By the Committee on Banking and Insurance; and Senator Galvano

597-03992-13 2013860c1

1 A bill to be entitled
2 An act relating to workers' compensation system
3 administration; amending s. 440.02, F.S.; revising a
4 definition; amending s. 440.05, F.S.; revising
5 requirements relating to submitting notice of election
6 of exemption; amending s. 440.102, F.S.; conforming a
7 cross-reference; amending s. 440.107, F.S.; revising
8 effectiveness of stop-work orders and penalty
9 assessment orders; amending s. 440.11, F.S.; revising
10 immunity from liability standards for employers and
11 employees using a help supply services company;
12 amending s. 440.13, F.S.; deleting and revising
13 definitions; revising health care provider
14 requirements and responsibilities; deleting rulemaking
15 authority and responsibilities of the Department of
16 Financial Services; revising provider reimbursement
17 dispute procedures; revising penalties for certain
18 violations or overutilization of treatment; deleting
19 certain Office of Insurance Regulation audit
20 requirements; deleting provisions providing for
21 removal of physicians from lists of those authorized
22 to render medical care under certain conditions;
23 amending s. 440.15, F.S.; revising limitations on
24 compensation for temporary total disability; amending
25 s. 440.185, F.S.; revising and deleting penalties for
26 noncompliance relating to duty of employer upon
27 receipt of notice of injury or death; amending s.
28 440.20, F.S.; transferring certain responsibilities of
29 the office to the department; deleting certain

30 responsibilities of the department; amending s.
31 440.211, F.S.; deleting a requirement that a provision
32 that is mutually agreed upon in any collective
33 bargaining agreement be filed with the department;
34 amending s. 440.385, F.S.; conforming cross-
35 references; amending s. 440.491, F.S.; revising
36 certain carrier reporting requirements; revising
37 duties of the department upon referral of an injured
38 employee; providing an effective date.
39
40 Be It Enacted by the Legislature of the State of Florida:
41
42 Section 1. Subsection (8) of section 440.02, Florida
43 Statutes, is amended to read:
44 440.02 Definitions.—When used in this chapter, unless the
45 context clearly requires otherwise, the following terms shall
46 have the following meanings:
47 (8) "Construction industry" means for-profit activities
48 involving any building, clearing, filling, excavation, or
49 substantial improvement in the size or use of any structure or
50 the appearance of any land. However, "construction" does not
51 mean a homeowner's act of construction or the result of a
52 construction upon his or her own premises, provided such
53 premises are not intended to be sold, resold, or leased by the
54 owner within 1 year after the commencement of construction. The
55 division may, by rule, establish ~~standard industrial~~
56 ~~classification~~ codes and definitions thereof that ~~which~~ meet the
57 criteria of the term "construction industry" as set forth in
58 this section.

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59 Section 2. Subsection (3) of section 440.05, Florida
60 Statutes, is amended to read:
61 440.05 Election of exemption; revocation of election;
62 notice; certification.—
63 (3) Each officer of a corporation who is engaged in the
64 construction industry and who elects an exemption from this
65 chapter or who, after electing such exemption, revokes that
66 exemption~~,~~ must submit a notice to such effect to the department
67 on a form prescribed by the department. The notice of election
68 to be exempt must be ~~which is~~ electronically submitted to the
69 department by the officer of a corporation who is allowed to
70 claim an exemption as provided by this chapter and must list the
71 name, federal tax identification number, date of birth, ~~Florida~~
72 driver license number or Florida identification card number, and
73 all certified or registered licenses issued pursuant to chapter
74 489 held by the person seeking the exemption, the registration
75 number of the corporation filed with the Division of
76 Corporations of the Department of State, and the percentage of
77 ownership evidencing the required ownership under this chapter.
78 The notice of election to be exempt must identify each
79 corporation that employs the person electing the exemption and
80 must list the social security number or federal tax
81 identification number of each such employer and the additional
82 documentation required by this section. In addition, the notice
83 of election to be exempt must provide that the officer electing
84 an exemption is not entitled to benefits under this chapter,
85 must provide that the election does not exceed exemption limits
86 for officers provided in s. 440.02, and must certify that any
87 employees of the corporation whose officer elects an exemption

