

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

COMMITTEE SUBSTITUTE

FOR HOUSE BILL NO. 2576

By: Maddox (Jim)

COMMITTEE SUBSTITUTE

An Act relating to workers' compensation and the State Insurance Fund; amending 85 O.S. 1991, Sections 1.2, as last amended by Section 1, Chapter 349, O.S.L. 1993, 3, as last amended by Section 51, Chapter 366, O.S.L. 1993, 3.9, 5, as amended by Section 3, Chapter 294, O.S.L. 1992, 12, 13, 14, as last amended by Section 7, Chapter 349, O.S.L. 1993, 17, 22, as last amended by Section 10, Chapter 349, O.S.L. 1993, 24.1, as amended by Section 32, Chapter 335, O.S.L. 1992, 24.2, as amended by Section 11, Chapter 349, O.S.L. 1993, 42, 43, 45 and 61, as last amended by Section 12, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1993, Sections 1.2, 3, 5, 14, 22, 24.1, 24.2 and 61), which relate to the Workers' Compensation Act; amending 85 O.S. 1991, Sections 132, 134 and 139, as amended by Section 2, Chapter 60, O.S.L. 1992 (85 O.S. Supp. 1993, Section 139), which relate to the State Insurance Fund; amending 85 O.S. 1991, Sections 172, as amended by Section 11, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1993, Section 172), which relates to the Special Indemnity Fund; amending 85 O.S. 1991, Section 177, as amended by Section 23, Chapter 245, O.S.L. 1993 (85 O.S. Supp. 1993, Section 177), which relates to the Workers' Compensation Administration Fund; amending Section 18, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1993, Section 201.1), which relates to the Physician Advisory Committee; amending 36 O.S. 1991, Section 624, which relates to insurance companies; authorizing special judges at the Workers' Compensation Court; providing for term, jurisdiction and compensation of such judges; modifying and defining terms; modifying ombudsman program; prohibiting certain acts by employers; modifying exclusive remedy; identifying when compensation for temporary total compensation commences; modifying the authority of an employee to select a physician; modifying scope of the schedule of medical fees; providing for certified managed care programs; stating duties of the Insurance Commissioner of the State of Oklahoma; providing procedures relating to certification and supervision of managed care programs; requiring certain rules; modifying grounds for and procedures relating to the selection of a third physician; providing for the appointment of an audiologist as a third physician; modifying effect of determinations by third physicians; modifying schedule of compensation; requiring certain notice and specifying contents thereof; modifying certain penalties; requiring certain notices; permitting consideration of unemployment compensation benefits in determination of workers' compensation benefits; modifying ways of securing compensation to employees; authorizing workers' compensation equivalent insurance

products; stating duties of the Insurance Commissioner and the State Board for Property and Casualty Rates; providing criteria for the approval of such products; stating legislative intent; imposing requirements on certain insurers; transferring certain duties of the Board of Managers of the State Insurance Fund to the State Board for Property and Casualty Rates; prohibiting the approval of certain rates; deleting obsolete language; updating statutory references; modifying the power and authority of the State Insurance Fund Commissioner or delegated officer in conducting the business and affairs of the State Insurance Fund; requiring the Insurance Commissioner to examine the State Insurance Fund; modifying eligibility to benefits from the Special Indemnity Fund; subjecting workers' compensation equivalent insurance products to certain tax; expanding the duties of the Physician Advisory Committee; subjecting the State Insurance Fund to certain provisions governing insurance companies; prohibiting certain acts; providing sanctions; creating the Office of Ombudsman Services on Workers' Compensation within the Oklahoma Department of Commerce and stating duties thereof; repealing 85 O.S. 1991, Sections 2.3 and 2.4, which relate to persons providing services in medical care or social services programs; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 85 O.S. 1991, Section 1.2, as last amended by Section 1, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1993, Section 1.2), is amended to read as follows:

Section 1.2 There is hereby created the Workers' Compensation Court which shall consist of ten (10) judges and such special judges as may be appointed by the presiding judge pursuant to subsection D of this section. Each judge of the Court, other than special judges, shall be appointed to a designated numbered position on the Court. The positions shall be numbered one through ten. The initial terms of ~~the~~ such judges by position number shall expire on the following dates:

Position 1 shall expire 7-1-84.

Position 2 shall expire 7-1-84.

Position 3 shall expire 7-1-84.

Position 4 shall expire 7-1-82.

Position 5 shall expire 7-1-82.

Position 6 shall expire 7-1-80.

Position 7 shall expire 7-1-80.

Position 8 shall expire 7-1-88.

Position 9 shall expire 7-1-88.

Position 10 shall expire 7-1-96 after being appointed under the provisions hereinafter set forth effective September 1, 1993.

Thereafter, each position shall be filled by a judge appointed to serve a six-year term.

Provided the judges serving unexpired terms on the State Industrial Court shall serve on the Workers' Compensation Court until their terms expire only as provided herein. The judges of the State Industrial Court whose terms expire March 14, 1979, shall serve in Positions 6 and 7 until that date, and the judge whose term expires March 14, 1981, shall serve in Position 5 until that date. Upon expiration of these terms, the Governor shall appoint judges to serve the remainder of the initial terms designated in this section. When a vacancy on the Court occurs or is certain to occur or for initial appointments to the Court, the Judicial Nominating Commission shall choose and submit to the Governor and the Chief Justice of the Supreme Court the names of three persons, in addition to the name of the incumbent judge, if any, for each appointment, each of whom has previously notified the Commission in writing that he will serve as a judge if appointed. The Governor shall appoint one of the nominees to fill the vacancy, but if he fails to do so within sixty (60) days, the Chief Justice of the Supreme Court shall appoint one of the nominees, the appointment to be certified to the Secretary of State.

