

By Senator Casas

39-780-99

See HB

1 A bill to be entitled
 2 An act relating to workers' compensation
 3 insurance; amending s. 440.02, F.S.; excluding
 4 certain injuries from the definition of
 5 "catastrophic injury"; amending s. 440.13,
 6 F.S.; authorizing insurers to pay certain
 7 amounts exceeding fee schedules under certain
 8 circumstances; requiring the Agency for Health
 9 Care Administration to adopt certain rules and
 10 to use certain national guidelines; amending s.
 11 440.134, F.S.; providing additional
 12 definitions; providing for informal and formal
 13 grievances; providing procedures; providing
 14 requirements; prohibiting the agency from using
 15 certain information to determine insurer
 16 compliance under certain circumstances;
 17 amending s. 440.15, F.S.; revising criteria for
 18 eligibility for benefits for permanent total
 19 disability; revising criteria for determination
 20 of permanent impairment and eligibility for
 21 wage-loss benefits; providing for payment of
 22 wage-loss benefits; revising criteria for
 23 determination of temporary partial disability;
 24 providing for supplemental temporary benefits
 25 under certain circumstances; providing an
 26 effective date.

27
 28 Be It Enacted by the Legislature of the State of Florida:

29
 30 Section 1. Subsection (37) of section 440.02, Florida
 31 Statutes, 1998 Supplement, is amended to read:

1 440.02 Definitions.--When used in this chapter, unless
2 the context clearly requires otherwise, the following terms
3 shall have the following meanings:

4 (37) "Catastrophic injury" means a permanent
5 impairment constituted by:

6 (a) Spinal cord injury involving severe paralysis of
7 an arm, a leg, or the trunk;

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

10 (c) Severe brain or closed-head injury as evidenced
11 by:

12 1. Severe sensory or motor disturbances;

13 2. Severe communication disturbances;

14 3. Severe complex integrated disturbances of cerebral
15 function;

16 4. Severe episodic neurological disorders; or

17 5. Other severe brain and closed-head injury
18 conditions at least as severe in nature as any condition
19 provided in subparagraphs 1.-4.;

20 (d) Second-degree or third-degree burns of 25 percent
21 or more of the total body surface ~~or third-degree burns of 5~~
22 ~~percent or more to the face and hands; or~~

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

24 ~~(f) Any other injury that would otherwise qualify~~
25 ~~under this chapter of a nature and severity that would qualify~~
26 ~~an employee to receive disability income benefits under Title~~
27 ~~II or supplemental security income benefits under Title XVI of~~
28 ~~the federal Social Security Act as the Social Security Act~~
29 ~~existed on July 1, 1992, without regard to any time~~
30 ~~limitations provided under that act.~~

31

1 Section 2. Paragraph (b) of subsection (14) and
2 paragraph (a) of subsection (15) of section 440.13, Florida
3 Statutes, 1998 Supplement, are amended to read:

4 440.13 Medical services and supplies; penalty for
5 violations; limitations.--

6 (14) PAYMENT OF MEDICAL FEES.--

7 (b) Fees charged for remedial treatment, care, and
8 attendance may not exceed the applicable fee schedules adopted
9 under this chapter, which shall be the maximum reimbursement
10 allowance under a workers' compensation managed care
11 arrangement. The applicable fee schedule shall not restrict
12 the right of an insurer, self-insurance fund, individually
13 self-insured employer, or assessable mutual insurer from
14 agreeing to pay any additional compensation to any health care
15 provider as part of a contract in which there is a
16 risk-sharing arrangement between the insurer, self-insurance
17 fund, individually self-insured employer, or assessable mutual
18 insurer and the provider or any other incentives for
19 successful outcomes in returning an injured employee to work.

20 (15) PRACTICE PARAMETERS.--

21 (a) The Agency for Health Care Administration, in
22 conjunction with the division and appropriate health
23 professional associations and health-related organizations
24 shall ~~develop and may~~ adopt by rule guidelines, prepared by
25 nationally recognized health care institutions and
26 professional organizations, for ~~scientifically sound~~ practice
27 parameters for medical procedures relevant to workers'
28 compensation claimants. Practice parameters developed under
29 this section must focus on identifying effective remedial
30 treatments and promoting the appropriate utilization of health
31 care resources. Priority must be given to those procedures

1 that involve the greatest utilization of resources either
2 because they are the most costly or because they are the most
3 frequently performed. Practice parameters for treatment of the
4 10 top procedures associated with workers' compensation
5 injuries including the remedial treatment of lower-back
6 injuries must be developed by December 31, 2000 ~~1994~~.