88 are covered by workers' compensation insurance. Upon receipt of
89 the notice of the election to be exempt, receipt of all
90 application fees, and a determination by the department that the
91 notice meets the requirements of this subsection, the department
92 shall issue a certification of the election to the officer,
93 unless the department determines that the information contained
94 in the notice is invalid. The department shall revoke a
95 certificate of election to be exempt from coverage upon a
96 determination by the department that the person does not meet
97 the requirements for exemption or that the information contained
98 in the notice of election to be exempt is invalid. The
99 certificate of election must list the name of the corporation
100 listed in the request for exemption. A new certificate of
101 election must be obtained each time the person is employed by a
102 new or different corporation that is not listed on the
103 certificate of election. A copy of the certificate of election
104 must be sent to each workers' compensation carrier identified in
105 the request for exemption. Upon filing a notice of revocation of
106 election, an officer who is a subcontractor or an officer of a
107 corporate subcontractor must notify her or his contractor. Upon
108 revocation of a certificate of election of exemption by the
109 department, the department shall notify the workers'
110 compensation carriers identified in the request for exemption.
111 Section 3. Paragraph (p) of subsection (5) of section
112 440.102, Florida Statutes, is amended to read:
113 440.102 Drug-free workplace program requirements.—The
114 following provisions apply to a drug-free workplace program
115 implemented pursuant to law or to rules adopted by the Agency
116 for Health Care Administration:

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117 (5) PROCEDURES AND EMPLOYEE PROTECTION.—All specimen
118 collection and testing for drugs under this section shall be
119 performed in accordance with the following procedures:
120 (p) All authorized remedial treatment, care, and attendance
121 provided by a health care provider to an injured employee before
122 medical and indemnity benefits are denied under this section
123 must be paid for by the carrier or self-insurer. However, the
124 carrier or self-insurer must have given reasonable notice to all
125 affected health care providers that payment for treatment, care,
126 and attendance provided to the employee after a future date
127 certain will be denied. A health care provider, as defined in s.
128 440.13(1)(g) ~~440.13(1)(h)~~, that refuses, without good cause, to
129 continue treatment, care, and attendance before the provider
130 receives notice of benefit denial commits a misdemeanor of the
131 second degree, punishable as provided in s. 775.082 or s.
132 775.083.
133 Section 4. Paragraph (b) of subsection (7) of section
134 440.107, Florida Statutes, is amended to read:
135 440.107 Department powers to enforce employer compliance
136 with coverage requirements.—
137 (7)
138 (b) Stop-work orders and penalty assessment orders issued
139 under this section against a corporation, limited liability
140 company, partnership, or sole proprietorship shall be in effect
141 against any successor corporation or business entity that has
142 one or more of the same principals or officers as the
143 corporation, limited liability company, or partnership against
144 which the stop-work order was issued and are engaged in the same
145 or equivalent trade or activity.

146 Section 5. Subsection (2) of section 440.11, Florida
147 Statutes, is amended to read:
148 440.11 Exclusiveness of liability.—
149 (2) The immunity from liability described in subsection (1)
150 shall extend to an employer and to each employee of the employer
151 which uses ~~utilizes~~ the services of the employees of a help
152 supply services company, as set forth in North American
153 Industrial Classification System Codes 561320 and 561330
154 ~~Standard Industry Code Industry Number 7363~~, when such
155 employees, whether management or staff, are acting in
156 furtherance of the employer's business. An employee so engaged
157 by the employer shall be considered a borrowed employee of the
158 employer~~,~~ and, for the purposes of this section, shall be
159 treated as any other employee of the employer. The employer
160 shall be liable for and shall secure the payment of compensation
161 to all such borrowed employees as required in s. 440.10, except
162 when such payment has been secured by the help supply services
163 company.
164 Section 6. Paragraphs (e) through (t) of subsection (1) of
165 section 440.13, Florida Statutes, are redesignated as paragraphs
166 (d) through (s), respectively, subsections (14) through (17) are
167 renumbered as subsections (13) through (16), respectively, and
168 present paragraphs (h) and (q) of subsection (1), paragraphs
169 (a), (c), (e), and (i) of subsection (3), subsection (7),
170 paragraph (b) of subsection (8), paragraph (b) of subsection
171 (11), paragraph (e) of subsection (12), and present subsections
172 (13) and (14) of that section are amended to read:
173 440.13 Medical services and supplies; penalty for
174 violations; limitations.—

