may be approved by an order of a judge of compensation claims, with or without hearing, or informally by letter by any such judge of compensation claims, or by the ~~department division director~~, if such advance is found to be for the best interests of the person entitled thereto.

3. When the parties have stipulated to an advance payment in excess of \$2,000, subject to the approval of the ~~department division~~, such payment may be approved by a judge of compensation claims by order if the judge finds that such advance payment is for the best interests of the person entitled thereto and is reasonable under the circumstances of the particular case. The judge of compensation claims shall make or cause to be made such investigations as she or he considers necessary concerning the stipulation and, in her or his discretion, may have an investigation of the matter made ~~by the Rehabilitation Section of the division~~. The stipulation and the report of any investigation shall be deemed a part of the record of the proceedings.

(d) When an application for an advance payment in excess of \$2,000 is opposed by the employer or carrier, it shall be heard by a judge of compensation claims after giving the interested parties not less than 10 days' notice of such hearing by mail, unless such notice is waived. In her or his discretion, the judge of compensation claims may have an investigation of the matter made ~~by the Rehabilitation Section of the division~~, in which event the report and recommendation of ~~that section~~ will be deemed a part of the record of the proceedings. If the judge of compensation claims finds that such advance payment is for the best interests of the person entitled to compensation, will not materially prejudice the rights of the employer and carrier, and is reasonable under the circumstances of the case, she or he may order the same paid. However, in no event may any such advance payment under this paragraph be granted in excess of \$7,500 or 26 weeks of benefits in any 48-month period, whichever is greater, from the date of the last advance payment.

(15)(a) The ~~department division~~ shall examine on an ongoing basis claims files in accordance with s. 624.3161 and may impose fines pursuant to s. 624.310(5) and this chapter in order to identify questionable claims-handling techniques, questionable patterns or practices of claims, or a pattern of repeated unreasonably controverted claims by ~~employers, carriers, as defined in s. 440.02, self-insurers, health care providers, health care facilities, training and education providers, or any others providing services to employees pursuant to this chapter and may certify its findings to the Department of Insurance. If the department finds such questionable techniques, patterns, or repeated unreasonably controverted claims as constitute a general business practice of a carrier, as defined in s. 440.02 in the judgment of the division shall be certified in its findings by the division to the Department of Insurance or such other appropriate licensing agency.~~ Such certification by the division is exempt from the provisions of chapter 120. Upon receipt of any such certification, the department of Insurance shall take appropriate action so as to bring such general business practices to a halt pursuant to s. 440.38(3)(a) or may impose penalties pursuant to s. 624.4211. The ~~department division~~ may initiate investigations of questionable techniques, patterns, practices, or repeated unreasonably controverted

claims. The ~~department division~~ may by rule establish forms and procedures for corrective action plans and for auditing carriers.

(b) As to any examination, investigation, or hearing being conducted under this chapter, the Insurance Commissioner or his or her Secretary of Labor and Employment Security or the secretary's designee:

1. May administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence; and

2. Shall have the power to subpoena witnesses, compel their attendance and testimony, and require by subpoena the production of books, papers, records, files, correspondence, documents, or other evidence which is relevant to the inquiry.

(c) If any person refuses to comply with any such subpoena or to testify as to any matter concerning which she or he may be lawfully interrogated, the Circuit Court of Leon County or of the county wherein such examination, investigation, or hearing is being conducted, or of the county wherein such person resides, may, on the application of the department, issue an order requiring such person to comply with the subpoena and to testify.

(d) Subpoenas shall be served, and proof of such service made, in the same manner as if issued by a circuit court. Witness fees, costs, and reasonable travel expenses, if claimed, shall be allowed the same as for testimony in a circuit court.

(e) The ~~department division~~ shall publish annually a report which indicates the promptness of first payment of compensation records of each carrier or self-insurer so as to focus attention on those carriers or self-insurers with poor payment records for the preceding year. ~~A copy of such report shall be certified to~~ The department of ~~Insurance~~ which shall take appropriate steps so as to cause such poor carrier payment practices to halt pursuant to s. 440.38(3)(a). In addition, the department division shall take appropriate action so as to halt such poor payment practices of self-insurers. "Poor payment practice" means a practice of late payment sufficient to constitute a general business practice.

(f) The ~~department division~~ shall promulgate rules providing guidelines to carriers, as defined in s. 440.02, self-insurers, and employers to indicate behavior that may be construed as questionable claims-handling techniques, questionable patterns of claims, repeated unreasonably controverted claims, or poor payment practices.

(16) No penalty assessed under this section may be recouped by any carrier or self-insurer in the rate base, the premium, or any rate filing. ~~In the case of carriers, The Department of Insurance shall enforce this subsection; and in the case of self-insurers, the division shall enforce this subsection.~~

(17) The department division may by rule establish audit procedures and set standards for the Automated Carrier Performance System.

Section 34. Subsections (1) and (2) of section 440.207, Florida Statutes, are amended to read:

440.207 Workers' compensation system guide.—

(1) ~~The department Division of Workers' Compensation of the Department of Labor and Employment Security~~ shall educate all persons providing or receiving benefits pursuant to this chapter as to their rights and responsibilities under this chapter.

(2) ~~The department division~~ shall publish an understandable guide to the workers' compensation system which shall contain an explanation of benefits provided; services provided by the Employee Assistance and Ombudsman Office; procedures regarding mediation, the hearing process, and civil and criminal penalties; relevant rules of the ~~department division~~; and such other information as the ~~department division~~ believes will inform employees, employers, carriers, and those providing services pursuant to this chapter of their rights and responsibilities under this chapter and the rules of the ~~department division~~. For the purposes of this subsection, a guide is understandable if the text of the guide is written at a level of readability not exceeding the eighth grade level, as determined by a recognized readability test.

Section 35. Subsection (1) of section 440.211, Florida Statutes, is amended to read:

440.211 Authorization of collective bargaining agreement.—

(1) Subject to the limitation stated in subsection (2), a provision that is mutually agreed upon in any collective bargaining agreement filed with the ~~department division~~ between an individually self-insured employer or other employer upon consent of the employer's carrier and a recognized or certified exclusive bargaining representative establishing any of the following shall be valid and binding:

(a) An alternative dispute resolution system to supplement, modify, or replace the provisions of this chapter which may include, but is not limited to, conciliation, mediation, and arbitration. Arbitration held pursuant to this section shall be binding on the parties.

(b) The use of an agreed-upon list of certified health care providers of medical treatment which may be the exclusive source of all medical treatment under this chapter.

(c) The use of a limited list of physicians to conduct independent medical examinations which the parties may agree shall be the exclusive source of independent medical examiners pursuant to this chapter.

(d) A light-duty, modified-job, or return-to-work program.

(e) A vocational rehabilitation or retraining program.

Section 36. Subsections (1) and (2) of section 440.24, Florida Statutes, are amended to read:

440.24 Enforcement of compensation orders; penalties.—

(1) In case of default by the employer or carrier in the payment of compensation due under any compensation order of a judge of compensation claims or other failure by the employer or carrier to comply with such order within 10 days after the order becomes final, any circuit court of this state within the jurisdiction of which the employer or carrier resides or transacts business shall, upon application by the ~~department division~~ or any beneficiary under such order, have jurisdiction to issue a rule nisi directing such employer or carrier to show cause why a writ of execution, or such other process as may be necessary to enforce the terms of such order, shall not be issued, and, unless such cause is shown, the court shall have jurisdiction to issue a writ of execution or such other process or final order as may be necessary to enforce the terms of such order of the judge of compensation claims.