7 Section 3. Subsections (1), (2), and (15) of section
8 440.134, Florida Statutes, 1998 Supplement, are amended, and
9 subsection (26) is added to that section, to read:

10 440.134 Workers' compensation managed care
11 arrangement.--

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

13 (a) "Agency" means the Agency for Health Care
14 Administration.

15 (b)~~(h)~~ "Capitated contract" means a contract in which
16 an insurer pays directly or indirectly a fixed amount to a
17 health care provider in exchange for the future rendering of
18 medical services for covered expenses.

19 (c)~~(b)~~ "Complaint" means any dissatisfaction expressed
20 by an injured worker concerning an insurer's workers'
21 compensation managed care arrangement.

22 (d)~~(e)~~ "Emergency care" means medical services as
23 defined in chapter 395.

24 (e)~~(d)~~ "Formal grievance" means a written expression
25 of dissatisfaction with the ~~medical~~ care, services, or
26 benefits received which is submitted by a provider or an
27 injured employee, or on an employee's behalf by an agent or
28 provider, and addressed through a dispute resolution process
29 provided by an insurer's workers' compensation managed care
30 arrangement health care providers, expressed in writing by an
31 injured worker.

1 (f) "Informal grievance" means a verbal complaint of
2 dissatisfaction, expressed by an injured employee or a
3 provider, with care services or benefits received, and
4 addressed immediately through telephonic or personal
5 interaction at the time the complaint is made known.

6 (g)~~(e)~~ "Insurer" means an insurance carrier,
7 self-insurance fund, assessable mutual insurer, or
8 individually self-insured employer.

9 (h)~~(i)~~ "Medical care coordinator" means a primary care
10 provider within a provider network who is responsible for
11 managing the medical care of an injured worker including
12 determining other health care providers and health care
13 facilities to which the injured employee will be referred for
14 evaluation or treatment. A medical care coordinator shall be a
15 physician licensed under chapter 458 or an osteopathic
16 physician licensed under chapter 459. The responsibilities for
17 managing the medical care of an injured worker may be
18 performed by a medical case manager.

19 (i) "Medical case manager" means a qualified
20 rehabilitation provider as defined in s. 440.491 or a
21 registered nurse licensed under chapter 464, either of whom
22 acts under the supervision of a medical care coordinator.

23 (j)~~(k)~~ "Primary care provider" means, except in the
24 case of emergency treatment, the initial treating physician
25 and, when appropriate, continuing treating physician, who may
26 be a family practitioner, general practitioner, or internist
27 physician licensed under chapter 458; a family practitioner,
28 general practitioner, or internist osteopathic physician
29 licensed under chapter 459; a chiropractic physician licensed
30 under chapter 460; a podiatric physician licensed under

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1 chapter 461; an optometrist licensed under chapter 463; or a
2 dentist licensed under chapter 466.

3 (k)~~(j)~~ "Provider network" means a comprehensive panel
4 of health care providers and health care facilities who have
5 contracted directly or indirectly with an insurer to provide
6 appropriate remedial treatment, care, and attendance to
7 injured workers in accordance with this chapter.

8 (l)~~(f)~~ "Service area" means the agency-approved
9 geographic area within which an insurer is authorized to offer
10 a workers' compensation managed care arrangement.

11 (m)~~(g)~~ "Workers' compensation managed care
12 arrangement" means an arrangement under which a provider of
13 health care, a health care facility, a group of providers of
14 health care, a group of providers of health care and health
15 care facilities, an insurer that has an exclusive provider
16 organization approved under s. 627.6472 or a health
17 maintenance organization licensed under part I of chapter 641
18 has entered into a written agreement directly or indirectly
19 with an insurer to provide and to manage appropriate remedial
20 treatment, care, and attendance to injured workers in
21 accordance with this chapter.

22 (2)(a) The agency shall, beginning April 1, 1994,
23 authorize an insurer to offer or utilize a workers'
24 compensation managed care arrangement after the insurer files
25 a completed application along with the payment of a \$1,000
26 application fee, and upon the agency's being satisfied that
27 the applicant has the ability to provide quality of care
28 consistent with the prevailing professional standards of care
29 and the insurer and its workers' compensation managed care
30 arrangement otherwise meets the requirements of this section.
31 Effective April 1, 1994, no insurer may offer or utilize a

1 managed care arrangement without such authorization. The
2 authorization, unless sooner suspended or revoked, shall
3 automatically expire 2 years after the date of issuance unless
4 renewed by the insurer. The authorization shall be renewed
5 upon application for renewal and payment of a renewal fee of
6 \$1,000, provided that the insurer is in compliance with the
7 requirements of this section and any rules adopted hereunder.
8 An application for renewal of the authorization shall be made
9 90 days prior to expiration of the authorization, on forms
10 provided by the agency. The renewal application shall not
11 require the resubmission of any documents previously filed
12 with the agency if such documents have remained valid and
13 unchanged since their original filing.