B. A judge of the Court, other than a special judge, shall have been licensed to practice law in this state for a period of not less than five (5) years prior to appointment. Each such judge, before entering upon the duties of his office, shall take and subscribe to an oath of office and file the same with the Secretary of State. Each such judge shall continue to serve until his successor shall have been appointed and qualified. A judge,

other than a special judge, shall be eligible for reappointment, provided that he may be removed for cause by the Court on the Judiciary prior to the expiration of his term.

C. Each judge, other than a special judge, shall receive a salary equal to that paid to a district judge of this state, and shall devote full time to his duties and shall not engage in the private practice of law during the term in office.

D. The Governor shall appoint from among the judges of the Workers' Compensation Court, other than the special judges, a presiding judge of that Court who shall serve for a two-year term commencing with the initial appointment beginning January 1, 1987. Any judge so appointed shall not serve more than two times in succession. The presiding judge shall preside at all hearings held by the Court, preside at such meetings of the judges of the Court as may be necessary, appoint no more than two special judges to serve at his pleasure, and perform such other supervisory duties as the needs of the Court may require. The presiding judge may designate one of the ~~other~~ remaining judges, other than one of the special judges, to act as presiding judge in his place whenever necessary during the disqualification, disability, or absence of the presiding judge. During the disqualification, disability, or absence of the presiding judge, the acting presiding judge shall exercise all of the powers of the presiding judge. Special judges shall conduct prehearing and settlement conferences and hear matters regarding the necessity of medical treatment. No order, award or judgment is void or subject to collateral attack merely because it was rendered by a special judge. Each special judge shall be a licensed practicing attorney and shall have such additional qualifications as may be applicable to special judges of the district courts. Special judges of the Workers' Compensation Court shall be compensated to the same extent and in the same manner as special judges of the district courts.

E. The Court shall have the authority to adopt reasonable rules within its respective areas of responsibility including the rules of procedure for the Court en banc, after notice and public

Req. No. 9170Page 4

hearing, for effecting the purposes of the Workers' Compensation Act. All of the judges of the Court, including any special judges, shall be present at all meetings wherein rules are adopted or amended. All rules, upon adoption, shall be submitted to the Supreme Court, which shall either approve or disapprove them within thirty (30) days. All rules, upon approval by the Supreme Court, shall be published and be made available to the public and, if not inconsistent with the law, shall be binding in the administration of the Workers' Compensation Act.

F. The Court is hereby designated and confirmed as a court of record, with respect to any matter within the limits of its jurisdiction, and within such limits the judges thereof, including any special judges appointed pursuant to subsection D of this section, shall possess the powers and prerogatives of the judges of the other courts of record of this state.

G. The principal office of the Court shall be situated in the City of Oklahoma City in quarters assigned by the Department of Central Services. The Court may hold hearings in any city of this state.

H. All county commissioners and presiding district judges of this state shall make quarters available for the conducting of hearings by a judge of the Court upon request by the Court.

I. The judges of the Court, other than special judges, shall determine the qualifications necessary for the job of Administrator. Said qualifications shall be submitted to the Chief Justice of the Supreme Court for approval, disapproval or modification.

J. Judges of the Workers' Compensation Court, including special judges, may punish for direct contempt pursuant to Sections 565, 565.1 and 566 of Title 21 of the Oklahoma Statutes.

SECTION 2. AMENDATORY 85 O.S. 1991, Section 3, as last amended by Section 51, Chapter 366, O.S.L. 1993 (85 O.S. Supp. 1993, Section 3), is amended to read as follows:

Section 3. As used in the Workers' Compensation Act:

1. "Administrator" means the Administrator of workers' compensation as provided for in the Workers' Compensation Act-;i

2. "Court" means the Workers' Compensation Court-i;

3. "Employer", except when otherwise expressly stated, means a person, partnership, association, limited liability company, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association, corporation, or limited liability company, departments, instrumentalities and institutions of this state and divisions thereof, counties and divisions thereof, public trusts, boards of education and incorporated cities or towns and divisions thereof, employing a person included within the term "employee" as herein defined-i;

4. "Employee" means any person engaged in the employment of any person, firm, limited liability company or corporation covered by the terms of the Workers' Compensation Act, and shall include workers associating themselves together under an agreement for the performance of a particular piece of work, in which event such persons so associating themselves together shall be deemed employees of the person having the work executed; provided, that if such associated workers shall employ a worker in the execution of such contract, then as to such employed worker, both the associated employees and the principal employer shall at once become subject to the provisions of the Workers' Compensation Act relating to independent contractors. Sole proprietors, members of a partnership, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the corporation are specifically excluded from the foregoing definition of "employee", and shall not be deemed to be employees as respects the benefits of the Workers' Compensation Act. Provided, a sole proprietor, member of a partnership, member of a limited liability company who owns at least ten percent (10%) of the capital of the limited liability company or any stockholder-employee of a corporation who owns ten percent (10%) or more stock in the corporation who does not so elect to be covered by a policy of insurance covering benefits under the Workers' Compensation Act, when acting as a

subcontractor, shall not be eligible to be covered under the prime contractor's policy of workers' compensation insurance; however, nothing herein shall relieve the entities enumerated from providing workers' compensation insurance coverage for their employees. Sole proprietors, members of a partnership, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the corporation may elect to include the sole proprietors, any or all of the partnership members, any or all of the limited liability company members or any or all stockholder-employees as employees, if otherwise qualified, by endorsement to the policy specifically including them under any policy of insurance covering benefits under the Workers' Compensation Act. When so included the sole proprietors, members of a partnership, members of a limited liability company or any or all stockholder-employees shall be deemed to be employees as respects the benefits of the Workers' Compensation Act.