(2) In any case where the employer is insured and the carrier fails to comply with any compensation order of a judge of compensation claims or court within 10 days after such order becomes final, ~~the division shall notify the department of Insurance of such failure, and the Department of Insurance~~ shall thereupon suspend the license of such carrier to do an insurance business in this state, until such carrier has complied with such order.

Section 37. Subsections (5) and (7) of section 440.25, Florida Statutes, are amended to read:

440.25 Procedures for mediation and hearings.—

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

(b) An appellant may be relieved of any necessary filing fee by filing a verified petition of indigency for approval as provided in s. 57.081(1) and may be relieved in whole or in part from the costs for preparation of the record on appeal if, within 15 days after the date notice of the estimated costs for the preparation is served, the appellant files with the judge of compensation claims a copy of the designation of the record on appeal, and a verified petition to be relieved of costs. A verified petition filed prior to the date of service of the notice of the estimated costs shall be deemed not timely filed. The verified petition relating to record costs shall contain a sworn statement that the appellant is insolvent and a complete, detailed, and sworn financial affidavit showing all the appellant's assets, liabilities, and income. Failure to state in the affidavit all assets and income, including marital assets and income, shall be grounds for denying the petition with prejudice. The Office of the Judges of Compensation Claims shall adopt rules as may be required pursuant to this subsection, including forms for use in all petitions brought under this subsection. The appellant's attorney, or the appellant if she or he is not represented by an attorney, shall include as a part of the verified petition relating to record costs an affidavit or affirmation that, in her or his opinion, the notice of appeal was filed in good faith and that there is a probable basis for the District Court of Appeal, First

District, to find reversible error, and shall state with particularity the specific legal and factual grounds for the opinion. Failure to so affirm shall be grounds for denying the petition. A copy of the verified petition relating to record costs shall be served upon all interested parties. The judge of compensation claims shall promptly conduct a hearing on the verified petition relating to record costs, giving at least 15 days' notice to the appellant, the department division, and all other interested parties, all of whom shall be parties to the proceedings. The judge of compensation claims may enter an order without such hearing if no objection is filed by an interested party within 20 days from the service date of the verified petition relating to record costs. Such proceedings shall be conducted in accordance with the provisions of this section and with the workers' compensation rules of procedure, to the extent applicable. In the event an insolvency petition is granted, the judge of compensation claims shall direct the department division to pay record costs and filing fees from the Workers' Compensation Administration Trust Fund pending final disposition of the costs of appeal. ~~The department division~~ may transcribe or arrange for the transcription of the record in any proceeding for which it is ordered to pay the cost of the record.

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

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

Section 38. Section 440.271, Florida Statutes, is amended to read:

440.271 Appeal of order of judge of compensation claims.—Review of any order of a judge of compensation claims entered pursuant to this chapter shall be by appeal to the District Court of Appeal, First District. Appeals shall be filed in accordance with rules of procedure prescribed by the Supreme Court for review of such orders. The department division shall be

given notice of any proceedings pertaining to s. 440.25, regarding indigency, or s. 440.49, regarding the Special Disability Trust Fund, and shall have the right to intervene in any proceedings.

Section 39. Section 440.345, Florida Statutes, is amended to read:

440.345 Reporting of attorney's fees.—All fees paid to attorneys for services rendered under this chapter shall be reported to the Office of the Judges of Compensation Claims as the Division of Administrative Hearings ~~Office of the Judges of Compensation Claims~~ requires by rule. ~~The Office of the Judges of Compensation Claims shall annually summarize such data in a report to the Workers' Compensation Oversight Board.~~

Section 40. Section 440.35, Florida Statutes, is amended to read:

440.35 Record of injury or death.—Every employer shall keep a record in respect of any injury to an employee. Such record shall contain such information of disability or death in respect of such injury as the department ~~division~~ may by regulation require, and shall be available to inspection by the department ~~division~~ or by any state authority at such time and under such conditions as the department ~~division~~ may by regulation prescribe.

Section 41. Subsections (3) and (7) of section 440.381, Florida Statutes, are amended to read:

440.381 Application for coverage; reporting payroll; payroll audit procedures; penalties.—

(3) ~~The department of Insurance and the Department of Labor and Employment Security~~ shall establish by rule minimum requirements for audits of payroll and classifications in order to ensure that the appropriate premium is charged for workers' compensation coverage. The rules shall ensure that audits performed by both carriers and employers are adequate to provide that all sources of payments to employees, subcontractors, and independent contractors have been reviewed and that the accuracy of classification of employees has been verified. The rules shall provide that employers in all classes other than the construction class be audited not less frequently than biennially and may provide for more frequent audits of employers in specified classifications based on factors such as amount of premium, type of business, loss ratios, or other relevant factors. In no event shall employers in the construction class, generating more than the amount of premium required to be experience rated, be audited less than annually. The annual audits required for construction classes shall consist of physical onsite audits. Payroll verification audit rules must include, but need not be limited to, the use of state and federal reports of employee income, payroll and other accounting records, certificates of insurance maintained by subcontractors, and duties of employees.

(7) If an employee suffering a compensable injury was not reported as earning wages on the last quarterly earnings report filed with the Division of Unemployment Compensation before the accident, the employer shall indemnify the carrier for all workers' compensation benefits paid to or on behalf of the employee unless the employer establishes that the employee

was hired after the filing of the quarterly report, in which case the employer and employee shall attest to the fact that the employee was employed by the employer at the time of the injury. ~~It shall be the responsibility of the Division of Workers' Compensation to collect all necessary data so as to enable it to notify the carrier of the name of an injured worker who was not reported as earning wages on the last quarterly earnings report. The division is hereby authorized to release such records to the carrier which will enable the carrier to seek reimbursement as provided under this subsection.~~ Failure of the employer to indemnify the insurer within 21 days after demand by the insurer shall constitute grounds for the insurer to immediately cancel coverage. Any action for indemnification brought by the carrier shall be cognizable in the circuit court having jurisdiction where the employer or carrier resides or transacts business. The insurer shall be entitled to a reasonable attorney's fee if it recovers any portion of the benefits paid in such action.

Section 42. Section 440.40, Florida Statutes, is amended to read:

440.40 Compensation notice.—Every employer who has secured compensation under the provisions of this chapter shall keep posted in a conspicuous place or places in and about her or his place or places of business typewritten or printed notices, in accordance with a form prescribed by the department division, stating that such employer has secured the payment of compensation in accordance with the provisions of this chapter. Such notices shall contain the name and address of the carrier, if any, with whom the employer has secured payment of compensation and the date of the expiration of the policy. The department division may by rule prescribe the form of the notices and require carriers to provide the notices to policyholders.

Section 43. Section 440.41, Florida Statutes, is amended to read:

440.41 Substitution of carrier for employer.—In any case where the employer is not a self-insurer, in order that the liability for compensation imposed by this chapter may be most effectively discharged by the employer, and in order that the administration of this chapter in respect of such liability may be facilitated, the department division shall by regulation provide for the discharge, by the carrier for such employer, of such obligations and duties of the employer in respect of such liability, imposed by this chapter upon the employer, as it considers proper in order to effectuate the provisions of this chapter. For such purposes:

(1) Notice to or knowledge of an employer of the occurrence of the injury shall be notice to or knowledge of the carrier.

(2) Jurisdiction of the employer by the judges of compensation claims, the department division, or any court under this chapter shall be jurisdiction of the carrier.

(3) Any requirement by the judges of compensation claims, the department division, or any court under any compensation order, finding, or decision shall be binding upon the carrier in the same manner and to the same extent as upon the employer.