14 (b) Effective January 1, 1997, the employer shall,
15 subject to the limitations specified elsewhere in this
16 chapter, furnish to the employee solely through managed care
17 arrangements such medically necessary remedial treatment,
18 care, and attendance for such period as the nature of the
19 injury or the process of recovery requires. Notwithstanding
20 such requirement, any employer who self-insures pursuant to s.
21 440.38 may opt out of a mandatory managed care arrangement and
22 the requirements of this section by providing such medically
23 necessary remedial treatment, care, and attendance for such
24 periods as the nature of the injury or process of recovery
25 requires, as provided by s. 440.13. Nothing in this section
26 shall be construed to prevent an employer who has self-insured
27 pursuant to s. 440.38 from using managed care arrangements to
28 provide treatment to employees of the employer.

29 (c) The agency shall not adopt any rule that gives a
30 preference or advantage to any organization, including, but
31 not limited to, a preferred provider organization, health

1 maintenance organization, or similar entity, in order to
2 encourage experimentation and development of the most
3 effective and cost-efficient means possible for returning an
4 injured employee to work.

5 (15)(a) A workers' compensation managed care
6 arrangement must have and use formal and informal procedures
7 for hearing complaints and resolving ~~written~~ grievances from
8 injured workers and health care providers. The procedures must
9 be aimed at mutual agreement for settlement and may include
10 arbitration procedures. Procedures provided herein are in
11 addition to other procedures contained in this chapter.

12 (b) The grievance procedure must be described in
13 writing and provided to the affected workers and health care
14 providers.

15 (c) At the time the workers' compensation managed care
16 arrangement is implemented, the insurer must provide detailed
17 information to workers and health care providers describing
18 how a grievance may be registered with the insurer.

19 (d) Grievances must be considered in a timely manner
20 and must be transmitted to appropriate decisionmakers who have
21 the authority to fully investigate the issue and take
22 corrective action.

23 (e) Informal grievances shall be concluded within 7
24 calendar days after initiation unless the parties and the
25 managed care arrangement mutually agree to an extension. The
26 7-day period shall commence upon telephone or personal contact
27 initiated by the employee or provider, the agency, or the
28 division. If the informal grievance remains unresolved, the
29 managed care arrangement shall notify the parties, in writing,
30 of the results and shall advise them of their rights to
31 initiate a formal grievance. The notification shall include

1 the name, address, and telephone number of the contact person
2 responsible for initiating the formal grievance. The managed
3 care arrangement shall also advise the employee to contact the
4 Employee Assistance Office for additional information
5 regarding rights and responsibilities and the dispute
6 resolution process under the Workers' Compensation Law. To
7 prevent undue delays in the dispute resolution process, the
8 managed care grievance coordinator shall, within 3 business
9 days after receiving a formal grievance, forward a copy of the
10 grievance to the division's Employee Assistance Office. A
11 formal grievance shall be concluded within 30 days after
12 receipt by the managed care arrangement unless the employee or
13 provider and the managed care arrangement mutually agree to an
14 extension. If the grievance involves the collection of
15 information outside the service area, the managed care
16 arrangement shall have 15 calendar days in addition to the
17 30-day period within which to process the grievance. The
18 managed care arrangement shall notify the employee in writing
19 that additional information is required to complete review of
20 the grievance and that a maximum of 45 days will be allowed
21 for such review. Within 5 business days after conclusion of
22 the review, the managed care arrangement shall notify the
23 parties of the results of the review. The managed care
24 arrangement shall provide written notice to its employees and
25 providers of the right to file a petition for benefits with
26 the Division of Workers' Compensation of the Department of
27 Labor and Employment Security upon completion of the formal
28 grievance procedure. The managed care arrangement shall
29 furnish a copy of the final decision letter from the managed
30 care arrangement regarding the grievance to the division upon
31 request.

1 ~~(f)(e)~~ If a grievance is found to be valid, corrective
2 action must be taken promptly.