"Employee" shall also include any person who is employed by the departments, instrumentalities and institutions of this state and divisions thereof, counties and divisions thereof, public trusts, boards of education and incorporated cities or towns and divisions thereof. "Employee" shall also include a member of the Oklahoma National Guard while in the performance of duties only while in response to state orders and any authorized voluntary or uncompensated worker, rendering services as a fire fighter, peace officer or civil defense worker. "Employee" shall also include a participant in a sheltered workshop program which is certified by the United States Department of Labor. "Employee" shall not include a person, commonly referred to as an owner-operator, who owns or leases a truck-tractor or truck for hire, if the owner-operator actually operates the truck-tractor or truck and if the person contracting with the owner-operator is not the lessor of the truck-tractor or truck. Provided however, an owner-operator shall not be precluded from workers' compensation

coverage under the Workers' Compensation Act if the owner-operator elects to participate as a sole proprietor-; i

5. "Employment" includes work or labor in a trade, business, occupation or activity carried on by an employer for pecuniary gain or any authorized voluntary or uncompensated worker rendering services as a fire fighter, peace officer or civil defense worker-; i

6. "Compensation" means the money allowance payable to an employee as provided for in the Workers' Compensation Act-; i

7. a. "Injury" or "personal injury" means only accidental injuries arising out of and in the course of employment and such disease or infection as may naturally result therefrom and occupational disease arising out of and in the course of employment as herein defined. Provided, only injuries having as their source a risk not purely personal but one that is reasonably connected with the conditions of employment shall be deemed to arise out of the employment.

b. "Injury" or "personal injury" includes heart-related or perivascular injury, illness or death if resultant from stress in excess of that experienced by a person in the conduct of everyday living. Such stress must arise out of and in the course of a claimant's employment.

c. "Injury" or "personal injury" shall not include mental injury ~~that is unaccompanied by~~ having no direct nexus to a physical injury-; i

8. "Wages" means the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the injury, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the employer-; i

9. "Insurance carrier" shall include stock corporations, reciprocal or interinsurance associations, or mutual associations with which employers have insured, and employers permitted to pay

compensation, directly under the provisions of paragraph 4 of subsection A of Section 61 of this title-; i

10. "Occupational disease" means only that disease or illness which is due to causes and conditions characteristic of or peculiar to the particular trade, occupation, process or employment in which the employee is exposed to such disease-; i

11. "Permanent impairment" means any anatomical or functional abnormality or loss after reasonable medical treatment has been achieved, which abnormality or loss the physician considers to be capable of being evaluated at the time the rating is made. Except as otherwise provided herein, any examining physician shall only evaluate impairment in accordance with the latest publication of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time of the injury. However, revisions to the guides made by the American Medical Association which are published after January 1, 1989, shall be operative one hundred twenty (120) days after the last day of the month of publication. The examining physician shall not follow the guides based on race or ethnic origin and shall not deviate from said guides except as may be specifically provided for in the guides. These officially adopted guides shall be the exclusive basis for testimony and conclusions with regard to permanent impairment with the exception of paragraph 3 of Section 22 of this title, relating to scheduled member injury or loss; medical reports submitted by the treating physician; and impairment, including pain or loss of strength, may be awarded with respect to those injuries or areas of the body not specifically covered by said guides-; i

12. "Permanent total disability" means incapacity because of accidental injury or occupational disease to earn any wages in any employment for which the employee is or becomes physically suited and reasonably fitted by education, training or experience; loss of both hands, or both feet, or both legs, or both eyes, or any two thereof, shall constitute permanent total disability-; i

13. "Permanent partial disability" means permanent disability which is less than total and shall be equal to or the same as permanent impairment;

14. "Arising out of" pertains to occupational causation. An accidental injury or disease arises out of employment if work caused more than fifty percent (50%) of the claimant's injury or disease;

15. "Certified Workers' Compensation Managed Care Organization" means an organization of health care providers, certified by the Insurance Commissioner, that has entered into a contractual agreement with an insurance carrier or self-insured employer to provide medical care under the Workers' Compensation Act; and

16. "Treating physician" or "primary care physician" means the licensed physician, or specialist referred by the primary care physician, who has provided or is providing medical care to the injured employee. Health care providers who have been retained by any party in that employee's claim for benefits under the Workers' Compensation Act are excluded.

SECTION 3. 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 under the program established by the Administrator shall provide information to injured workers, ~~and~~ investigate complaints, ~~and~~ communicate with employers, insurance carriers, self-insurers, and health care providers. ~~An ombudsman shall~~ on the injured worker's behalf and otherwise assist unrepresented claimants, ~~employers,~~ and other parties to enable them to protect their rights in the workers' compensation system.

C. Employers, prospective employers and economic development specialists shall be assisted by the Office of Ombudsman Services on Workers' Compensation created in Section 28 of this act.

SECTION 4. AMENDATORY 85 O.S. 1991, Section 5, as amended by Section 3, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1993, Section 5), is amended to read as follows:

Section 5. A. 1. No person, firm, partnership or corporation may discharge any employee because the employee has in good faith filed a claim, or has retained a lawyer to represent him in said claim, instituted or caused to be instituted, in good faith, any proceeding under the provisions of this title, or has testified or is about to testify in any such proceeding.

