

STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

HOUSE BILL NO. 2491

BY: BASTIN

AS INTRODUCED

AN ACT RELATING TO WORKERS' COMPENSATION; AMENDING 36 O.S. 1991, SECTION 924.2, WHICH RELATES TO REDUCED PREMIUM CHARGES FOR SUCCESSFUL PARTICIPATION IN OCCUPATIONAL SAFETY AND HEALTH PROGRAMS; AUTHORIZING ADDITIONAL PREMIUM REDUCTIONS; AMENDING 85 O.S. 1991, SECTIONS 3.9, 14 AND 17, WHICH RELATE TO THE WORKERS' COMPENSATION ACT; MODIFYING DUTIES OF OMBUDSMEN; REQUIRING EMPLOYERS TO SELECT ATTENDING, TREATING AND EVALUATING PHYSICIANS FOR INJURED EMPLOYEES; PROHIBITING INJURED EMPLOYEES FROM SELECTING PHYSICIANS EXCEPT UNDER CERTAIN CIRCUMSTANCES; AUTHORIZING INJURED EMPLOYEES TO REQUEST THE APPOINTMENT OF AN INDEPENDENT MEDICAL EXAMINER; MODIFYING REFERENCE TO THIRD PHYSICIAN; PROVIDING PROCEDURES GOVERNING THE APPOINTMENT OF AN INDEPENDENT MEDICAL EXAMINER; PROVIDING FOR THE DEVELOPMENT OF A LIST OF INDEPENDENT MEDICAL EXAMINERS; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 36 O.S. 1991, Section 924.2, is amended to read as follows:

Section 924.2 A. Any rate, schedule of rates or rating plan for workers' compensation insurance submitted to or filed with the State Board for Property and Casualty Rates, or fixed by the Board of Managers of the State Insurance Fund, and premiums, by whatever name, for workers' compensation for self-insureds except for group self-insured associations shall provide for an appropriate reduction in premium charges, by whatever name, for those eligible insured employers who have successfully participated in the occupational safety and health consultation, education and training program administered by the Commissioner of the Department of Labor pursuant to Section 414 of Title 40 of the Oklahoma Statutes.

B. All insurance companies writing workers' compensation insurance in this state, including the State Insurance Fund, and all self-insureds providing workers' compensation insurance except for group self-insured associations, shall allow an appropriate reduction in premium charges to all eligible employers who qualify for the reduction pursuant to the provisions of this section.

C. Eligible employers shall be those employers:

1. Who are insured by an insurance company writing workers' compensation insurance in this state;
2. Who are self-insured; or
3. Who are insured by the State Insurance Fund.

D. In order to qualify for the reduction in workers' compensation insurance premium, an employer shall successfully participate annually in the occupational safety and health consultation, education and training program administered by the Department of Labor. Successful participation shall be defined as:

1. Undergoing a safety and health hazard survey of the workplace, including an evaluation of the employer's safety and health program and onsite interviews with employees by the Department's consultant;

2. Correcting all hazards identified during the onsite visit within a reasonable period of time as established by the Department;

3. Establishing an effective workplace safety and health program and implementing program provisions within a reasonable period of time as established by the Department. The program shall include:

- a. demonstration of management commitment to worker safety and health,
- b. procedures for identifying and controlling workplace hazards,
- c. development and communication of safety plans, rules and work procedures, and
- d. training for supervisors and employees in safe and healthful work practices;

4. Reducing by one-third (1/3) or more the extent to which the lost workday case rate, as measured by the Department of Labor, was above the national average for the industry at the time the employer elected to participate in the occupational safety and health consultation, education and training program, or maintaining a rate at or below the national average for the industry; and

5. Documenting a reduction in workers' compensation claims for the preceding year by showing one of the following:

- a. a ten percent (10%) reduction in the dollar amount of claims,
- b. a ten percent (10%) reduction in the severity of claims, or
- c. no reported claims,

as a result of attending the occupational safety and health consultation, education and training program administered by the Department of Labor.

E. 1. Upon successful participation in the occupational safety and health consultation, education and training program as defined

in subsection D of this section, an employer shall be issued a certificate by the Commissioner of the Department of Labor which shall be the basis of qualification for the reduction in workers' compensation insurance premium, by whatever name. The certificate shall qualify the employer for a premium reduction for a one-year period.

2. An employer that has successfully participated in the occupational safety and health consultation, education and training program as defined in subsection D of this section and that has had no reported workers' compensation claims for the immediately preceding five-year period shall be issued a certificate by the Commissioner of the Department of Labor which shall be the basis of qualification for the reduction in workers' compensation insurance premium, by whatever name. The certificate shall qualify the employer for a ten percent (10%) premium reduction for a one-year period. An additional one percent (1%) reduction in workers' compensation premium, by whatever name, shall be granted to all employers subject to the provisions of this paragraph for each additional year of workers' compensation claims-free experience up to a maximum of a fifteen percent (15%) premium reduction.