Section 44. Subsection (3) of section 440.42, Florida Statutes, is amended to read:

440.42 Insurance policies; liability.—

(3) No contract or policy of insurance issued by a carrier under this chapter shall expire or be canceled until at least 30 days have elapsed after a notice of cancellation has been sent to the ~~department division~~ and to the employer in accordance with the provisions of s. 440.185(7). However, when duplicate or dual coverage exists by reason of two different carriers having issued policies of insurance to the same employer securing the same liability, it shall be presumed that only that policy with the later effective date shall be in force and that the earlier policy terminated upon the effective date of the latter. In the event that both policies carry the same effective date, one of the policies may be canceled instanter upon filing a notice of cancellation with the ~~department division~~ and serving a copy thereof upon the employer in such manner as the ~~department division~~ prescribes by rule. The ~~department division~~ may by rule prescribe the content of the notice of retroactive cancellation and specify the time, place, and manner in which the notice of cancellation is to be served.

Section 45. Section 440.44, Florida Statutes, is amended to read:

440.44 Workers' compensation; staff organization.—

(1) INTERPRETATION OF LAW.—As a guide to the interpretation of this chapter, the Legislature takes due notice of federal social and labor acts and hereby creates an agency to administer such acts passed for the benefit of employees and employers in Florida industry, and desires to meet the requirements of such federal acts wherever not inconsistent with the Constitution and laws of Florida.

(2) INTENT.—It is the intent of the Legislature that the department, the agency, the Department of Education, and the Division of Administrative Hearings assume an active and forceful role in its administration of this act, so as to ensure that the system operates efficiently and with maximum benefit to both employers and employees.

(3) EXPENDITURES.—The department, the agency, the Department of Education, division and the director of the Division of Administrative Hearings shall make such expenditures, including expenditures for personal services and rent at the seat of government and elsewhere, for law books; for telephone services and WATS lines; for books of reference, periodicals, equipment, and supplies; and for printing and binding as may be necessary in the administration of this chapter. All expenditures in the administration of this chapter shall be allowed and paid as provided in s. 440.50 upon the presentation of itemized vouchers therefor approved by the department, the agency, the Department of Education, division or the director of the Division of Administrative Hearings.

(4) ~~MERIT SYSTEM PRINCIPLE OF PERSONNEL ADMINISTRATION~~.—Subject to the other provisions of this chapter, the department, the agency, the Department of Education, and the Division of Administrative

Hearings ~~may~~ division is authorized to appoint, and prescribe the duties and powers of, bureau chiefs, attorneys, accountants, medical advisers, technical assistants, inspectors, claims examiners, and such other employees as may be necessary in the performance of their ~~its~~ duties under this chapter.

(5) OFFICE.—The department, the agency, the Department of Education, division and the Deputy Chief Judge shall maintain and keep open during reasonable business hours an office, which shall be provided in the Capitol or some other suitable building in the City of Tallahassee, for the transaction of business under this chapter, at which office the official records and papers shall be kept. The office shall be furnished and equipped. The department, the agency division, any judge of compensation claims, or the Deputy Chief Judge may hold sessions and conduct hearings at any place within the state. The Office of the Judges of Compensation Claims shall maintain the 17 district offices, 31 judges of compensation claims, and 31 mediators as they exist on June 30, 2001.

(6) SEAL.—The department division and the judges of compensation claims shall have a seal upon which shall be inscribed the words “State of Florida Department of Insurance—Seal” and “Division of Administrative Hearings—Seal,” respectively.

(7) DESTRUCTION OF OBSOLETE RECORDS.—The department division is expressly authorized to provide by regulation for and to destroy obsolete records of the department division. The Division of Administrative Hearings is expressly authorized to provide by regulation for and to destroy obsolete records of the Office of the Judges of Compensation Claims.

(8) PROCEDURE.—In the exercise of their ~~its~~ duties and functions requiring administrative hearings, the department and the agency division shall proceed in accordance with the Administrative Procedure Act. The authority of the department and the agency division to issue orders resulting from administrative hearings as provided for in this chapter shall not infringe upon the jurisdiction of the judges of compensation claims.

Section 46. Subsection (1) of section 440.45, Florida Statutes, is amended to read:

440.45 Office of the Judges of Compensation Claims.—

(1)(a) There is created the Office of the Judges of Compensation Claims within the Department of Management Services. The Office of the Judges of Compensation Claims shall be headed by the Deputy Chief Judge of Compensation Claims. The Deputy Chief Judge shall report to the director of the Division of Administrative Hearings. The Deputy Chief Judge shall be appointed by the Governor for a term of 4 years from a list of three names submitted by the statewide nominating commission created under subsection (2). The Deputy Chief Judge must demonstrate prior administrative experience and possess the same qualifications for appointment as a judge of compensation claims, and the procedure for reappointment of the Deputy Chief Judge will be the same as for reappointment of a judge of compensation claims. The office shall be a separate budget entity and the director of the Division of Administrative Hearings shall be its agency head for all

purposes, including, but not limited to, rulemaking pursuant to subsection (4) and establishing agency policies and procedures. The Department of Management Services shall provide administrative support and service to the office to the extent requested by the director of the Division of Administrative Hearings but shall not direct, supervise, or control the Office of the Judges of Compensation Claims in any manner, including, but not limited to, personnel, purchasing, budgetary matters, or property transactions. The operating budget of the Office of the Judges of Compensation Claims shall be paid out of the Workers' Compensation Administration Trust Fund established in s. 440.50.

(b) The current term of the Chief Judge of Compensation Claims shall expire October 1, 2001. Effective October 1, 2001, the position of Deputy Chief Judge of Compensation Claims is created.

Section 47. Subsections (1), (2), (7), (8), (9), (10), and (11) of section 440.49, Florida Statutes, are amended to read:

440.49 Limitation of liability for subsequent injury through Special Disability Trust Fund.—

(1) **LEGISLATIVE INTENT.**—Whereas it is often difficult for workers with disabilities to achieve employment or to become reemployed following an injury, and it is the desire of the Legislature to facilitate the return of these workers to the workplace, it is the purpose of this section to encourage the employment, reemployment, and accommodation of the physically disabled by reducing an employer's insurance premium for reemploying an injured worker, to decrease litigation between carriers on apportionment issues, and to protect employers from excess liability for compensation and medical expense when an injury to a physically disabled worker merges with, aggravates, or accelerates her or his preexisting permanent physical impairment to cause either a greater disability or permanent impairment, or an increase in expenditures for temporary compensation or medical benefits than would have resulted from the injury alone. ~~The department division~~ or the administrator shall inform all employers of the existence and function of the fund and shall interpret eligibility requirements liberally. However, this subsection shall not be construed to create or provide any benefits for injured employees or their dependents not otherwise provided by this chapter. The entitlement of an injured employee or her or his dependents to compensation under this chapter shall be determined without regard to this subsection, the provisions of which shall be considered only in determining whether an employer or carrier who has paid compensation under this chapter is entitled to reimbursement from the Special Disability Trust Fund.

(2) **DEFINITIONS.**—As used in this section, the term:

(a) "Permanent physical impairment" means and is limited to the conditions listed in paragraph (6)(a).

(b) "Preferred worker" means a worker who, because of a permanent impairment resulting from a compensable injury or occupational disease, is unable to return to the worker's regular employment.