2. No person, firm, partnership or corporation may discharge an employee during a period of temporary total disability solely on the basis of absence from work.

B. No employer shall be required to rehire or retain any employee who is determined physically unable to perform his assigned duties. The failure of an employer to rehire or retain any such employee shall in no manner be deemed a violation of this section.

C. No employer, directly or indirectly, shall make the selection of a certified workers' compensation managed care organization as provided in Section 8 of this act a condition of employment.

SECTION 5. AMENDATORY 85 O.S. 1991, Section 12, is amended to read as follows:

Section 12. ~~The~~ A. Except as provided in subsection C of this section, the liability prescribed in Section 11 of this title shall be exclusive and in place of all other liability of the immediate employer only and any of his employees, any architect, professional engineer, or land surveyor retained to perform professional services on a construction project, at common law or otherwise, for such injury, loss of services, or death, to the employee, or the spouse, personal representative, parents, or dependents of the employee, or any other person. If an employer has failed to secure the payment of compensation for his injured employee, as provided for in this title, an injured employee, or his legal representatives if death results from the injury, may maintain an action in the courts for damages on account of such

injury, and in such action the defendant may not plead or prove as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of his employment, or that the injury was due to the contributory negligence of the employee; provided:

~~(i)~~ 1. The immunity created by the provisions of this section shall not extend to action by an employee, or the spouse, personal representative, parents, or dependents of the employee, or any other person against another employer, or its employees, on the same job as the injured or deceased worker where such other employer does not stand in the position of an intermediate or principal employer to the immediate employer of the injured or deceased worker;

~~(ii)~~ 2. The immunity created by the provisions of this section shall not extend to action against another employer, or its employees, on the same job as the injured or deceased worker even though such other employer may be considered as standing in the position of a special master of a loaned servant where such special master neither is the immediate employer of the injured or deceased worker nor stands in the position of an intermediate or principal employer to the immediate employer of the injured or deceased worker; and

~~(iii)~~ 3. This provision shall not be construed to abrogate the loaned servant doctrine in any respect other than that described in paragraph ~~(ii)~~ 2 of this ~~section~~ subsection. This section shall not be construed to relieve the employer from any other penalty provided for in this title for failure to secure the payment of compensation provided for in this title.

~~(iv)~~ B. For the purpose of extending the immunity of this section, any architect, professional engineer, or land surveyor shall be deemed an intermediate or principal employer for services performed at or on the site of a construction project, but this immunity shall not extend to the negligent preparation of design plans and specifications.

C. The liability prescribed in Section 11 of this title shall not be exclusive if the injury was proximately caused by the gross negligence of the employer.

SECTION 6. AMENDATORY 85 O.S. 1991, Section 13, is amended to read as follows:

Section 13. A. No compensation shall be allowed for the first seven (7) calendar days of disability except the benefits as provided for in Section 14 of this title; provided that if disability continues beyond the twenty-first calendar day, compensation shall be computed from the inception date of such disability.

B. If the disability is not disputed, compensation for temporary total disability shall be commenced within fifteen (15) calendar days after the employer receives notice of the injury. If an employee files a claim for compensation pursuant to Section 3.4 of this title, compensation for temporary total disability shall be commenced within fifteen (15) calendar days after the employee requests a hearing on the compensation issue, unless liability for the disability is denied by the employer. Such hearings shall be set for trial no later than forty-five (45) days after the request for hearing is filed by the employee.

SECTION 7. AMENDATORY 85 O.S. 1991, Section 14, as last amended by Section 7, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1993, Section 14), is amended to read as follows:

Section 14. A. The employer 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 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 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~~ Unless the employee has previously enrolled in a certified workers' compensation managed care organization and has previously selected a primary care physician, the employee may select a physician of his choice at the time of injury to render necessary medical treatment, at the expense of the employer. The attending physician so selected by the employee 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, directly or pursuant to the direct supervision of a medical provider may submit such charges and duration of treatment to the Administrator of the Court for review in accordance with the rules 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; provided, however, the fee and treatment schedule shall not be amended or altered until 1995 except to require the utilization of the latest Current Procedural Terminology (CPT) codes as published by the American Medical Association or to provide for the reduction of charges or duration of treatment. The Administrator's review of medical and treatment charges pursuant to this section shall be conducted pursuant to the fee and treatment schedule in existence at the time the medical care or treatment was provided. The order of the Administrator approving medical and treatment charges pursuant to this section, including those of any person acting pursuant to the direct supervision of a medical provider, 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 aggregate 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 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14.2 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. If a self-insured employer or an employer's workers' compensation insurance carrier has contracted with a certified workers' compensation managed care organization, an employee may select that organization for necessary medical treatment as provided under the Workers' Compensation Act. Notwithstanding any other provision of law, those employees who are subject to such certified managed care organizations shall receive medical

treatment in the manner prescribed by the organization. When a contract of employment is made, qualified employers shall provide the employee with the opportunity to enroll in the insurer's certified workers' compensation managed care organization. Procedures and forms for enrollment shall be provided by the self-insured employer or insurance carrier. The burden for notification of an employee's enrollment in a managed care organization shall be the employer's. After enrollment, an employee shall seek treatment under the managed care organization for one calendar year. The employee may opt out of the organization, effective on the first day of the first month after the anniversary date of employment. However, if the date of the injury falls under a period of enrollment in a managed care organization, treatment must be rendered under the managed care treatment contract. The provisions of this section shall not preclude the employee from petitioning the Workers' Compensation Court or the Administrator of the Workers' Compensation Court for a change of physician or from seeking emergency medical treatment as provided in Section 14 of Title 85 of the Oklahoma Statutes.