3 ~~(g)(f)~~ All concerned parties must be notified of the
4 results of a grievance.

5 ~~(h)(g)~~ The insurer must report annually, no later than
6 March 31, to the agency regarding its grievance procedure
7 activities for the prior calendar year. The report must be in
8 a format prescribed by the agency and must contain the number
9 of grievances filed in the past year and a summary of the
10 subject, nature, and resolution of such grievances.

11 (26) Injuries that require medical treatment for which
12 charges will be incurred whether or not such injuries are
13 reported to the carrier, but which do not disable the employee
14 for more than 7 days, shall not be used by the agency in
15 determining insurer compliance with this section.

16 Section 4. Paragraphs (a), (b), and (f) of subsection
17 (1) and subsections (3) and (4) of section 440.15, Florida
18 Statutes, 1998 Supplement, are amended, and subsection (16) is
19 added to that section, to read:

20 440.15 Compensation for disability.--Compensation for
21 disability shall be paid to the employee, subject to the
22 limits provided in s. 440.12(2), as follows:

23 (1) PERMANENT TOTAL DISABILITY.--

24 (a) In case of total disability adjudged to be
25 permanent, 66 2/3 percent of the average weekly wages shall be
26 paid to the employee during the continuance of such total
27 disability. Entitlement to benefits from permanent total
28 disability shall cease upon the employee reaching age 70.

29 ~~(b) Only a catastrophic injury as defined in s. 440.02~~
30 ~~shall,~~In the absence of conclusive proof of a substantial
31 earning capacity, only a catastrophic injury as defined in s.

1 440.02(37) shall be presumed to constitute permanent total
2 disability. In any case involving catastrophic injury, no
3 compensation shall be payable under paragraph (a) if the
4 employee is engaged in, or is physically capable of engaging
5 in, any gainful employment, including sheltered employment.
6 The burden shall be on the employee to establish that the
7 employee is not able to perform, due to physical limitations,
8 at least part-time sedentary work available within a 100-mile
9 radius of the employee's residence. Only claimants with
10 catastrophic injuries are eligible for permanent total
11 benefits. In no other case may permanent total disability be
12 awarded.

13 (f)1. If permanent total disability results from
14 injuries that occurred subsequent to June 30, 1955, and for
15 which the liability of the employer for compensation has not
16 been discharged under s. 440.20(12), the injured employee
17 shall receive additional weekly compensation benefits equal to
18 5 percent of her or his weekly compensation rate, as
19 established pursuant to the law in effect on the date of her
20 or his injury, multiplied by the number of calendar years
21 since the date of injury. The weekly compensation payable and
22 the additional benefits payable under this paragraph, when
23 combined, may not exceed the maximum weekly compensation rate
24 in effect at the time of payment as determined pursuant to s.
25 440.12(2). Entitlement to these supplemental payments shall
26 cease at age 62 if the employee is eligible for social
27 security benefits under 42 U.S.C. s. ~~ss~~-402 or and 423,
28 whether or not the employee has applied for such benefits.
29 These supplemental benefits shall be paid by the division out
30 of the Workers' Compensation Administration Trust Fund when
31 the injury occurred subsequent to June 30, 1955, and before

1 July 1, 1984. These supplemental benefits shall be paid by the
2 employer when the injury occurred on or after July 1, 1984.
3 Supplemental benefits are not payable for any period prior to
4 October 1, 1974.

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

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

26 3. When an injured employee receives a full or partial
27 lump-sum advance of the employee's permanent total disability
28 compensation benefits, the employee's benefits under this
29 paragraph shall be computed on the employee's weekly
30 compensation rate as reduced by the lump-sum advance.

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

1 (a) Impairment benefits.--

2 1. Once the employee has reached the date of maximum
3 medical improvement from all compensable injuries, impairment
4 benefits are due and payable within 20 days after the carrier
5 has knowledge of the impairment.