(c) "Merger" describes or means that:

1. If the permanent physical impairment had not existed, the subsequent accident or occupational disease would not have occurred;

2. The permanent disability or permanent impairment resulting from the subsequent accident or occupational disease is materially and substantially greater than that which would have resulted had the permanent physical impairment not existed, and the employer has been required to pay, and has paid, permanent total disability or permanent impairment benefits for that materially and substantially greater disability;

3. The preexisting permanent physical impairment is aggravated or accelerated as a result of the subsequent injury or occupational disease, or the preexisting impairment has contributed, medically and circumstantially, to the need for temporary compensation, medical, or attendant care and the employer has been required to pay, and has paid, temporary compensation, medical, or attendant care benefits for the aggravated preexisting permanent impairment; or

4. Death would not have been accelerated if the permanent physical impairment had not existed.

(d) "Excess permanent compensation" means that compensation for permanent impairment, or permanent total disability or death benefits, for which the employer or carrier is otherwise entitled to reimbursement from the Special Disability Trust Fund.

(e) "Administrator" means the entity selected by the department division to review, allow, deny, compromise, controvert, and litigate claims of the Special Disability Trust Fund.

In addition to the definitions contained in this subsection, the department division may by rule prescribe definitions that are necessary for the effective administration of this section.

(7) REIMBURSEMENT OF EMPLOYER.—

(a) The right to reimbursement as provided in this section is barred unless written notice of claim of the right to such reimbursement is filed by the employer or carrier entitled to such reimbursement with the department division or administrator at Tallahassee within 2 years after the date the employee last reached maximum medical improvement, or within 2 years after the date of the first payment of compensation for permanent total disability, wage loss, or death, whichever is later. The notice of claim must contain such information as the department division by rule requires or as established by the administrator; and the employer or carrier claiming reimbursement shall furnish such evidence in support of the claim as the department division or administrator reasonably may require.

(b) For notice of claims on the Special Disability Trust Fund filed on or after July 1, 1978, the Special Disability Trust Fund shall, within 120 days after receipt of notice that a carrier has paid, been required to pay, or

accepted liability for excess compensation, serve notice of the acceptance of the claim for reimbursement.

(c) A proof of claim must be filed on each notice of claim on file as of June 30, 1997, within 1 year after July 1, 1997, or the right to reimbursement of the claim shall be barred. A notice of claim on file on or before June 30, 1997, may be withdrawn and refiled if, at the time refiled, the notice of claim remains within the limitation period specified in paragraph (a). Such refileing shall not toll, extend, or otherwise alter in any way the limitation period applicable to the withdrawn and subsequently refiled notice of claim. Each proof of claim filed shall be accompanied by a proof-of-claim fee as provided in paragraph (9)(d). The Special Disability Trust Fund shall, within 120 days after receipt of the proof of claim, serve notice of the acceptance of the claim for reimbursement. This paragraph shall apply to all claims notwithstanding the provisions of subsection (12).

(d) Each notice of claim filed or refiled on or after July 1, 1997, must be accompanied by a notification fee as provided in paragraph (9)(d). A proof of claim must be filed within 1 year after the date the notice of claim is filed or refiled, accompanied by a proof-of-claim fee as provided in paragraph (9)(d), or the claim shall be barred. The notification fee shall be waived if both the notice of claim and proof of claim are submitted together as a single filing. The Special Disability Trust Fund shall, within 180 days after receipt of the proof of claim, serve notice of the acceptance of the claim for reimbursement. This paragraph shall apply to all claims notwithstanding the provisions of subsection (12).

(e) For dates of accident on or after January 1, 1994, the Special Disability Trust Fund shall, within 120 days of receipt of notice that a carrier has been required to pay, and has paid over \$10,000 in benefits, serve notice of the acceptance of the claim for reimbursement. Failure of the Special Disability Trust Fund to serve notice of acceptance shall give rise to the right to request a hearing on the claim for reimbursement. If the Special Disability Trust Fund through its representative denies or controverts the claim, the right to such reimbursement shall be barred unless an application for a hearing thereon is filed with the ~~department~~ division or administrator at Tallahassee within 60 days after notice to the employer or carrier of such denial or controversion. When such application for a hearing is timely filed, the claim shall be heard and determined in accordance with the procedure prescribed in s. 440.25, to the extent that such procedure is applicable, and in accordance with the workers' compensation rules of procedure. In such proceeding on a claim for reimbursement, the Special Disability Trust Fund shall be made the party respondent, and no findings of fact made with respect to the claim of the injured employee or the dependents for compensation, including any finding made or order entered pursuant to s. 440.20(11), shall be res judicata. The Special Disability Trust Fund may not be joined or made a party to any controversy or dispute between an employee and the dependents and the employer or between two or more employers or carriers without the written consent of the fund.

(f) When it has been determined that an employer or carrier is entitled to reimbursement in any amount, the employer or carrier shall be reim-

bursed annually from the Special Disability Trust Fund for the compensation and medical benefits paid by the employer or carrier for which the employer or carrier is entitled to reimbursement, upon filing request therefor and submitting evidence of such payment in accordance with rules prescribed by the ~~department division~~, which rules may include parameters for annual audits. The Special Disability Trust Fund shall pay the approved reimbursement requests on a first-in, first-out basis reflecting the order in which the reimbursement requests were received.

(g) The ~~department division~~ may by rule require specific forms and procedures for the administration and processing of claims made through the Special Disability Trust Fund.

(8) PREFERRED WORKER PROGRAM.—The Department of Education ~~division~~ or administrator shall issue identity cards to preferred workers upon request by qualified employees and the Department of Insurance shall reimburse an employer, from the Special Disability Trust Fund, for the cost of workers' compensation premium related to the preferred workers payroll for up to 3 years of continuous employment upon satisfactory evidence of placement and issuance of payroll and classification records and upon the employee's certification of employment. The ~~department and the Department of Education division~~ may by rule prescribe definitions, forms, and procedures for the administration of the preferred worker program. The Department of Education ~~division~~ may by rule prescribe the schedule for submission of forms for participation in the program.

(9) SPECIAL DISABILITY TRUST FUND.—

(a) There is established in the State Treasury a special fund to be known as the "Special Disability Trust Fund," which shall be available only for the purposes stated in this section; and the assets thereof may not at any time be appropriated or diverted to any other use or purpose. The Treasurer shall be the custodian of such fund, and all moneys and securities in such fund shall be held in trust by such Treasurer and shall not be the money or property of the state. The Treasurer is authorized to disburse moneys from such fund only when approved by the ~~department division~~ or corporation and upon the order of the Comptroller. The Treasurer shall deposit any moneys paid into such fund into such depository banks as the ~~department division~~ may designate and is authorized to invest any portion of the fund which, in the opinion of the ~~department division~~, is not needed for current requirements, in the same manner and subject to all the provisions of the law with respect to the deposits of state funds by such Treasurer. All interest earned by such portion of the fund as may be invested by the Treasurer shall be collected by her or him and placed to the credit of such fund.

(b)1. The Special Disability Trust Fund shall be maintained by annual assessments upon the insurance companies writing compensation insurance in the state, the commercial self-insurers under ss. 624.462 and 624.4621, the assessable mutuals under s. 628.601, and the self-insurers under this chapter, which assessments shall become due and be paid quarterly at the same time and in addition to the assessments provided in s. 440.51. The ~~department division~~ shall estimate annually in advance the amount neces-

sary for the administration of this subsection and the maintenance of this fund and shall make such assessment in the manner hereinafter provided.

2. The annual assessment shall be calculated to produce during the ensuing fiscal year an amount which, when combined with that part of the balance in the fund on June 30 of the current fiscal year which is in excess of \$100,000, is equal to the average of:

- a. The sum of disbursements from the fund during the immediate past 3 calendar years, and
- b. Two times the disbursements of the most recent calendar year.