F. The Insurance Commissioner, the Administrator of the Workers' Compensation Court and the State Insurance Fund Commissioner shall maintain records documenting reductions in workers' compensation insurance premiums granted pursuant to this section and shall make an annual report of such reductions to the President Pro Tempore of the Senate and the Speaker of the House of Representatives by January 1 of each year. Insurers shall report such premium reductions in their annual statement.

G. The State Insurance Fund shall instruct its actuary to continually review the insurance premium credit program, developed and implemented pursuant to Section 142a of Title 85 of the Oklahoma Statutes, to determine if the program is detrimental to the

financial stability of the Fund. If the actuary determines that the program contributes detrimentally to the financial stability of the Fund, the actuary shall immediately recommend to the State Insurance Fund Commissioner that the safety premium reduction cease for a one-year period.

SECTION 2. AMENDATORY 85 O.S. 1991, Section 3.9, is amended to read as follows:

Section 3.9 A. The Administrator shall establish an ombudsman program to assist injured workers, employers and persons claiming death benefits in obtaining benefits under the Workers' Compensation Act.

B. Ombudsmen shall provide counseling and information to ~~injured workers,~~ to facilitate the resolution of a claim under the Workers' Compensation Act, and shall investigate complaints, and communicate with employers, insurance carriers, self-insurers, and health care providers. An ombudsman shall otherwise assist unrepresented claimants, employers, and other parties to enable them to protect their rights in the workers' compensation system and expedite the provision of benefits to the injured worker in a timely manner.

SECTION 3. AMENDATORY 85 O.S. 1991, Section 14, is amended to read as follows:

Section 14. A. The employer shall select an attending physician who, for purposes of the Workers' Compensation Act, also shall be the treating and evaluating physician, and shall promptly provide for an injured employee such medical, surgical or other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus as may be necessary after the injury. The attending physician shall supply the injured employee and the employer with a full examining report of injuries found at the time of examination and proposed treatment, this report to be supplied within seven (7) days after the examination; also, at the conclusion

of the treatment the attending physician shall supply a full report of his treatment to the employer of the injured employee.

~~B. The employer's selected physician shall have the right to examine the injured employee. A report of such examination shall be furnished the injured employee within seven (7) days after such examination.~~

~~C. If the employer fails or neglects to provide the same medical attendance or treatment, services or apparatus provided for~~ in subsection A of this section within a reasonable time after knowledge of the injury, the injured employee, during the period of such neglect or failure, may do so at the expense of the employer ~~provided, however, that the~~. Notwithstanding any other provision of this section, an injured employee, or another in his behalf, may obtain emergency treatment at the expense of the employer where such emergency treatment is not provided by the employer.

~~Notwithstanding any other provision of this section, the employee may select a physician of his choice to render necessary medical treatment, at the expense of the employer; provided, however, that the attending~~ Any physician ~~so~~ selected by the employee as provided in this subsection shall notify the employer and/or the insurance carrier within seven (7) days after examination or treatment was first rendered.

D. The term "physician" as used in this section shall mean any person licensed in Oklahoma as a medical doctor, chiropractor, chiropodist, dentist, osteopathic physician or optometrist. The Court may accept testimony from a psychologist if the testimony is made under the direction of a medical doctor. If such injured employee should become deceased, whether or not he has filed a claim, such fact shall not affect liability for medical attention previously rendered, and any person or persons entitled to such benefits may enforce charges therefor as though such employee had survived.

E. Whoever renders medical, surgical or other attendance or treatment, nurse and hospital service, medicine, crutches and apparatus, or emergency treatment, may submit such charges and duration of treatment to the Administrator of the Court for review in accordance with the rules and regulations of the Administrator. Such charges and duration of treatment shall be limited to the usual, customary and reasonable charges and duration of treatment as prescribed and limited by a schedule of fees and treatment for all medical providers to be adopted, after notice and public hearing, by the Administrator. Said fee and treatment schedule shall be based on the usual, customary and reasonable medical charges of health care providers in the same trade area for comparable treatment of a person with similar injuries and the duration of treatment prevailing in this state for persons with similar injuries. The fee and treatment schedule shall be reviewed biennially by the Administrator and, after such review, and notice and public hearing, the Administrator shall be empowered to amend or alter said fee and treatment schedule to ensure its adequacy. The order of the Administrator approving medical and treatment charges pursuant to this section shall be enforceable by the Court in the same manner as provided in the Workers' Compensation Act for the enforcement of other compensation payments. Any party feeling aggrieved by the order, decision or award of the Administrator shall, within ten (10) days, have the right to request a hearing on such medical and treatment charges by a judge of the Workers' Compensation Court. The judge of the Court may affirm the decision of the Administrator, or reverse or modify said decision only if it is found to be contrary to the fee and treatment schedule existing at the time the said medical care or treatment was provided. The order of the judge shall be subject to the same appellate procedure set forth in Section 3.6 of this title for all other orders of the Court. The right to recover charges for every type of medical care for personal