6 2. The three-member panel, in cooperation with the
7 division, shall establish and use a uniform permanent
8 impairment rating schedule. This schedule must be based on
9 medically or scientifically demonstrable findings as well as
10 the systems and criteria set forth in the American Medical
11 Association's Guides to the Evaluation of Permanent
12 Impairment; the Snellen Charts, published by American Medical
13 Association Committee for Eye Injuries; and the Minnesota
14 Department of Labor and Industry Disability Schedules. The
15 schedule should be based upon objective findings. The schedule
16 shall be more comprehensive than the AMA Guides to the
17 Evaluation of Permanent Impairment and shall expand the areas
18 already addressed and address additional areas not currently
19 contained in the guides. On August 1, 1979, and pending the
20 adoption, by rule, of a permanent schedule, Guides to the
21 Evaluation of Permanent Impairment, copyright 1977, 1971,
22 1988, by the American Medical Association, shall be the
23 temporary schedule and shall be used for the purposes hereof.
24 For injuries after July 1, 1990, pending the adoption by
25 division rule of a uniform disability rating schedule, the
26 Minnesota Department of Labor and Industry Disability Schedule
27 shall be used unless that schedule does not address an injury.
28 In such case, the Guides to the Evaluation of Permanent
29 Impairment by the American Medical Association shall be used.
30 Determination of permanent impairment under this schedule must
31 be made by a physician licensed under chapter 458, a doctor of

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

8 3. All impairment income benefits shall be based on an
9 impairment rating using the impairment schedule referred to in
10 subparagraph 2. Impairment ~~income~~ benefits are paid weekly at
11 the rate of 66 2/3 ~~50~~ percent of the employee's average
12 weekly wage ~~temporary total disability benefit~~ not to exceed
13 the maximum weekly benefit under s. 440.12. An employee's
14 entitlement to impairment income benefits begins the day after
15 the employee reaches maximum medical improvement or the
16 expiration of temporary benefits, whichever occurs earlier,
17 and continues until the earlier of:

18 a. The expiration of a period computed at the rate of
19 3 weeks for each percentage point of impairment; or

20 b. The death of the employee.

21 4. After the employee has been certified by a doctor
22 as having reached maximum medical improvement or 6 weeks
23 before the expiration of temporary benefits, whichever occurs
24 earlier, the certifying doctor shall evaluate the condition of
25 the employee and assign an impairment rating, using the
26 impairment schedule referred to in subparagraph 2.

27 Compensation is not payable for the mental, psychological, or
28 emotional injury arising out of depression from being out of
29 work. If the certification and evaluation are performed by a
30 doctor other than the employee's treating doctor, the
31 certification and evaluation must be submitted to the treating

1 doctor, and the treating doctor must indicate agreement or
2 disagreement with the certification and evaluation. The
3 certifying doctor shall issue a written report to the
4 division, the employee, and the carrier certifying that
5 maximum medical improvement has been reached, stating the
6 impairment rating, and providing any other information
7 required by the division. If the employee has not been
8 certified as having reached maximum medical improvement before
9 the expiration of 102 weeks after the date temporary total
10 disability benefits begin to accrue, the carrier shall notify
11 the treating doctor of the requirements of this section.

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

14 6. The division may by rule specify forms and
15 procedures governing the method of payment of wage loss and
16 impairment benefits for dates of accidents before January 1,
17 1994, and for dates of accidents on or after January 1, 1994.

18 (b) Wage-loss ~~Supplemental~~ benefits.--

19 1. All wage-loss ~~supplemental~~ benefits must be paid in
20 accordance with this subsection. An employee is entitled to
21 wage-loss ~~supplemental~~ benefits as provided in this paragraph
22 as of the expiration of the impairment period, if:

23 a. The employee has an impairment rating from the
24 compensable injury of 5 ~~20~~ percent or more as determined
25 pursuant to this chapter;

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

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

1 and has not refused any employment during the wage-loss
2 period.

3 d. An employee shall not be entitled to any wage-loss
4 benefits if, during the impairment benefit period, the
5 employee has refused any employment.

6 2. In addition to payment of impairment benefits, each
7 injured worker who suffers a permanent impairment of 5 percent
8 or more, which permanent impairment is determined pursuant to
9 this chapter, is not based solely on subjective complaints,
10 and results in one or more work-related physical restrictions
11 that are directly attributable to the injury, may be entitled
12 to wage-loss benefits under this paragraph provided that such
13 permanent impairment results in a work-related physical
14 restriction that affects such employee's ability to perform
15 the activities of the employee's usual or other appropriate
16 employment. Such benefits shall be based on actual wage loss
17 and shall not be subject to the minimum compensation rate set
18 forth in s. 440.12(2). Subject to the maximum compensation
19 rate as set forth in s. 440.12(2), such wage-loss benefits
20 shall be equal to 80 percent of the difference between 80
21 percent of the employee's average weekly wage and the salary,
22 wages, and other remuneration the employee is able to earn
23 after reaching maximum medical improvement, as compared
24 weekly; however, the weekly wage-loss benefits may not exceed
25 an amount equal to 66 2/3 percent of the employee's average
26 weekly wage at the time of injury. In order to simplify the
27 comparison of the preinjury average weekly wage with the
28 salary, wages, and other remuneration the employee is able to
29 earn after reaching maximum medical improvement, the division
30 may by rule provide for the modification of the weekly
31 comparison so as to coincide as closely as possible with the