Such amount shall be prorated among the insurance companies writing compensation insurance in the state and the self-insurers. Provided however, for those carriers that have excluded ceded reinsurance premiums from their assessments on or before January 1, 2000, no assessments on ceded reinsurance premiums shall be paid by those carriers until such time as the former Division of Workers' Compensation of the Department of Labor and Employment Security or the department advises each of those carriers of the impact that the inclusion of ceded reinsurance premiums has on their assessment. The department ~~division~~ may not recover any past underpayments of assessments levied against any carrier that on or before January 1, 2000, excluded ceded reinsurance premiums from their assessment prior to the point that the former Division of Workers' Compensation of the Department of Labor and Employment Security or the department advises of the appropriate assessment that should have been paid.

3. The net premiums written by the companies for workers' compensation in this state and the net premium written applicable to the self-insurers in this state are the basis for computing the amount to be assessed as a percentage of net premiums. Such payments shall be made by each carrier and self-insurer to the ~~department division~~ for the Special Disability Trust Fund in accordance with such regulations as the ~~department division~~ prescribes.

4. The Treasurer is authorized to receive and credit to such Special Disability Trust Fund any sum or sums that may at any time be contributed to the state by the United States under any Act of Congress, or otherwise, to which the state may be or become entitled by reason of any payments made out of such fund.

(c) Notwithstanding the Special Disability Trust Fund assessment rate calculated pursuant to this section, the rate assessed shall not exceed 4.52 percent.

(d) The Special Disability Trust Fund shall be supplemented by a \$250 notification fee on each notice of claim filed or refiled after July 1, 1997, and a \$500 fee on each proof of claim filed in accordance with subsection (7). Revenues from the fee shall be deposited into the Special Disability Trust Fund and are exempt from the deduction required by s. 215.20. The fees provided in this paragraph shall not be imposed upon any insurer which is in receivership with the Department of Insurance.

(e) The department of ~~Labor and Employment Security~~ or administrator shall report annually on the status of the Special Disability Trust Fund. The report shall update the estimated undiscounted and discounted fund liability, as determined by an independent actuary, change in the total number of notices of claim on file with the fund in addition to the number of newly filed notices of claim, change in the number of proofs of claim processed by the fund, the fee revenues refunded and revenues applied to pay down the liability of the fund, the average time required to reimburse accepted claims, and the average administrative costs per claim. The department or administrator shall submit its report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 1 of each year.

(10) DEPARTMENT DIVISION ADMINISTRATION OF FUND; CLAIMS; EXPENSES.—The ~~department division~~ or administrator shall administer the Special Disability Trust Fund with authority to allow, deny, compromise, controvert, and litigate claims made against it and to designate an attorney to represent it in proceedings involving claims against the fund, including negotiation and consummation of settlements, hearings before judges of compensation claims, and judicial review. The ~~department division~~ or administrator or the attorney designated by it shall be given notice of all hearings and proceedings involving the rights or obligations of such fund and shall have authority to make expenditures for such medical examinations, expert witness fees, depositions, transcripts of testimony, and the like as may be necessary to the proper defense of any claim. All expenditures made in connection with conservation of the fund, including the salary of the attorney designated to represent it and necessary travel expenses, shall be allowed and paid from the Special Disability Trust Fund as provided in this section upon the presentation of itemized vouchers therefor approved by the department division.

(11) EFFECTIVE DATES.—This section does not apply to any case in which the accident causing the subsequent injury or death or the disablement or death from a subsequent occupational disease occurred prior to July 1, 1955, or on or after January 1, 1998. In no event shall the Special Disability Trust Fund be liable for, or reimburse employers or carriers for, any case in which the accident causing the subsequent injury or death or the disablement or death from a subsequent occupational disease occurred on or after January 1, 1998. The Special Disability Trust Fund shall continue to reimburse employers or carriers for subsequent injuries occurring prior to January 1, 1998, and the department division shall continue to assess for and the ~~department division~~ or administrator shall fund reimbursements as provided in subsection (9) for this purpose.

Section 48. Paragraphs (b) through (h) of subsection (1) of section 440.491, Florida Statutes, are redesignated as paragraphs (c) through (i), respectively, a new paragraph (b) is added to said subsection, and present paragraph (c) of subsection (1), paragraph (a) of subsection (3), paragraph (b) of subsection (4), paragraphs (b) and (c) of subsection (5), and subsections (6), (7), and (8) of said section are amended, to read:

440.491 Reemployment of injured workers; rehabilitation.—

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

(b) “Department” means the Department of Education.

~~(d)~~(e) “Qualified rehabilitation provider” means a rehabilitation nurse, rehabilitation counselor, vocational evaluator, rehabilitation facility, or agency approved by the Department of Education division as qualified to provide reemployment assessments, medical care coordination, reemployment services, or vocational evaluations under this chapter.

(3) REEMPLOYMENT STATUS REVIEWS AND REPORTS.—

(a) When an employee who has suffered an injury compensable under this chapter is unemployed 60 days after the date of injury and is receiving benefits for temporary total disability, temporary partial disability, or wage loss, and has not yet been provided medical care coordination and reemployment services voluntarily by the carrier, the carrier must determine whether the employee is likely to return to work and must report its determination to the ~~department division~~. The carrier must thereafter determine the reemployment status of the employee at 90-day intervals as long as the employee remains unemployed, is not receiving medical care coordination or reemployment services, and is receiving the benefits specified in this subsection.

(4) REEMPLOYMENT ASSESSMENTS.—

(b) The carrier shall authorize only a qualified rehabilitation provider to provide the reemployment assessment. The rehabilitation provider shall conduct its assessment and issue a report to the carrier, the employee, and the ~~department division~~ within 30 days after the time such assessment is complete.

(5) MEDICAL CARE COORDINATION AND REEMPLOYMENT SERVICES.—

(b) If the rehabilitation provider concludes that training and education are necessary to return the employee to suitable gainful employment, or if the employee has not returned to suitable gainful employment within 180 days after referral for reemployment services or receives \$2,500 in reemployment services, whichever comes first, the carrier must discontinue reemployment services and refer the employee to the ~~department division~~ for a vocational evaluation. Notwithstanding any provision of chapter 289 or chapter 627, the cost of a reemployment assessment and the first \$2,500 in reemployment services to an injured employee must not be treated as loss adjustment expense for workers' compensation ratemaking purposes.

(c) A carrier may voluntarily provide medical care coordination or reemployment services to the employee at intervals more frequent than those required in this section. For the purpose of monitoring reemployment, the carrier or the rehabilitation provider shall report to the ~~department division~~, in the manner prescribed by the ~~department division~~, the date of reemployment and wages of the employee. The carrier shall report its voluntary service activity to the ~~department division~~ as required by rule. Voluntary

services offered by the carrier for any of the following injuries must be considered benefits for purposes of ratemaking: traumatic brain injury; spinal cord injury; amputation, including loss of an eye or eyes; burns of 5 percent or greater of the total body surface.

(6) TRAINING AND EDUCATION.—

(a) Upon referral of an injured employee by the carrier, or upon the request of an injured employee, the ~~department division~~ shall conduct a training and education screening to determine whether it should refer the employee for a vocational evaluation and, if appropriate, approve training and education or other vocational services for the employee. The ~~department division~~ may not approve formal training and education programs unless it determines, after consideration of the reemployment assessment, pertinent reemployment status reviews or reports, and such other relevant factors as it prescribes by rule, that the reemployment plan is likely to result in return to suitable gainful employment. The ~~department division~~ is authorized to expend moneys from the Workers' Compensation Administration Trust Fund, established by s. 440.50, to secure appropriate training and education or other vocational services when necessary to satisfy the recommendation of a vocational evaluator. The ~~department division~~ shall establish training and education standards pertaining to employee eligibility, course curricula and duration, and associated costs.