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175 (1) DEFINITIONS.—As used in this section, the term:
176 ~~(d) "Certified health care provider" means a health care~~
177 ~~provider who has been certified by the department or who has~~
178 ~~entered an agreement with a licensed managed care organization~~
179 ~~to provide treatment to injured workers under this section.~~
180 ~~Certification of such health care provider must include~~
181 ~~documentation that the health care provider has read and is~~
182 ~~familiar with the portions of the statute, impairment guides,~~
183 ~~practice parameters, protocols of treatment, and rules which~~
184 ~~govern the provision of remedial treatment, care, and~~
185 ~~attendance.~~
186 (g)~~(h)~~ "Health care provider" means a physician or any
187 recognized practitioner licensed to provide ~~who provides~~ skilled
188 services pursuant to a prescription or under the supervision or
189 direction of a physician ~~and who has been certified by the~~
190 ~~department as a health care provider~~. The term "health care
191 provider" includes a health care facility.
192 (p)~~(q)~~ "Physician" or "doctor" means a physician licensed
193 under chapter 458, an osteopathic physician licensed under
194 chapter 459, a chiropractic physician licensed under chapter
195 460, a podiatric physician licensed under chapter 461, an
196 optometrist licensed under chapter 463, or a dentist licensed
197 under chapter 466~~, each of whom must be certified by the~~
198 ~~department as a health care provider~~.
199 (3) PROVIDER ELIGIBILITY; AUTHORIZATION.—
200 (a) As a condition to eligibility for payment under this
201 chapter, a health care provider who renders services ~~must be a~~
202 ~~certified health care provider and~~ must receive authorization
203 from the carrier before providing treatment. This paragraph does

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204 not apply to emergency care. ~~The department shall adopt rules to~~
205 ~~implement the certification of health care providers.~~
206 (c) A health care provider may not refer the employee to
207 another health care provider, diagnostic facility, therapy
208 center, or other facility without prior authorization from the
209 carrier, except when emergency care is rendered. Any referral
210 must be to a health care provider ~~that has been certified by the~~
211 ~~department~~, unless the referral is for emergency treatment, and
212 ~~the referral~~ must be made in accordance with practice parameters
213 and protocols of treatment as provided for in this chapter.
214 (e) Carriers shall adopt procedures for receiving,
215 reviewing, documenting, and responding to requests for
216 authorization. ~~Such procedures shall be for a health care~~
217 ~~provider certified under this section.~~
218 (i) Notwithstanding paragraph (d), a claim for specialist
219 consultations, surgical operations, physiotherapeutic or
220 occupational therapy procedures, X-ray examinations, or special
221 diagnostic laboratory tests that cost more than $1,000 and other
222 specialty services that the department identifies by rule is not
223 valid and reimbursable unless the services have been expressly
224 authorized by the carrier, ~~or~~ unless the carrier has failed to
225 respond within 10 days to a written request for authorization,
226 or unless emergency care is required. The insurer shall
227 authorize such consultation or procedure unless the health care
228 provider or facility is not authorized ~~or certified~~, unless such
229 treatment is not in accordance with practice parameters and
230 protocols of treatment established in this chapter, or unless a
231 judge of compensation claims has determined that the
232 consultation or procedure is not medically necessary, not in

233 accordance with the practice parameters and protocols of
234 treatment established in this chapter, or otherwise not
235 compensable under this chapter. Authorization of a treatment
236 plan does not constitute express authorization for purposes of
237 this section, except to the extent the carrier provides
238 otherwise in its authorization procedures. This paragraph does
239 not limit the carrier’s obligation to identify and disallow
240 overutilization or billing errors.
241 (7) UTILIZATION AND REIMBURSEMENT DISPUTES.—
242 (a) Any health care provider, carrier, or employer who
243 elects to contest the disallowance or adjustment of payment by a
244 carrier under subsection (6) must, within 45 ~~30~~ days after
245 receipt of notice of disallowance or adjustment of payment,
246 petition the department to resolve the dispute. The petitioner
247 must serve a copy of the petition on the carrier and on all
248 affected parties by certified mail. The petition must be
249 accompanied by all documents and records that support the
250 allegations contained in the petition. Failure of a petitioner
251 to submit such documentation to the department results in
252 dismissal of the petition.
253 (b) The carrier must submit to the department within 30 ~~10~~
254 days after receipt of the petition all documentation
255 substantiating the carrier’s disallowance or adjustment. Failure
256 of the carrier to timely submit such ~~the requested~~ documentation
257 to the department within 30 ~~10~~ days constitutes a waiver of all
258 objections to the petition.
259 (c) Within 120 ~~60~~ days after receipt of all documentation,
260 the department must provide to the petitioner, the carrier, and
261 the affected parties a written determination of whether the