1 injured worker's pay periods. In determining the amount the
2 employee is able to earn in any month after an injury,
3 commissions and similar irregular payments shall be allocated
4 first to the week in which they are received, in an amount
5 that when added to other earnings for such week does not
6 exceed the employee's average weekly wage, and the balance
7 shall be allocated in the same manner to the subsequent weeks
8 until fully allocated, but not exceeding 52 weeks from the
9 week that the commission or a similar irregular payment was
10 received.~~If an employee is not entitled to supplemental~~
11 ~~benefits at the time of payment of the final weekly impairment~~
12 ~~income benefit because the employee is earning at least 80~~
13 ~~percent of the employee's average weekly wage, the employee~~
14 ~~may become entitled to supplemental benefits at any time~~
15 ~~within 1 year after the impairment income benefit period ends~~
16 ~~if:~~
17 a. ~~The employee earns wages that are less than 80~~
18 ~~percent of the employee's average weekly wage for a period of~~
19 ~~at least 90 days;~~
20 b. ~~The employee meets the other requirements of~~
21 ~~subparagraph 1.; and~~
22 c. ~~The employee's decrease in earnings is a direct~~
23 ~~result of the employee's impairment from the compensable~~
24 ~~injury.~~
25 3. The amount determined to be the salary, wages, and
26 other remuneration the employee is able to earn after reaching
27 the date of maximum medical improvement shall in no case be
28 less than the sum actually being earned by the employee,
29 including earnings from sheltered employment. Wage-loss forms
30 and job search reports shall be mailed to the employer,
31 carrier, or servicing agent within 14 days after the time

1 benefits are due. Failure by an employee to timely request
2 benefits and file the appropriate job search forms showing
3 that the employee made a good faith job search after the
4 employee has knowledge that a job search is required, whether
5 the employee has been advised by the employer, carrier,
6 servicing agent, or the employee's attorney, shall result in
7 benefits not being payable during the time the employee fails
8 to timely file a request for wage loss and the job search
9 reports. During the wage-loss period, if the employee is
10 offered a bona fide position of employment the employee is
11 capable of performing, given the physical condition of the
12 employee and the geographic accessibility of the position, the
13 employee's weekly wages are considered equivalent to the
14 weekly wages for the position offered to the employee. If an
15 employee does not obtain and maintain employment, the employer
16 may show that the salary, wages, and other remuneration the
17 employee is able to earn is greater than zero by providing
18 data concerning actual job openings within a reasonable
19 geographical area which the employee is physically and
20 vocationally capable of performing, in which case the amount
21 the employee is able to earn may be deemed to be the amount
22 the employee could earn in such jobs.~~If an employee earns~~
23 ~~wages that are at least 80 percent of the employee's average~~
24 ~~weekly wage for a period of at least 90 days during which the~~
25 ~~employee is receiving supplemental benefits, the employee~~
26 ~~ceases to be entitled to supplemental benefits for the filing~~
27 ~~period. Supplemental benefits that have been terminated shall~~
28 ~~be reinstated when the employee satisfies the conditions~~
29 ~~enumerated in subparagraph 2. and files the statement required~~
30 ~~under subparagraph 5. Notwithstanding any other provision, if~~
31 ~~an employee is not entitled to supplemental benefits for 12~~

1 ~~consecutive months, the employee ceases to be entitled to any~~
2 ~~additional income benefits for the compensable injury. If the~~
3 ~~employee is discharged within 12 months after losing~~
4 ~~entitlement under this subsection, benefits may be reinstated~~
5 ~~if the employee was discharged at that time with the intent to~~
6 ~~deprive the employee of supplemental benefits.~~