B. The Insurance Commissioner of the State of Oklahoma shall certify an entity as a certified worker's compensation managed care organization for purposes of the Workers' Compensation Act and shall promulgate such rules as may be necessary to implement the provisions of subsection A of this section. Such rules shall authorize any person to petition the Insurance Commissioner for decertification of a managed care organization from the list of certified organizations for material violation of any rules promulgated pursuant to this subsection.

C. The workers' compensation insurance premiums of an employer whose employees enroll in a certified workers' compensation managed care organization shall be reduced by the insurer, at a percentage to be determined by the insurer, for that portion of the employer's payroll which applies to enrolled employees. An insurer may offer employees specified incentives for enrollment in a managed care organization.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 14.3 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Any person or entity may make written application to the Insurance Commissioner of the State of Oklahoma to have a workers' compensation managed care organization certified that provides management of quality treatment to injured employees for injuries and diseases compensable under the Workers' Compensation Act. Each application for certification shall be accompanied by a fee of One Thousand Five Hundred Dollars (\$1,500.00). A managed care organization may be certified to provide services to a limited geographic area. A certificate is valid for the period the Commissioner prescribes unless revoked or suspended. Application for certification shall be made in the form and manner and shall set forth information regarding the proposed program for providing services as the Commissioner may prescribe. The information shall include, but not be limited to:

1. A list of the names of all medical providers who will provide services under the managed care organization, together with appropriate evidence of compliance with any licensing or certification requirements for those providers to practice in this state; and

2. A description of the places and manner of providing services under the organization.

B. 1. The Commissioner shall certify a managed care organization if the Commissioner finds that the organization:

- a. proposes to provide quality services for all medical services that may be required by the Workers' Compensation Act in a manner that is timely, effective and convenient for the employee,
- b. is reasonably geographically convenient to employees it services,
- c. provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of service,

- d. provides adequate methods of peer review, utilization review and dispute resolution to prevent inappropriate, excessive or medically unnecessary treatment, and excludes participation in the organization by those individuals who violate these treatment standards,
- e. provides aggressive case management for injured employees and a program for early return to work,
- f. provides a timely and accurate method of reporting to the Commissioner necessary information regarding medical service costs and utilization to enable the Commissioner to determine the effectiveness of the organization,
- g. authorizes necessary emergency medical treatment for an injury provided by a medical provider not a part of the managed care organization,
- h. assures reasonable access to medical providers available under the managed care organization and provides the employee with a choice of one primary care physician from a list of at least four primary care physicians affiliated with the certified managed care organization, and
- i. complies with any other requirement the Commissioner determines is necessary to provide quality medical services and health care to injured employees.

2. The Commissioner may accept findings, licenses or certifications of other state agencies as satisfactory evidence of compliance with a particular requirement of this section.

C. The Commissioner shall refuse to certify or shall revoke or suspend the certification for a managed care organization if the Commissioner finds that the program for providing medical or health care services fails to meet the requirements of this section, or service under the organization is not being provided in accordance with the terms of a certified organization.

D. No person who participates in forming consortiums collectively negotiating fees or otherwise solicits or enters into

Req. No. 9170Page 19

contracts in a good faith effort to provide medical or health care services according to the provisions of this section shall be examined or subject to administrative or civil liability regarding any such participation except pursuant to the Commissioner's active supervision of such activities and the managed care program. Before engaging in such activities, the person shall provide notice of intent to the Commissioner in a form prescribed by the Commissioner.

E. The Commissioner shall promulgate such rules as may be necessary to implement the provisions of this section.

SECTION 10. AMENDATORY 85 O.S. 1991, Section 17, is amended to read as follows:

Section 17. A. The final 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 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. When an employee's claim for compensation for permanent disability alleges any hearing loss, the court shall appoint a licensed audiologist as a third physician to provide an evaluation of the percent of disability from hearing loss. 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. The written medical testimony of any physician shall be on a form provided by the Administrator.

When the medical testimony to be introduced on behalf of the employee and employer is divergent by more than ~~twenty-five percent—(25%)~~ twenty percent (20%) as to the extent of permanent impairment of the employee or when there is any disagreement in the evidence as to the nature, extent or 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

Req. No. 9170Page 20

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~~ Court shall select a third physician ~~who~~ from a list developed by the Physician Advisory Committee pursuant to Section 201.1 of this title. The third physician 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 shall be the arbiter of the dispute and shall issue a verified written report on a form provided by the Administrator to 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. ~~When the challenging party and the challenged party are for any reason unable or unwilling to agree upon the appointment of a third physician within ten (10) days, the Court shall appoint the third physician.~~ Upon receipt of the third physician's report, ~~the~~ a 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. All findings of the third physician shall be final unless the Court determines that such findings are arbitrary and capricious.

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

~~D.~~ The impairment rating determined by the third physician may be followed by the Court. If the Court deviates from the third physician's impairment rating by more than ten percent

~~(10%), the Court shall specifically identify the basis for such deviation in its order.~~

SECTION 11. AMENDATORY 85 O.S. 1991, Section 22, as last amended by Section 10, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1993, Section 22), is amended to read as follows:

Section 22. The following schedule of compensation is hereby established:

1. Permanent Total Disability. In case of total disability adjudged to be permanent, seventy percent (70%) of the employee's average weekly wages shall be paid to the employee during the continuance of such total disability.