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262 carrier properly adjusted or disallowed payment. The department
263 must be guided by standards and policies set forth in this
264 chapter, including all applicable reimbursement schedules,
265 practice parameters, and protocols of treatment, in rendering
266 its determination.
267 (d) If the department finds an improper disallowance or
268 improper adjustment of payment by an insurer, the insurer shall
269 reimburse the health care provider, facility, insurer, or
270 employer within 30 days, subject to the penalties provided in
271 this subsection.
272 (e) The department shall adopt rules to carry out this
273 subsection. The rules may include provisions for consolidating
274 petitions filed by a petitioner and expanding the timetable for
275 rendering a determination upon a consolidated petition.
276 (f) Any carrier that engages in a pattern or practice of
277 arbitrarily or unreasonably disallowing or reducing payments to
278 health care providers may be subject to one or more of the
279 following penalties imposed by the department:
280 1. Repayment of the appropriate amount to the health care
281 provider.
282 2. An administrative fine assessed by the department in an
283 amount not to exceed $5,000 per instance of improperly
284 disallowing or reducing payments.
285 3. Award of the health care provider’s costs, including a
286 reasonable attorney ~~attorney’s~~ fee, for prosecuting the
287 petition.
288 (8) PATTERN OR PRACTICE OF OVERUTILIZATION.—
289 (b) If the department determines that a health care
290 provider has engaged in a pattern or practice of overutilization

291 or a violation of this chapter or rules adopted by the
292 department, including a pattern or practice of providing
293 treatment in excess of the practice parameters or protocols of
294 treatment, it may impose one or more of the following penalties:
295 1. An order ~~of the department~~ barring the provider from
296 payment under this chapter;
297 2. Deauthorization of care under review;
298 3. Denial of payment for care rendered in the future;
299 ~~4. Decertification of a health care provider certified as~~
300 ~~an expert medical advisor under subsection (9) or of a~~
301 ~~rehabilitation provider certified under s. 440.49;~~
302 4.~~5.~~ An administrative fine of ~~assessed by the department~~
303 ~~in an amount not to exceed~~ $5,000 ~~per instance of~~
304 ~~overutilization or violation~~; and
305 5.~~6.~~ Notification of and review by the appropriate
306 licensing authority pursuant to s. 440.106(3).
307 (11) AUDITS.—
308 (b) The department shall monitor carriers as provided in
309 this chapter ~~and the Office of Insurance Regulation shall audit~~
310 ~~insurers and group self-insurance funds as provided in s.~~
311 ~~624.3161, to determine if medical bills are paid in accordance~~
312 ~~with this section and rules of the department and Financial~~
313 ~~Services Commission, respectively. Any employer, if self-~~
314 ~~insured, or carrier found by the department or Office of~~
315 ~~Insurance Regulation not to be within 90 percent compliance as~~
316 ~~to the payment of medical bills after July 1, 1994, must be~~
317 ~~assessed a fine not to exceed 1 percent of the prior year's~~
318 ~~assessment levied against such entity under s. 440.51 for every~~
319 ~~quarter in which the entity fails to attain 90-percent~~

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320 ~~compliance. The department shall fine or otherwise discipline an~~
321 ~~employer or carrier, pursuant to this chapter or rules adopted~~
322 ~~by the department, and the Office of Insurance Regulation shall~~
323 ~~fine or otherwise discipline an insurer or group self-insurance~~
324 ~~fund pursuant to the insurance code or rules adopted by the~~
325 ~~Financial Services Commission, for each late payment of~~
326 ~~compensation that is below the minimum 95-percent performance~~
327 ~~standard. Any carrier that is found to be not in compliance in~~
328 ~~subsequent consecutive quarters must implement a medical-bill~~
329 ~~review program approved by the department or office, and an~~
330 ~~insurer or group self-insurance fund is subject to disciplinary~~
331 ~~action by the Office of Insurance Regulation~~.
332 (12) CREATION OF THREE-MEMBER PANEL; GUIDES OF MAXIMUM
333 REIMBURSEMENT ALLOWANCES.—
334 (e) In addition to establishing the uniform schedule of
335 maximum reimbursement allowances, the panel shall:
336 1. Take testimony, receive records, and collect data to
337 evaluate the adequacy of the workers’ compensation fee schedule,
338 nationally recognized fee schedules and alternative methods of
339 reimbursement to ~~certified~~ health care providers and health care
340 facilities for inpatient and outpatient treatment and care.
341 2. Survey ~~certified~~ health care providers and health care
342 facilities to determine the availability and accessibility of
343 workers’ compensation health care delivery systems for injured
344 workers.
345 3. Survey carriers to determine the estimated impact on
346 carrier costs and workers’ compensation premium rates by
347 implementing changes to the carrier reimbursement schedule or
348 implementing alternative reimbursement methods.