7 4. An injured worker requesting wage-loss benefits for
8 any period during which such injured worker was unemployed
9 shall have a duty to make reasonable and good-faith efforts to
10 obtain suitable gainful employment on a consistent basis. The
11 term "suitable gainful employment" means employment that is
12 reasonably attainable considering the individual's age,
13 education, personal aptitudes, previous vocational experience,
14 and physical abilities. For any such period, the employer may
15 require the injured worker's request for wage-loss benefits to
16 include verification of the injured worker's efforts to obtain
17 suitable gainful employment, which verification shall be made
18 on forms prescribed by the division. In determining whether
19 the injured worker has made reasonable and good-faith efforts
20 to obtain suitable gainful employment, a judge of compensation
21 claims shall consider the availability of suitable employment
22 in the area of the injured worker's residence, the injured
23 worker's access to transportation, and the effect of the
24 injured worker's physical and mental impairments upon the
25 injured worker's ability to conduct job search activities.
26 Unless otherwise provided under this section, an injured
27 worker requesting wage-loss benefits for any period during
28 which he or she has been unemployed is not entitled to such
29 benefits if he or she has failed or refused to make reasonable
30 and good-faith efforts to obtain suitable gainful employment
31 during such period.~~During the period that impairment income~~

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

16 5.a. The right to wage-loss benefits shall terminate
17 as of the end of any 1-year period commencing at any time
18 subsequent to the month when the injured employee reaches the
19 date of maximum medical improvement, unless during such 1-year
20 period wage-loss benefits have been payable during at least 3
21 consecutive months. This limitation period shall not be tolled
22 or extended by the incarceration of the employee or by virtue
23 of the employee becoming an inmate of a penal institution.

24 b. For injuries occurring after June 30, 1999, an
25 employee shall be eligible for 4 weeks of wage-loss benefits
26 for each percentage point of permanent impairment.~~After the~~
27 ~~initial determination of supplemental benefits, the employee~~
28 ~~must file a statement with the carrier stating that the~~
29 ~~employee has earned less than 80 percent of the employee's~~
30 ~~average weekly wage as a direct result of the employee's~~
31 ~~impairment, stating the amount of wages the employee earned in~~

1 ~~the filing period, and stating that the employee has in good~~
2 ~~faith sought employment commensurate with the employee's~~
3 ~~ability to work. The statement must be filed quarterly on a~~
4 ~~form and in the manner prescribed by the division. The~~
5 ~~division may modify the filing period as appropriate to an~~
6 ~~individual case. Failure to file a statement relieves the~~
7 ~~carrier of liability for supplemental benefits for the period~~
8 ~~during which a statement is not filed.~~

9 6. If an injured employee claims wage-loss benefits
10 and is not entitled to the wage loss claimed in whole or in
11 part due to application of the deemed earnings provisions of
12 subparagraph 3., the employee shall be presumed to be
13 employable in the open labor market and not permanently and
14 totally disabled. Additionally, an injured employee who
15 refuses employment that is found to be appropriate in light of
16 any physical limitation for the work-related injury shall be
17 presumed not to have suffered an injury producing a permanent
18 total disability. An employee who does return to work and is
19 entitled to wage-loss benefits shall likewise be presumed to
20 be employable in the open labor market and not permanently and
21 totally disabled. There shall be no presumption relative to
22 employability or permanent total disability for an injured
23 employee who receives full wage-loss entitlement under this
24 ~~paragraph. The carrier shall begin payment of supplemental~~
25 ~~benefits not later than the seventh day after the expiration~~
26 ~~date of the impairment income benefit period and shall~~
27 ~~continue to timely pay those benefits. The carrier may request~~
28 ~~a mediation conference for the purpose of contesting the~~
29 ~~employee's entitlement to or the amount of supplemental income~~
30 ~~benefits.~~

1 7. If an injured employee is either adjudicated or
2 accepted as permanently totally disabled, all impairment
3 benefits or wage-loss benefits paid shall be a credit against
4 any entitlement to permanent total disability. ~~Supplemental~~
5 ~~benefits are calculated quarterly and paid monthly. For~~
6 ~~purposes of calculating supplemental benefits, 80 percent of~~
7 ~~the employee's average weekly wage and the average wages the~~
8 ~~employee has earned per week are compared quarterly. For~~
9 ~~purposes of this paragraph, if the employee is offered a bona~~
10 ~~fide position of employment that the employee is capable of~~
11 ~~performing, given the physical condition of the employee and~~
12 ~~the geographic accessibility of the position, the employee's~~
13 ~~weekly wages are considered equivalent to the weekly wages for~~
14 ~~the position offered to the employee.~~

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

21 9. ~~The division may by rule define terms that are~~
22 ~~necessary for the administration of this section and forms and~~
23 ~~procedures governing the method of payment of supplemental~~
24 ~~benefits for dates of accidents before January 1, 1994, and~~
25 ~~for dates of accidents on or after January 1, 1994.~~

26 (c) Duration of temporary impairment and wage-loss
27 ~~supplemental~~ income benefits.--The employee's eligibility for
28 temporary benefits, impairment income benefits, and wage-loss
29 ~~supplemental~~ benefits terminates on the expiration of 401
30 weeks after the date of injury.