(b) When it appears that an employee who has attained maximum medical improvement requires training and education to obtain suitable gainful employment, the employer shall pay the employee additional temporary total compensation while the employee receives such training and education for a period not to exceed 26 weeks, which period may be extended for an additional 26 weeks or less, if such extended period is determined to be necessary and proper by a judge of compensation claims. However, a carrier or employer is not precluded from voluntarily paying additional temporary total disability compensation beyond that period. If an employee requires temporary residence at or near a facility or an institution providing training and education which is located more than 50 miles away from the employee's customary residence, the reasonable cost of board, lodging, or travel must be borne by the ~~department division~~ from the Workers' Compensation Administration Trust Fund established by s. 440.50. An employee who refuses to accept training and education that is recommended by the vocational evaluator and considered necessary by the ~~department division~~ is subject to a 50-percent reduction in weekly compensation benefits, including wage-loss benefits, as determined under s. 440.15(3)(b).

(7) PROVIDER QUALIFICATIONS.—

(a) The ~~department division~~ shall investigate and maintain a directory of each qualified public and private rehabilitation provider, facility, and agency, and shall establish by rule the minimum qualifications, credentials, and requirements that each rehabilitation service provider, facility, and agency must satisfy to be eligible for listing in the directory. These minimum qualifications and credentials must be based on those generally accepted within the service specialty for which the provider, facility, or agency is approved.

(b) The ~~department division~~ shall impose a biennial application fee of \$25 for each listing in the directory, and all such fees must be deposited in the Workers' Compensation Administration Trust Fund.

(c) The ~~department division~~ shall monitor and evaluate each rehabilitation service provider, facility, and agency qualified under this subsection to ensure its compliance with the minimum qualifications and credentials established by the ~~department division~~. The failure of a qualified rehabilitation service provider, facility, or agency to provide the ~~department division~~ with information requested or access necessary for the ~~department division~~ to satisfy its responsibilities under this subsection is grounds for disqualifying the provider, facility, or agency from further referrals.

(d) A qualified rehabilitation service provider, facility, or agency may not be authorized by an employer, a carrier, or the ~~department division~~ to provide any services, including expert testimony, under this section in this state unless the provider, facility, or agency is listed or has been approved for listing in the directory. This restriction does not apply to services provided outside this state under this section.

(e) The ~~department division~~, after consultation with representatives of employees, employers, carriers, rehabilitation providers, and qualified training and education providers, shall adopt rules governing professional practices and standards.

(8) CARRIER PRACTICES.—The ~~department division~~ shall monitor the selection of providers and the provision of services by carriers under this section for consistency with legislative intent set forth in subsection (2).

Section 49. Section 440.50, Florida Statutes, is amended to read:

440.50 Workers' Compensation Administration Trust Fund.—

(1)(a) There is established in the State Treasury a special fund to be known as the "Workers' Compensation Administration Trust Fund" for the purpose of providing for the payment of all expenses in respect to the administration of this chapter, including the vocational rehabilitation of injured employees as provided in s. 440.49 and the payments due under s. 440.15(1)(f), the funding of the fixed administrative expenses of the plan, and the funding of the Bureau of Workers' Compensation Fraud within the Department of Insurance. Such fund shall be administered by the ~~department division~~.

(b) The ~~department division~~ is authorized to transfer as a loan an amount not in excess of \$250,000 from such special fund to the Special Disability Trust Fund established by s. 440.49(9), which amount shall be repaid to said special fund in annual payments equal to not less than 10 percent of moneys received for such Special Disability Trust Fund.

(2) The Treasurer is authorized to disburse moneys from such fund only when approved by the ~~department division~~ and upon the order of the Comptroller.

(3) The Treasurer shall deposit any moneys paid into such fund into such depository banks as the ~~department division~~ may designate and is authorized to invest any portion of the fund which, in the opinion of the ~~department division~~, is not needed for current requirements, in the same manner and subject to all the provisions of the law with respect to the deposit of state funds by such Treasurer. All interest earned by such portion of the fund as may be invested by the Treasurer shall be collected by him or her and placed to the credit of such fund.

(4) All civil penalties provided in this chapter, if not voluntarily paid, may be collected by civil suit brought by the ~~department division~~ and shall be paid into such fund.

Section 50. Section 440.51, Florida Statutes, is amended to read:

440.51 Expenses of administration.—

(1) The ~~department division~~ shall estimate annually in advance the amounts necessary for the administration of this chapter, in the following manner.

(a) The ~~department division~~ shall, by July 1 of each year, notify carriers and self-insurers of the assessment rate, which shall be based on the anticipated expenses of the administration of this chapter for the next calendar year. Such assessment rate shall take effect January 1 of the next calendar year and shall be included in workers' compensation rate filings approved by the Department of Insurance which become effective on or after January 1 of the next calendar year. Assessments shall become due and be paid quarterly.

(b) The total expenses of administration shall be prorated among the carriers writing compensation insurance in the state and self-insurers. The net premiums collected by carriers and the amount of premiums calculated by the ~~department division~~ for self-insured employers are the basis for computing the amount to be assessed. When reporting deductible policy premium for purposes of computing assessments levied after July 1, 2001, full policy premium value must be reported prior to application of deductible discounts or credits. This amount may be assessed as a specific amount or as a percentage of net premiums payable as the ~~department division~~ may direct, provided such amount so assessed shall not exceed 2.75 percent, beginning January 1, 2001, except during the interim period from July 1, 2000, through December 31, 2000, such assessments shall not exceed 4 percent of such net premiums. The carriers may elect to make the payments required under s. 440.15(1)(f) rather than having these payments made by the ~~department division~~. In that event, such payments will be credited to the carriers, and the amount due by the carrier under this section will be reduced accordingly.

(2) The ~~department division~~ shall provide by regulation for the collection of the amounts assessed against each carrier. Such amounts shall be paid within 30 days from the date that notice is served upon such carrier. If such amounts are not paid within such period, there may be assessed for each 30 days the amount so assessed remains unpaid, a civil penalty equal to 10

percent of the amount so unpaid, which shall be collected at the same time and a part of the amount assessed. For those carriers who excluded ceded reinsurance premiums from their assessments prior to January 1, 2000, the department ~~division~~ shall not recover any past underpayments of assessments related to ceded reinsurance premiums prior to January 1, 2001, against such carriers.

(3) If any carrier fails to pay the amounts assessed against him or her under the provisions of this section within 60 days from the time such notice is served upon him or her, the ~~department of Insurance upon being advised by the division~~ may suspend or revoke the authorization to insure compensation in accordance with the procedure in s. 440.38(3)(a). The department ~~division~~ may permit a carrier to remit any underpayment of assessments for assessments levied after January 1, 2001.

(4) All amounts collected under the provisions of this section shall be paid into the fund established in s. 440.50.

(5) Any amount so assessed against and paid by an insurance carrier, self-insurer authorized pursuant to s. 624.4621, or commercial self-insurance fund authorized under ss. 624.460-624.488 shall be allowed as a deduction against the amount of any other tax levied by the state upon the premiums, assessments, or deposits for workers' compensation insurance on contracts or policies of said insurance carrier, self-insurer, or commercial self-insurance fund. Any insurance carrier claiming such a deduction against the amount of any such tax shall not be required to pay any additional retaliatory tax levied pursuant to s. 624.5091 as a result of claiming such deduction. Because deductions under this subsection are available to insurance carriers, s. 624.5091 does not limit such deductions in any manner.

(6)(a) The department ~~division~~ may require from each carrier, at such time and in accordance with such regulations as the department ~~division~~ may prescribe, reports in respect to all gross earned premiums and of all payments of compensation made by such carrier during each prior period, and may determine the amounts paid by each carrier and the amounts paid by all carriers during such period.