injuries arising out of and in the course of covered employment as herein defined, shall lie solely with the Workers' Compensation Court, and all jurisdiction of the other trial courts of this state over such action is hereby abolished. The foregoing provision, relating to approval and enforcement of such charges and duration of treatment, shall not apply where a written contract exists between the employer or insurance carrier and the person who renders such medical, surgical or other attendance or treatment, nurse and hospital service, or furnishes medicine, crutches or apparatus.

F. The Court or Administrator shall have authority on application of employee or employer or its insurance carrier to order a change of physicians at the expense of the employer when, in its judgment, such change is desirable or necessary; provided, the employer shall not be liable to make any of the payments provided for in this section, in case of contest of liability, where the Court shall decide that the injury does not come within the provisions of the Workers' Compensation Act.

G. If the employee chooses a physician for treatment and subsequently changes physicians without the approval of the Court or Administrator, or without agreement of the parties, the maximum liability of the employer for the expenses of all such subsequent physicians shall be Five Hundred Dollars (\$500.00). Provided, the limitations shall not apply to referrals by the treating physician for treatment or diagnostic procedures.

SECTION 4. AMENDATORY 85 O.S. 1991, Section 17, is amended to read as follows:

Section 17. A. 1. The determination of disability shall be the responsibility of the Court. Any claim submitted by an employee for compensation for permanent disability must be supported by competent medical testimony which shall include an evaluation by ~~a~~ the treating physician stating his opinion of the employee's percentage of permanent impairment and whether or not the impairment

is job-related and caused by the accidental injury or occupational disease. For purposes of this section, a physician shall have the same meaning as defined in Section 14 of this title and shall include a person licensed by another state who would be qualified to be a licensed physician under the laws of Oklahoma.

2. If the treating physician was selected by the employer as provided in Section 14 of this title and the employee is not satisfied with the physician's evaluation of permanent impairment, the employee may request the Court to appoint an independent medical examiner from the list of qualified independent medical examiners established by the Court pursuant to this section.

3. The written medical testimony of any physician shall be on a form provided by the Administrator.

4. When the medical testimony to be introduced on behalf of the employee and employer is divergent by more than twenty-five percent (25%) as to the extent of permanent impairment of the employee or when there is any disagreement in the evidence as to the medical cause of the medical permanent impairment, or if the employee has no lost time from employment, any party may challenge such testimony by giving written notice to all other parties and to the Administrator. The written notice shall be given prior to or during any prehearing conference. Upon receipt of such notice, the challenging party and the party challenged shall select ~~a third physician~~ an independent medical examiner who shall be afforded a reasonable opportunity to examine the employee together with all medical records involved and any other medical data or evidence that he may consider to be relevant. The ~~third physician~~ independent medical examiner shall issue a verified written report on a form provided by the Administrator ~~to~~ of the Court stating his finding of the percentage of permanent impairment of the employee and whether or not the impairment is job-related and caused by the accidental injury or occupational disease.

B. 1. When the challenging party and the challenged party are for any reason unable or unwilling to agree upon the appointment of ~~a third physician~~ an independent medical examiner within ten (10) days, the Court shall appoint the ~~third physician~~ independent medical examiner from the list of qualified independent medical examiners established by the Court pursuant to this section. Upon receipt of the ~~third physician's~~ independent medical examiner's report, the party shall have the right to object to the introduction into evidence of the report. The objection must be made by giving written notification to all parties and to the Court within five (5) days after receipt of the report. The physicians must then testify in person or by deposition.

2. Any physician who is appointed or selected pursuant to the provisions of this section shall be reimbursed for the medical examination, reports and fees in a reasonable and customary amount set by the Court, and these costs shall be borne by the employer.

C. The Court shall establish a list of qualified independent medical examiners to assist in resolving disputes involving medical issues. The list shall be composed of physicians of different medical specialties for examination of employees for disputed medical treatment.

D. The parties may stipulate to the appointment of ~~a third physician~~ an independent medical examiner even in the absence of divergent medical testimony.

~~D.~~ E. The impairment rating determined by the ~~third physician~~ independent medical examiner may be followed by the Court. If the Court deviates from the ~~third physician's~~ independent medical examiner's impairment rating by more than ten percent (10%), the Court shall specifically identify the basis for such deviation in its order.

SECTION 5. This act shall become effective September 1, 1992.

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