31 (4) TEMPORARY PARTIAL DISABILITY.--

1 (a) In case of temporary partial disability,
2 compensation shall be equal to 80 percent of the difference
3 between 80 percent of the employee's average weekly wage and
4 the salary, wages, and other remuneration the employee is able
5 to earn, as compared weekly; however, the weekly benefits may
6 not exceed an amount equal to 66 2/3 percent of the employee's
7 average weekly wage at the time of injury. In order to
8 simplify the comparison of the preinjury average weekly wage
9 with the salary, wages, and other remuneration the employee is
10 able to earn, the division may by rule provide for the
11 modification of the weekly comparison so as to coincide as
12 closely as possible with the injured worker's pay periods. The
13 amount determined to be the salary, wages, and other
14 remuneration the employee is able to earn shall in no case be
15 less than the sum actually being earned by the employee,
16 including earnings from sheltered employment. During any
17 denial of temporary partial disability, if the employee is
18 offered a bona fide position of employment which the employee
19 is capable of performing, given the physical condition of the
20 employee and the geographic accessibility of the position, the
21 employee's weekly wages are considered equivalent to the
22 weekly wages for the position offered to the employee. If an
23 employee does not obtain and maintain employment, the employer
24 may show that the salary, wages, or other remuneration the
25 employee is able to earn is greater than zero by providing
26 evidence of actual job openings within a reasonable
27 geographical area which the employee is physically and
28 vocationally capable of performing, in which case the amount
29 the employee is able to earn may be deemed to be the amount
30 the employee could earn in such jobs.

31

1 (b) At no time shall an injured employee be entitled
2 to more than 104 weeks of temporary benefits whether they are
3 temporary total, temporary partial, or a combination of both.
4 Such benefits shall be paid during the continuance of such
5 disability, not to exceed a period of 104 weeks, as provided
6 by this subsection and subsection (2). Once the injured
7 employee reaches the maximum number of weeks, temporary
8 disability benefits cease and the injured worker's permanent
9 impairment must be determined. The division may by rule
10 specify forms and procedures governing the method of payment
11 of temporary disability benefits for dates of accidents before
12 January 1, 1994, and for dates of accidents on or after
13 January 1, 1994.

14 (16) SUPPLEMENTAL TEMPORARY BENEFITS.--

15 (a) An injured employee may be entitled to
16 supplemental temporary benefits for a period up to 26 weeks if
17 surgical intervention for a compensable injury is medically
18 necessary. Supplemental temporary benefits shall only be
19 payable for periods for which it is medically demonstrated
20 that the injured employee is suffering from a temporary total
21 disability or temporary partial disability as a result of the
22 surgical intervention. Such benefits shall be calculated in
23 accordance with subsections (2) and (4).

24 (b) An injured employee shall at no time be entitled
25 to more than 130 weeks of supplemental temporary benefits by
26 operation of this subsection in combination with benefits
27 provided under subsections (2) and (4).

28 (c) In the absence of entitlement to benefits under
29 this subsection prior to the expiration of the 104-week
30 maximum for temporary benefits, the claimant shall still be
31 assigned a permanent impairment rating in accordance with

1 subparagraph (3)(a)4., and impairment benefits shall commence.
2 If benefits under this subsection become due, the payment of
3 impairment benefits shall cease until such time as
4 supplemental temporary benefits payable under this subsection
5 are no longer due. In such case, payment of impairment
6 benefits will be reinstated for the remaining portion of the
7 impairment benefits owed without reclassification of
8 impairment benefits previously paid to another classification
9 of benefits, continuing until expiration of the period of
10 entitlement to impairment benefits.

11 Section 5. This act shall take effect October 1, 1999.

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14 LEGISLATIVE SUMMARY

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16 Revises various provisions of workers' compensation
17 insurance, including modifying the definition of
18 catastrophic injury. Allows insurers to exceed fee
19 schedule amounts. Provides for informal and formal
20 grievances. Prohibits the Agency for Health Care
21 Administration from prohibiting insurers from using
22 alternative managed care arrangements. Allows
23 self-insureds to opt out of mandatory managed care
24 arrangements. Revises compensation for disability
25 provisions relating to permanent total disability,
26 permanent impairment and wage-loss benefits, and
27 temporary partial disability, and provides for
28 supplemental temporary benefits. (See bill for details.)

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