(b) The Department of Insurance may require from each self-insurer, at such time and in accordance with such regulations as the Department of Insurance prescribes, reports in respect to wages paid, the amount of premiums such self-insurer would have to pay if insured, and all payments of compensation made by such self-insurer during each prior period, and may determine the amounts paid by each self-insurer and the amounts paid by all self-insurers during such period. For the purposes of this section, the payroll records of each self-insurer shall be open to annual inspection and audit by the Department of Insurance or its authorized representative, during regular business hours; and if any audit of such records of a self-insurer discloses a deficiency in the amounts reported to the Department of Insurance or in the amounts paid to the Department of Insurance by a self-insurer pursuant to this section, the Department of Insurance may assess the cost of such audit against the self-insurer.

(7) The department division shall keep accumulated cost records of all injuries occurring within the state coming within the purview of this chapter on a policy and calendar-year basis. For the purpose of this chapter, a "calendar year" is defined as the year in which the injury is reported to the department division; "policy year" is defined as that calendar year in which the policy becomes effective, and the losses under such policy shall be chargeable against the policy year so defined.

(8) The department division shall assign an account number to each employer under this chapter and an account number to each insurance carrier authorized to write workers' compensation insurance in the state; and it shall be the duty of the department division under the account number so assigned to keep the cost experience of each carrier and the cost experience of each employer under the account number so assigned by calendar and policy year, as above defined.

(9) In addition to the above, it shall be the duty of the department division to keep the accident experience, as classified by the department division, by industry as follows:

- (a) Cause of the injury;
- (b) Nature of the injury; and
- (c) Type of disability.

(10) In every case where the duration of disability exceeds 30 days, the carrier shall establish a sufficient reserve to pay all benefits to which the injured employee, or in case of death, his or her dependents, may be entitled to under the law. In establishing the reserve, consideration shall be given to the nature of the injury, the probable period of disability, and the estimated cost of medical benefits.

(11) The department division shall furnish to any employer or carrier, upon request, its individual experience. ~~The division shall furnish to the Department of Insurance, upon request, the Florida experience as developed under accident year or calendar year.~~

(12) In addition to any other penalties provided by this law, the failure to submit any report or other information required by this law shall be just cause to suspend the right of a self-insurer to operate as such, or, ~~upon certification by the division to the Department of Insurance that a carrier has failed or refused to furnish such reports,~~ shall be just cause for the department of Insurance to suspend or revoke the license of such carrier.

(13) As used in s. 440.50 and this section, the term:

(a) "Plan" means the workers' compensation joint underwriting plan provided for in s. 627.311(4).

(b) "Fixed administrative expenses" means the expenses of the plan, not to exceed \$750,000, which are directly related to the plan's administration but which do not vary in direct relationship to the amount of premium written by the plan and which do not include loss adjustment premiums.

(14) Before July 1 in each year, the plan shall notify the department division of the amount of the plan's gross written premiums for the preceding calendar year. Whenever the plan's gross written premiums reported to the department division are less than \$30 million, the department division shall transfer to the plan, subject to appropriation by the Legislature, an amount not to exceed the plan's fixed administrative expenses for the preceding calendar year.

Section 51. Subsections (1) and (3) of section 440.52, Florida Statutes, are amended to read:

440.52 Registration of insurance carriers; notice of cancellation or expiration of policy; suspension or revocation of authority.—

(1) Each insurance carrier who desires to write such compensation insurance in compliance with this chapter shall be required, before writing such insurance, to register with the department division and pay a registration fee of \$100. This shall be deposited by the department division in the fund created by s. 440.50.

(3) If the department division finds, after due notice and a hearing at which the insurance carrier is entitled to be heard in person or by counsel and present evidence, that the insurance carrier has repeatedly failed to comply with its obligations under this chapter, the department division may ~~request the Department of Insurance to~~ suspend or revoke the authorization of such insurance carrier to write workers' compensation insurance under this chapter. Such suspension or revocation shall not affect the liability of any such insurance carrier under policies in force prior to the suspension or revocation.

Section 52. Section 440.525, Florida Statutes, is amended to read:

440.525 Examination of carriers.—~~Beginning July 1, 1994, The Division of Workers' Compensation of the department of Labor and Employment Security may examine each carrier as often as is warranted to ensure that carriers are fulfilling their obligations under the law, and shall examine each carrier not less frequently than once every 3 years. The examination must cover the preceding 3 fiscal years of the carrier's operations and must commence within 12 months after the end of the most recent fiscal year being covered by the examination.~~ The examination may cover any period of the carrier's operations since the last previous examination.

Section 53. Section 440.572, Florida Statutes, is amended to read:

440.572 Authorization for individual self-insurer to provide coverage.—An individual self-insurer having a net worth of not less than \$250 million as authorized by s. 440.38(1)(f) may assume by contract the liabilities under this chapter of contractors and subcontractors, or each of them, employed by or on behalf of such individual self-insurer when performing work on or adjacent to property owned or used by the individual self-insurer by the department division. The net worth of the individual self-insurer shall include the assets of the self-insurer's parent company and its subsidiaries,

sister companies, affiliated companies, and other related entities, located within the geographic boundaries of the state.

Section 54. Section 440.59, Florida Statutes, is amended to read:

440.59 Reporting requirements.—

(1) The department shall annually prepare a report of the administration of this chapter for the preceding calendar year, including a detailed statement of the receipts of and expenditures from the fund established in s. 440.50 and a statement of the causes of the accidents leading to the injuries for which the awards were made, together with such recommendations as the department considers advisable. On or before September 15 of each year, the department shall submit a copy of the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Democratic and Republican Leaders of the Senate and the House of Representatives, and the chairs of the legislative committees having jurisdiction over workers' compensation.

~~(2) The division shall annually prepare a closed claim report for all claims for which the employee lost more than 7 days from work and shall submit a copy of the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Democratic and Republican Leaders of the Senate and the House of Representatives, and the chairs of the legislative committees having jurisdiction over workers' compensation on or before September 15 of each year. The closed claim report shall include, but not be limited to, an analysis of all claims closed during the preceding year as to the date of accident, age of the injured employee, occupation of the injured employee, type of injury, body part affected, type and duration of indemnity benefits paid, permanent impairment rating, medical benefits identified by type of health care provider, and type and cost of any rehabilitation benefits provided.~~

~~(3) The division shall prepare an annual report for all claims for which the employee lost more than 7 days from work and shall submit a copy of the report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Democratic and Republican Leaders of the Senate and the House of Representatives, and the chairs of the legislative committees having jurisdiction over workers' compensation, on or before September 15 of each year. The annual report shall include a status report on all cases involving work-related injuries in the previous 10 years. The annual report shall include, but not be limited to, the number of open and closed cases, the number of cases receiving various types of benefits, and the cash and medical benefits paid between the date of injury and the evaluation date in each case.~~

Section 55. Section 440.591, Florida Statutes, is amended to read:

440.591 Administrative procedure; rulemaking authority.—~~The department, the agency, and the Department of Education may division has authority to~~ adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter conferring duties upon it.

Section 56. Section 440.593, Florida Statutes, is amended to read:

440.593 Electronic reporting.—

(1) The department division may establish an electronic reporting system requiring or authorizing an employer or carrier to submit required forms, reports, or other information electronically rather than by other means. The department division may establish different deadlines for submitting forms, reports, or information to the department division, or to its authorized agent, via the electronic reporting system than are otherwise required when reporting information by other means.