2. Temporary Total Disability. In cases of temporary total disability, ~~seventy percent (70%)~~ one hundred percent (100%) of the employee's average weekly wages shall be paid to the employee during the continuance thereof, but not in excess of one hundred fifty (150) weeks, except as otherwise provided in the Workers' Compensation Act. Provided, after compensation has been paid for a period of one hundred forty (140) weeks, the employee may request a review of the case by a judge of the Court for continued temporary total disability benefits provided by the Workers' Compensation Act. Upon a finding that benefits should be extended beyond the initial one-hundred-fifty-week period, compensation may be continued for an additional one hundred fifty (150) weeks.

3. Permanent Partial Disability. (a) With respect to injuries occurring prior to ~~the effective date of this act~~ September 1, 1993, in case of disability, partial in character but permanent in quality, the compensation shall be seventy percent (70%) of the employee's average weekly wages, and shall be paid to the employee for the period named in the schedule, as follows:

Thumb: For the loss of thumb, sixty (60) weeks.

First Finger: For the loss of the first finger, commonly called the index finger, thirty-five (35) weeks.

Second Finger: For the loss of a second finger, thirty (30) weeks.

Third Finger: For the loss of a third finger, twenty (20) weeks.

Fourth Finger: For the loss of a fourth finger, commonly called the little finger, fifteen (15) weeks.

Phalange of Thumb or Finger: The loss of the first phalange of the thumb or finger shall be considered equal to the loss of one-half (1/2) of such thumb or finger, and compensation shall be one-half (1/2) of the amount above specified; the loss of more than one phalange shall be considered as the loss of the entire thumb or finger; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

Great Toe: For the loss of a great toe, thirty (30) weeks.

Other Toes: For the loss of one of the toes other than the great toe, ten (10) weeks.

Phalange of Toe: The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half (1/2) of the amount specified. The loss of more than one phalange shall be considered as the loss of the entire toe.

Hand: For the loss of a hand, ~~two hundred (200)~~ four hundred (400) weeks.

Arm: For the loss of an arm, ~~two hundred fifty (250)~~ five hundred (500) weeks.

Foot: For the loss of a foot, ~~two hundred (200)~~ four hundred (400) weeks.

Leg: For the loss of a leg, ~~two hundred fifty (250)~~ five hundred (500) weeks.

Eye: For the loss of an eye, ~~two hundred (200)~~ four hundred (400) weeks.

Deafness: Deafness from industrial cause, including occupations which are hazardous to hearing, accident or sudden trauma, three hundred (300) weeks, and total deafness of one ear from industrial cause, including occupations which are hazardous to hearing, accident or sudden trauma, one hundred (100) weeks. ~~Any examining physician shall only evaluate deafness or hearing impairment in accordance with the latest publication of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time of the injury. All~~

~~evaluations shall include an apportionment of injury causation. However, revisions to the guides made by the American Medical Association which are published after January 1, 1989, shall be operative one hundred twenty (120) days after the last day of the month of publication. The examining physician shall not follow the guides based on race or ethnic origin. The examining physician shall not deviate from said guides except as may be specifically provided for in the guides or modifications to the guides adopted by the Administrator of the Workers' Compensation Court as provided for in Section 18 of this act. The guides or modifications thereto shall be the exclusive basis for testimony and conclusions with regard to deafness or hearing impairment.~~

Loss of Use: Permanent loss of use of a thumb, finger, toe, arm, hand, foot, leg or eye shall be considered as the equivalent of the loss of such thumb, finger, toe, hand, arm, foot, leg or eye.

For the permanent partial loss of use of a member, loss of hearing or sight of an eye, seventy percent (70%) of the employee's average weekly wage during that portion of the number of weeks in the foregoing schedule provided for the loss of such member or sight of an eye which the partial loss of use thereof bears to the total loss of use of such member, loss of hearing or sight of an eye.

Amputations: Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand. Amputation between the knee and the ankle shall be considered as the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm. Amputation at or above the knee shall be considered as the loss of a leg.

The compensation for the foregoing specific injuries shall be in lieu of all other compensation except the benefits provided in Section 14 of this title and Section 16 of this title.

In case of an injury resulting in serious and permanent disfigurement, compensation shall be payable in an amount to be determined by the Court, but not in excess of ~~Twenty Thousand Dollars (\$20,000.00)~~ Fifty Thousand Dollars (\$50,000.00);

provided, that compensation for permanent disfigurement shall not be in addition to the other compensation provided for in this section, but shall be taken into consideration in fixing the compensation otherwise provided.

Hernia: In case of an injury resulting in hernia, temporary total compensation for fourteen (14) weeks, and the cost of an operation shall be payable; provided, in any case where the injured employee has been twice previously operated for hernia in the same area and it is established by opinion of a competent surgeon that further surgery in the same area will not result in full relief of the condition, the Court may then award compensation for disability resulting therefrom under paragraph 1 of this section, or, if not totally and permanently disabled, then under the "Other Cases" subdivision following, and, after a second surgical attempt to repair hernia, the injured may not be required to submit to further surgery in an effort to relieve the disability thereafter existing; provided, further, the use of any artificial reinforcement or device, with or without surgery, shall not be the basis of reducing extent of disability to be awarded.