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349 4. Submit recommendations on or before January 1, 2003, and
350 biennially thereafter, to the President of the Senate and the
351 Speaker of the House of Representatives on methods to improve
352 the workers' compensation health care delivery system.
353
354 The department, as requested, shall provide data to the panel,
355 including, but not limited to, utilization trends in the
356 workers' compensation health care delivery system. The
357 department shall provide the panel with an annual report
358 regarding the resolution of medical reimbursement disputes and
359 any actions pursuant to subsection (8). The department shall
360 provide administrative support and service to the panel to the
361 extent requested by the panel.
362 ~~(13) REMOVAL OF PHYSICIANS FROM LISTS OF THOSE AUTHORIZED~~
363 ~~TO RENDER MEDICAL CARE.—The department shall remove from the~~
364 ~~list of physicians or facilities authorized to provide remedial~~
365 ~~treatment, care, and attendance under this chapter the name of~~
366 ~~any physician or facility found after reasonable investigation~~
367 ~~to have:~~
368 ~~(a) Engaged in professional or other misconduct or~~
369 ~~incompetency in connection with medical services rendered under~~
370 ~~this chapter;~~
371 ~~(b) Exceeded the limits of his or her or its professional~~
372 ~~competence in rendering medical care under this chapter, or to~~
373 ~~have made materially false statements regarding his or her or~~
374 ~~its qualifications in his or her application;~~
375 ~~(c) Failed to transmit copies of medical reports to the~~
376 ~~employer or carrier, or failed to submit full and truthful~~
377 ~~medical reports of all his or her or its findings to the~~

378 ~~employer or carrier as required under this chapter;~~
379 ~~(d) Solicited, or employed another to solicit for himself~~
380 ~~or herself or itself or for another, professional treatment,~~
381 ~~examination, or care of an injured employee in connection with~~
382 ~~any claim under this chapter;~~
383 ~~(e) Refused to appear before, or to answer upon request of,~~
384 ~~the department or any duly authorized officer of the state, any~~
385 ~~legal question, or to produce any relevant book or paper~~
386 ~~concerning his or her conduct under any authorization granted to~~
387 ~~him or her under this chapter;~~
388 ~~(f) Self-referred in violation of this chapter or other~~
389 ~~laws of this state; or~~
390 ~~(g) Engaged in a pattern of practice of overutilization or~~
391 ~~a violation of this chapter or rules adopted by the department,~~
392 ~~including failure to adhere to practice parameters and protocols~~
393 ~~established in accordance with this chapter.~~
394 (13) ~~(14)~~ PAYMENT OF MEDICAL FEES.—
395 (a) Except for emergency care treatment, fees for medical
396 services are payable only to a health care provider ~~certified~~
397 ~~and~~ authorized to render remedial treatment, care, or attendance
398 under this chapter. Carriers shall pay, disallow, or deny
399 payment to health care providers in the manner and at times set
400 forth in this chapter. A health care provider may not collect or
401 receive a fee from an injured employee within this state, except
402 as otherwise provided by this chapter. Such providers have
403 recourse against the employer or carrier for payment for
404 services rendered in accordance with this chapter. Payment to
405 health care providers or physicians shall be subject to the
406 medical fee schedule and applicable practice parameters and

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407 protocols, regardless of whether the health care provider or
408 claimant is asserting that the payment should be made.
409 (b) Fees charged for remedial treatment, care, and
410 attendance, except for independent medical examinations and
411 consensus independent medical examinations, may not exceed the
412 applicable fee schedules adopted under this chapter and
413 department rule. Notwithstanding any other provision in this
414 chapter, if a physician or health care provider specifically
415 agrees in writing to follow identified procedures aimed at
416 providing quality medical care to injured workers at reasonable
417 costs, deviations from established fee schedules shall be
418 permitted. Written agreements warranting deviations may include,
419 but are not limited to, the timely scheduling of appointments
420 for injured workers, participating in return-to-work programs
421 with injured workers' employers, expediting the reporting of
422 treatments provided to injured workers, and agreeing to
423 continuing education, utilization review, quality assurance,
424 precertification, and case management systems that are designed
425 to provide needed treatment for injured workers.
426 (c) Notwithstanding any other provision of this chapter,
427 following overall maximum medical improvement from an injury
428 compensable under this chapter, the employee is obligated to pay
429 a copayment of $10 per visit for medical services. The copayment
430 shall not apply to emergency care provided to the employee.
431 Section 7. Paragraph (b) of subsection (2) of section
432 440.15, Florida Statutes, is amended to read:
433 440.15 Compensation for disability.—Compensation for
434 disability shall be paid to the employee, subject to the limits
435 provided in s. 440.12(2), as follows:

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436 (2) TEMPORARY TOTAL DISABILITY.—
437 (b) Notwithstanding ~~the provisions of~~ paragraph (a), an
438 employee who has sustained the loss of an arm, leg, hand, or
439 foot, has been rendered a paraplegic, paraparetic, quadriplegic,
440 or quadriparetic, or has lost the sight of both eyes shall be
441 paid temporary total disability of 80 percent of her or his
442 average weekly wage. The increased temporary total disability
443 compensation provided for in this paragraph must not extend
444 beyond 6 months from the date of the accident; however, such
445 benefits shall not be due or payable if the employee is eligible
446 for, entitled to, or collecting permanent total disability
447 benefits. The compensation provided by this paragraph is not
448 subject to the limits provided in s. 440.12(2)~~, but instead is~~
449 ~~subject to a maximum weekly compensation rate of $700~~. If, at
450 the conclusion of this period of increased temporary total
451 disability compensation, the employee is still temporarily
452 totally disabled, the employee shall continue to receive
453 temporary total disability compensation as set forth in
454 paragraphs (a) and (c). The period of time the employee has
455 received this increased compensation will be counted as part of,
456 and not in addition to, the maximum periods of time for which
457 the employee is entitled to compensation under paragraph (a) but
458 not paragraph (c).
459 Section 8. Subsection (9) of section 440.185, Florida
460 Statutes, is amended to read:
461 440.185 Notice of injury or death; reports; penalties for
462 violations.—
463 (9) Any employer or carrier who fails or refuses to timely
464 send any form, report, or notice required by this section shall

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465 be subject to an administrative fine by the department not to
466 exceed $500 ~~$1,000~~ for each such failure or refusal. ~~If, within~~
467 ~~1 calendar year, an employer fails to timely submit to the~~
468 ~~carrier more than 10 percent of its notices of injury or death,~~
469 ~~the employer shall be subject to an administrative fine by the~~
470 ~~department not to exceed $2,000 for each such failure or~~
471 ~~refusal.~~ However, any employer who fails to notify the carrier
472 of an ~~the~~ injury on the prescribed form or by letter within the
473 7 days required in subsection (2) shall be liable for the
474 administrative fine, which shall be paid by the employer and not
475 the carrier. Failure by the employer to meet its obligations
476 under subsection (2) shall not relieve the carrier from
477 liability for the administrative fine if it fails to comply with
478 subsections (4) and (5).
479 Section 9. Paragraph (b) of subsection (8) and paragraphs
480 (a), (b), and (c) of subsection (12) of section 440.20, Florida
481 Statutes, are amended to read:
482 440.20 Time for payment of compensation and medical bills;
483 penalties for late payment.—
484 (8)
485 (b) In order to ensure carrier compliance under this
486 chapter, the department ~~office~~ shall monitor, audit, and
487 investigate the performance of carriers. The department ~~office~~
488 shall require that all compensation benefits be ~~are~~ timely paid
489 in accordance with this section. The department ~~office~~ shall
490 impose penalties for late payments of compensation that are
491 below a minimum 95-percent ~~95 percent~~ timely payment performance
492 standard. The carrier shall pay to the Workers' Compensation
493 Administration Trust Fund a penalty of:

494 1. Fifty dollars per number of installments of compensation
495 below the 95-percent ~~95 percent~~ timely payment performance
496 standard and equal to or greater than a 90-percent ~~90 percent~~
497 timely payment performance standard.
498 2. One hundred dollars per number of installments of
499 compensation below a 90-percent ~~90 percent~~ timely payment
500 performance standard.
501
502 This section does not affect the imposition of any penalties or
503 interest due to the claimant. If a carrier contracts with a
504 servicing agent to fulfill its administrative responsibilities
505 under this chapter, the payment practices of the servicing agent
506 are deemed the payment practices of the carrier for the purpose
507 of assessing penalties against the carrier.
508 (12)
509 (a) Liability of an employer for future payments of
510 compensation may not be discharged by advance payment unless
511 prior approval of a judge of compensation claims ~~or the~~
512 ~~department~~ has been obtained as hereinafter provided. The
513 approval shall not constitute an adjudication of the claimant's
514 percentage of disability.
515 (b) When the claimant has reached maximum recovery and
516 returned to her or his former or equivalent employment with no
517 substantial reduction in wages, such approval of a reasonable
518 advance payment of a part of the compensation payable to the
519 claimant may be given informally by letter by a judge of
520 compensation claims ~~or by the department~~.
521 (c) In the event the claimant has not returned to the same
522 or equivalent employment with no substantial reduction in wages

523 or has suffered a substantial loss of earning capacity or a
524 physical impairment, actual or apparent:
525 1. An advance payment of compensation not in excess of
526 $2,000 may be approved informally by letter, without hearing, by
527 any judge of compensation claims or the Chief Judge.
528 2. An advance payment of compensation not in excess of
529 $2,000 may be ordered by any judge of compensation claims after
530 giving the interested parties an opportunity for a hearing
531 thereon pursuant to not less than 10 days' notice by mail,
532 unless such notice is waived, and after giving due consideration
533 to the interests of the person entitled thereto. When the
534 parties have stipulated to an advance payment of compensation
535 not in excess of $2,000, such advance may be approved by an
536 order of a judge of compensation claims, with or without
537 hearing, or informally by letter by any such judge of
538 compensation claims~~, or by the department~~, if such advance is
539 found to be for the best interests of the person entitled
540 thereto.
541 3. When the parties have stipulated to an advance payment
542 in excess of $2,000, ~~subject to the approval of the department,~~
543 such payment may be approved by a judge of compensation claims
544 by order if the judge finds that such advance payment is for the
545 best interests of the person entitled thereto and is reasonable
546 under the circumstances of the particular case. The judge of
547 compensation claims shall make or cause to be made such
548 investigations as she or he considers necessary concerning the
549 stipulation and, in her or his discretion, may have an
550 investigation of the matter made. The stipulation and the report
551 of any investigation shall be deemed a part of the record of the

552 proceedings.

553 Section 10. Subsection (1) of section 440.211, Florida
554 Statutes, is amended to read:

555 440.211 Authorization of collective bargaining agreement.—

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

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

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

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

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

576 (e) A vocational rehabilitation or retraining program.

577 Section 11. Paragraph (b) of subsection (1) of section
578 440.385, Florida Statutes, is amended to read:

579 440.385 Florida Self-Insurers Guaranty Association,
580 Incorporated.—

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581 (1) CREATION OF ASSOCIATION.—
582 (b) A member may voluntarily withdraw from the association
583 when the member voluntarily terminates the self-insurance
584 privilege and pays all assessments due to the date of such
585 termination. However, the withdrawing member shall continue to
586 be bound by the provisions of this section relating to the
587 period of his or her membership and any claims charged pursuant
588 thereto. The withdrawing member who is a member on or after
589 January 1, 1991, shall also be required to provide to the
590 association upon withdrawal, and at 12-month intervals
591 thereafter, satisfactory proof, including, if requested by the
592 association, a report of known and potential claims certified by
593 a member of the American Academy of Actuaries, that it continues
594 to meet the standards of s. 440.38(1)(b) ~~440.38(1)(b)1.~~ in
595 relation to claims incurred while the withdrawing member
596 exercised the privilege of self-insurance. Such reporting shall
597 continue until the withdrawing member demonstrates to the
598 association that there is no remaining value to claims incurred
599 while the withdrawing member was self-insured. If a withdrawing
600 member fails or refuses to timely provide an actuarial report to
601 the association, the association may obtain an order from a
602 circuit court requiring the member to produce such a report and
603 ordering any other relief that the court determines appropriate.
604 The association is entitled to recover all reasonable costs and
605 attorney ~~attorney's~~ fees expended in such proceedings. If during
606 this reporting period the withdrawing member fails to meet the
607 standards of s. 440.38(1)(b) ~~440.38(1)(b)1.~~, the withdrawing
608 member who is a member on or after January 1, 1991, shall
609 thereupon, and at 6-month intervals thereafter, provide to the