(2) The department division may require any carrier to submit data electronically, either directly or through a third-party vendor, and may require any carrier or vendor submitting data to the department division electronically to be certified by the department division. The department division may specify performance requirements for any carrier or vendor submitting data electronically.

(3) The department division may revoke the certification of any carrier or vendor determined by the department division to be in noncompliance with performance standards prescribed by rule for electronic submissions.

(4) The department division may assess a civil penalty, not to exceed \$500 for each violation, as prescribed by rule.

(5) The department may division is authorized to adopt rules to administer this section.

Section 57. Subsections (1), (4), and (5) of section 443.012, Florida Statutes, are amended to read:

443.012 Unemployment Appeals Commission.—

(1) There is created within the Agency for Workforce Innovation Department of Labor and Employment Security an Unemployment Appeals Commission, hereinafter referred to as the “commission.” The commission shall consist of a chair and two other members to be appointed by the Governor, subject to confirmation by the Senate. Not more than one appointee must be a person who, on account of previous vocation, employment, or affiliation, is classified as a representative of employers; and not more than one such appointee must be a person who, on account of previous vocation, employment, or affiliation, is classified as a representative of employees.

(a) The chair shall devote his or her entire time to commission duties and shall be responsible for the administrative functions of the commission.

(b) The chair shall have the authority to appoint a general counsel and such other personnel as may be necessary to carry out the duties and responsibilities of the commission.

(c) The chair shall have the qualifications required by law for a judge of the circuit court and shall not engage in any other business vocation or employment. Notwithstanding any other provisions of existing law, the

chair shall be paid a salary equal to that paid under state law to a judge of the circuit court.

(d) The remaining members shall be paid a stipend of \$100 for each day they are engaged in the work of the commission. The chair and other members shall also be reimbursed for travel expenses, as provided in s. 112.061.

(e) The total salary and travel expenses of each member of the commission shall be paid from the Employment Security Administration Trust Fund.

(4) The property, personnel, and appropriations relating to the specified authority, powers, duties, and responsibilities of the commission shall be provided to the commission by the Agency for Workforce Innovation ~~Department of Labor and Employment Security~~.

(5) The commission shall not be subject to control, supervision, or direction by the Agency for Workforce Innovation ~~Department of Labor and Employment Security~~ in the performance of its powers and duties under this chapter.

Section 58. Subsection (12) of section 443.036, Florida Statutes, is amended to read:

443.036 Definitions.—As used in this chapter, unless the context clearly requires otherwise:

(12) COMMISSION.—“Commission” means the Unemployment Appeals Commission of the ~~Department of Labor and Employment Security~~.

Section 59. Subsection (3) of section 447.02, Florida Statutes, is amended to read:

447.02 Definitions.—The following terms, when used in this chapter, shall have the meanings ascribed to them in this section:

(3) The term “department” means the Department of Business and Professional Regulation ~~Labor and Employment Security~~.

Section 60. Subsection (4) of section 447.305, Florida Statutes, is amended to read:

447.305 Registration of employee organization.—

(4) Notification of registrations and renewals of registration shall be furnished at regular intervals by the commission to the Department of Business and Professional Regulation ~~Labor and Employment Security~~.

Section 61. Subsection (4) of section 450.012, Florida Statutes, is amended to read:

450.012 Definitions.—For the purpose of this chapter, the word, phrase, or term:

(4) “Department” means the Department of Business and Professional Regulation Labor and Employment Security.

Section 62. Paragraph (j) of subsection (1) of section 450.191, Florida Statutes, is amended to read:

450.191 Executive Office of the Governor; powers and duties.—

(1) The Executive Office of the Governor is authorized and directed to:

(j) Cooperate with the farm labor office of the Department of Business and Professional Regulation Labor and Employment Security in the recruitment and referral of migrant laborers and other persons for the planting, cultivation, and harvesting of agricultural crops in Florida.

Section 63. Subsection (2) of section 450.28, Florida Statutes, is amended to read:

450.28 Definitions.—

(2) “Department” means the Department of Business and Professional Regulation Labor and Employment Security.

Section 64. Subsections (1) and (5) of section 624.3161, Florida Statutes, are amended to read:

624.3161 Market conduct examinations.—

(1) As often as it deems necessary, the department shall examine each licensed rating organization, each advisory organization, each group, association, carrier, as defined in s. 440.02, or other organization of insurers which engages in joint underwriting or joint reinsurance, and each authorized insurer transacting in this state any class of insurance to which the provisions of chapter 627 are applicable. The examination shall be for the purpose of ascertaining compliance by the person examined with the applicable provisions of chapters 440, 624, 626, 627, and 635.

(5) Such examinations shall also be subject to the applicable provisions of chapter 440 and ss. 624.318, 624.319, 624.321, and 624.322.

Section 65. Paragraph (m) of subsection (1) of section 626.88, Florida Statutes, is amended to read:

626.88 Definitions of “administrator” and “insurer”.—

(1) For the purposes of this part, an “administrator” is any person who directly or indirectly solicits or effects coverage of, collects charges or premiums from, or adjusts or settles claims on residents of this state in connection with authorized commercial self-insurance funds or with insured or self-insured programs which provide life or health insurance coverage or coverage of any other expenses described in s. 624.33(1), other than any of the following persons:

(m) A person approved by the ~~Division of Workers’ Compensation of the Department of Insurance Labor and Employment Security~~ who administers only self-insured workers’ compensation plans.

Section 66. Subsection (9) of section 626.989, Florida Statutes, is amended to read:

626.989 Investigation by department or Division of Insurance Fraud; compliance; immunity; confidential information; reports to division; division investigator's power of arrest.—

(9) In recognition of the complementary roles of investigating instances of workers' compensation fraud and enforcing compliance with the workers' compensation coverage requirements under chapter 440, the ~~Division of Insurance Fraud of the Department of Insurance is and the Division of Workers' Compensation of the Department of Labor and Employment Security~~ are directed to prepare and submit a joint performance report to the President of the Senate and the Speaker of the House of Representatives by ~~November 1, 2003 of each year for each of the next 2 years~~, and then by November 1 every 3 years thereafter, describing the results obtained in achieving compliance with the workers' compensation coverage requirements and reducing the incidence of workers' compensation fraud.

Section 67. Section 627.0915, Florida Statutes, is amended to read:

627.0915 Rate filings; workers' compensation, drug-free workplace, and safe employers.—The Department of Insurance shall approve rating plans for workers' compensation insurance that give specific identifiable consideration in the setting of rates to employers that either implement a drug-free workplace program pursuant to rules adopted by the ~~Division of Workers' Compensation of the Department of Insurance Labor and Employment Security~~ or implement a safety program pursuant to provisions of the rating plan or implement both a drug-free workplace program and a safety program. The plans must be actuarially sound and must state the savings anticipated to result from such drug-testing and safety programs.

Section 68. Subsection (3) of section 627.914, Florida Statutes, is amended to read:

627.914 Reports of information by workers' compensation insurers required.—

(3) Individual self-insurers as defined in s. 440.02 shall report only Florida data as prescribed in paragraphs (2)(a)-(e) to the ~~Division of Workers' Compensation of the department of Labor and Employment Security~~.

(a) The ~~department~~ Division of Workers' Compensation shall publish the dates and forms necessary to enable individual self-insurers to comply with this section.

(b) A statistical or rating organization may be used by individual self-insurers for the purposes of reporting the data required by this section and calculating experience ratings.

Section 69. Sections 20.171 and 440.4416, Florida Statutes, are repealed.

Section 70. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions

or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Section 71. Except as otherwise provided herein, this act shall take effect July 1, 2002.

Approved by the Governor April 25, 2002.

Filed in Office Secretary of State April 25, 2002.