Other Cases: In all other classes of disabilities, excluding only those heretofore referred to in paragraph 3 of this section, which disabilities result in loss of use of any portion of an employee's body, and which disabilities are permanent in quality but partial in character, disability shall mean the percentage of permanent impairment. The compensation ordered paid shall be seventy percent (70%) of the employee's average weekly wage for the number of weeks which the partial disability of the employee bears to five hundred (500) weeks.

(b) With respect to injuries occurring on and after ~~the effective date of this act~~ September 1, 1993, in case of disability, partial in character but permanent in quality, the compensation shall be seventy percent (70%) of the employee's average weekly wages, and shall be paid to the employee for the period prescribed by the following schedule:

(1) For each percent of the first nine percent (9%) of disability, eighty percent (80%) of the number of weeks of

compensation provided by law prior to ~~the effective date of this act~~ September 1, 1993;

(2) For each percent of the next eleven percent (11%) of disability, the identical number of weeks of compensation provided by law prior to ~~the effective date of this act~~ September 1, 1993;

(3) For each percent of the next thirty percent (30%) of disability, one hundred twenty percent (120%) of the number of weeks of compensation provided by law prior to ~~the effective date of this act~~ September 1, 1993; and

(4) For each remaining percent of disability, the identical number of weeks of compensation provided by law prior to ~~the effective date of this act~~ September 1, 1993.

4. Temporary Partial Disability. In case of temporary partial disability, except the particular cases mentioned in paragraph 3 of this section, an injured employee shall receive seventy percent (70%) of the difference between his average weekly wages and his wage-earning capacity thereafter in the same employment or otherwise, if less than before the injury, during continuance of such partial disability, but not to exceed one hundred fifty (150) weeks. Provided, after compensation has been paid for a period of one hundred forty (140) weeks, the employee may request a review of the case by a judge of the Court for continued temporary partial disability benefits provided by the Workers' Compensation Act. Upon a finding that benefits should be extended beyond the initial one-hundred-fifty-week period, compensation may be continued for an additional one hundred fifty (150) weeks.

5. Notwithstanding any other section of the Workers' Compensation Act, temporary disability shall be payable without an award by the Court. The first payment of temporary disability compensation shall become due on the tenth day after the employer has received notice of injury as specified in Section 24.2 of this title. All compensation owed on that date shall be paid and thereafter payments shall be made weekly except when otherwise ordered by the Court.

Notwithstanding any other section of the Workers' Compensation Act, benefits for permanent partial disability shall be payable without an award of the Court in those cases where the compensability of the underlying injury is not in question and the employee's treating physician has determined the employee to have achieved maximum medical improvement with a resulting degree of permanent impairment. Within twenty (20) days of receiving notice of the employee's percentage of permanent impairment as determined by the treating physician, the employer shall begin the periodic payment of benefits for permanent partial disability on a weekly basis, for a period of up to twenty-six (26) weeks.

If any compensation payments owed without an award are not paid within ten (10) days after becoming due there shall be added to such owed payments an amount equal to ~~ten percent (10%)~~ twenty percent (20%) of the amount due which shall be paid at the same time in addition to the owed payments unless such nonpayment is excused by the Court ~~after a showing by the employer that conditions exist over which the employer had no control in that either payments were not made within the prescribed time or the employer denies coverage within the time specified for the employer to respond.~~

6. Limitation. The compensation payments under the provisions of the Workers' Compensation Act shall not exceed the sum of seventy-five percent (75%) of the state's average weekly wage as determined by the Oklahoma Employment Security Commission for temporary disability; Sixty Dollars (\$60.00) per week beginning as of the effective date of the Workers' Compensation Act, and Seventy Dollars (\$70.00) per week beginning January 1, 1979, and Eighty Dollars (\$80.00) per week beginning January 1, 1980, and Ninety Dollars (\$90.00) per week beginning January 1, 1981, and to fifty percent (50%) of the state's average weekly wage beginning January 1, 1982, for permanent partial disability; Seventy-five Dollars (\$75.00) per week beginning as of the effective date of the Workers' Compensation Act, and Ninety Dollars (\$90.00) per week beginning January 1, 1979, and One Hundred Ten Dollars (\$110.00) per week beginning January 1, 1980,

to sixty-six and two-thirds percent (66 2/3%) of the state's average weekly wage beginning January 1, 1981, and to seventy-five percent (75%) of the state's average weekly wage beginning September 1, 1992, for permanent total disability, or at any time be less than Thirty Dollars (\$30.00) per week; provided, however, that if the employee's wages at the time of the injury are less than Thirty Dollars (\$30.00) per week, he shall receive his full weekly wages; provided further, that the compensation received, as provided under paragraph 4 of this section, shall not, when added to the wages received by such employee after such injury, amount to a greater sum than eighty percent (80%) of his average weekly wages received prior to said injury.

The average weekly wage in this state shall be determined by the Oklahoma Employment Security Commission every three (3) years beginning July 1, 1984, and shall be used to establish maximum benefits under the Workers' Compensation Act for injuries occurring during a three-year period, which period shall begin on the first day of November after publication by the Oklahoma Employment Security Commission. For the purpose of computing benefits payable under the Workers' Compensation Act, the state's average weekly wage shall be rounded to the nearest dollar amount.

The benefit level for members of the National Guard and any authorized voluntary or uncompensated worker rendering services as a fire fighter, peace officer or civil defense worker shall be determined by using the earnings of the individual in his regular occupation.