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610 association the certified opinion of an independent actuary who
611 is a member of the American Academy of Actuaries of the
612 actuarial present value of the determined and estimated future
613 compensation payments of the member for claims incurred while
614 the member was a self-insurer, using a discount rate of 4
615 percent. With each such opinion, the withdrawing member shall
616 deposit with the association security in an amount equal to the
617 value certified by the actuary and of a type that is acceptable
618 for qualifying security deposits under s. 440.38(1)(b). The
619 withdrawing member shall continue to provide such opinions and
620 to provide such security until such time as the latest opinion
621 shows no remaining value of claims. The association has a cause
622 of action against a withdrawing member, and against any
623 successor of a withdrawing member, who fails to timely provide
624 the required opinion or who fails to maintain the required
625 deposit with the association. The association shall be entitled
626 to recover a judgment in the amount of the actuarial present
627 value of the determined and estimated future compensation
628 payments of the withdrawing member for claims incurred during
629 the time that the withdrawing member exercised the privilege of
630 self-insurance, together with reasonable attorney ~~attorney's~~
631 fees. The association is also entitled to recover reasonable
632 attorney ~~attorney's~~ fees in any action to compel production of
633 any actuarial report required by this section. For purposes of
634 this section, the successor of a withdrawing member means any
635 person, business entity, or group of persons or business
636 entities, which holds or acquires legal or beneficial title to
637 the majority of the assets or the majority of the shares of the
638 withdrawing member.

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639 Section 12. Paragraph (a) of subsection (3) and paragraph
640 (a) of subsection (6) of section 440.491, Florida Statutes, are
641 amended to read:
642 440.491 Reemployment of injured workers; rehabilitation.—
643 (3) REEMPLOYMENT STATUS REVIEWS AND REPORTS.—
644 (a) When an employee who has suffered an injury compensable
645 under this chapter is unemployed 60 days after the date of
646 injury and is receiving benefits for temporary total disability,
647 temporary partial disability, or wage loss~~,~~ and has not yet been
648 provided medical care coordination and reemployment services
649 voluntarily by the carrier, the carrier must determine whether
650 the employee is likely to return to work and must report its
651 determination to ~~the department and~~ the employee. The report
652 shall include the identification of both the carrier and the
653 employee, ~~and~~ the carrier claim number, and any case number
654 assigned by the Office of the Judges of Compensation Claims. The
655 carrier must thereafter determine the reemployment status of the
656 employee at 90-day intervals as long as the employee remains
657 unemployed, is not receiving medical care coordination or
658 reemployment services, and is receiving the benefits specified
659 in this subsection.
660 (6) TRAINING AND EDUCATION.—
661 (a) Upon referral of an injured employee by the carrier, or
662 upon the request of an injured employee, the department shall
663 conduct a training and education screening to determine whether
664 it should refer the employee for a vocational evaluation ~~and, if~~
665 ~~appropriate~~, approve training and education, or approve other
666 vocational services for the employee. At the time of such
667 referral, the carrier shall provide the department a copy of any

668 reemployment assessment or reemployment plan provided to the
669 carrier by a rehabilitation provider. The department may not
670 approve formal training and education programs unless it
671 determines, after consideration of the reemployment assessment,
672 that the reemployment plan is likely to result in return to
673 suitable gainful employment. The department may ~~is authorized to~~
674 expend moneys from the Workers' Compensation Administration
675 Trust Fund, established by s. 440.50, to secure appropriate
676 training and education at a Florida public college or at a
677 career center established under s. 1001.44, or to secure other
678 vocational services when necessary to satisfy the recommendation
679 of a vocational evaluator. As used in this paragraph,
680 "appropriate training and education" includes securing a general
681 education diploma (GED), if necessary. The department shall by
682 rule establish training and education standards pertaining to
683 employee eligibility, course curricula and duration, and
684 associated costs. For purposes of this subsection, training and
685 education services may be secured from additional providers if:
686 1. The injured employee currently holds an associate degree
687 and requests to earn a bachelor's degree not offered by a
688 Florida public college located within 50 miles from his or her
689 customary residence;
690 2. The injured employee's enrollment in an education or
691 training program in a Florida public college or career center
692 would be significantly delayed; or
693 3. The most appropriate training and education program is
694 available only through a provider other than a Florida public
695 college or career center or at a Florida public college or
696 career center located more than 50 miles from the injured

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697 employee’s customary residence.

698 Section 13. This act shall take effect July 1, 2013.

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