7. Previous Disability. The fact that an employee has suffered previous disability or impairment or received compensation therefor shall not preclude him from compensation for a later accidental personal injury or occupational disease; but in determining compensation for the later accidental personal injury or occupational disease his average weekly wages shall be such sum as will reasonably represent his earning capacity at the time of the later accidental personal injury or occupational disease. In the event there exists a previous impairment which produced permanent disability and the same is aggravated or accelerated by

an accidental personal injury or occupational disease, compensation for permanent disability shall be only for such amount as was caused by such accidental personal injury or occupational disease and no additional compensation shall be allowed for the pre-existing disability or impairment.

8. Income benefits for death. If the injury or occupational disease causes death, income benefits shall be payable in the amount and for the benefit of the persons following, subject to the maximum limits specified hereafter:

(a) Benefit amounts for particular classes of dependents.

(1) If there is a surviving spouse, to such surviving spouse fifty percent (50%) of the average weekly wages the deceased was earning. In no event shall this spousal income benefit be diminished.

(2) If there is a child or children, to such child or children fifteen percent (15%) of the average weekly wages the deceased was earning for each child. Where there are more than two such children, the income benefits payable for the benefit of all children shall be divided among all children, to share and share alike, subject to the provisions of subparagraphs (c) and (d) of this paragraph.

(3) In addition to the benefits theretofore paid or due, two (2) years' indemnity benefit in one lump sum shall be payable to a surviving spouse upon remarriage.

(4) To the children, if there is no surviving spouse, thirty-five percent (35%) of the average weekly wages the deceased was earning for one child, and fifteen percent (15%) of such wage for each additional child, divided among all children, to share and share alike, subject to the provisions of subparagraphs (c) and (d) of this paragraph.

(5) The income benefits payable for the benefit of any child under this section shall cease when he dies, marries or reaches the age of eighteen (18), or when the child over such age ceases to be physically or mentally incapable of self-support, or if the actually dependent child ceases to be actually dependent, or, if enrolled as a full-time student in any accredited educational

institution, ceases to be so enrolled or reaches the age of twenty-three (23). A child who originally qualified as a dependent by virtue of being less than eighteen (18) years of age may, upon reaching age eighteen (18), continue to qualify if he satisfies the tests of being physically or mentally incapable of self-support, actually dependent or enrolled in an accredited educational institution.

(6) To each parent, if actually dependent, twenty-five percent (25%) of the average weekly wages the deceased was earning subject to the provisions of subparagraphs (c) and (d) of this paragraph.

(7) To the brothers, sisters, grandparents and grandchildren, if actually dependent, twenty-five percent (25%) of the average weekly wages the deceased was earning to each such dependent. If there should be more than one of such dependents, the total income benefits payable for the benefit of such dependents shall be divided to share and share alike subject to the provisions of subparagraphs (c) and (d) of this paragraph.

(8) The income benefits of each beneficiary under divisions (6) and (7) above shall be paid until the beneficiary, if a parent or grandparent, dies, marries or ceases to be actually dependent, or, if a brother, sister or grandchild, dies, marries or reaches the age of eighteen (18), is over the age of eighteen (18) and ceases to be physically or mentally incapable of self-support or ceases to be actually dependent.

(9) A person ceases to be actually dependent when his income from all sources exclusive of workers' compensation income benefits is such that, if it had existed at the time the original determination of actual dependency was made, it would not have supported a finding of dependency. If the present annual income of an actually dependent person including workers' compensation income benefits at any time exceeds the total annual support received by the person from the deceased employee, the workers' compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased employee. In all cases, a person found to be

actually dependent shall be presumed to be no longer actually dependent three (3) years after the time as of which the person was found to be actually dependent. This presumption may be overcome by proof of continued actual dependency as defined in this paragraph and paragraph (1) of Section 3.1 of this title.

(b) Change in dependents. Upon the cessation of income benefits under this section to or for the benefit of any person, the income benefits payable to the remaining persons who continue to be entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.

(c) Maximum income benefits for death. For the purposes of this section, the average weekly wage of the employee shall be taken as not more than the average weekly wage of the state. In no case shall the aggregate weekly income benefits payable to all beneficiaries under this section exceed the maximum income benefits that were or would have been payable for total permanent disability to the deceased.

(d) Maximum total payment. The maximum weekly income benefits payable for all beneficiaries in case of death shall not exceed seventy-five percent (75%) of the average weekly wages the deceased was earning, subject to the maximum limits in subparagraph (c) of this paragraph. The maximum aggregate limitation shall not apply in case of payment of two (2) years' income benefits to the surviving spouse upon remarriage, as provided under division (3) of subparagraph (a) of this paragraph, to prevent the immediate recalculation and payments of benefits to the remaining beneficiaries as provided under subparagraph (b) of this paragraph. The weekly income benefits as recalculated to the remaining beneficiaries shall not exceed the weekly benefit that was or would have been payable for total permanent disability to the deceased. The classes of beneficiaries specified in divisions (1), (2) and (4) of subparagraph (a) of this paragraph shall have priority over all other beneficiaries in the apportionment of

income benefits. If the provisions of this subparagraph should prevent payments to other beneficiaries of the income benefits to the full extent otherwise provided for by this section, the gross remaining amount of income benefits payable to such other beneficiaries shall be apportioned by class, proportionate to the interest of each class in the remaining amount. Parents shall be considered to be in one class and those specified in division (7) of subparagraph (a) of this paragraph in a separate class.

9. Where some pecuniary loss may be shown by heirs-at-law of the deceased, as defined by the descent and distribution statutes of Oklahoma, who are otherwise not entitled to receive benefits under other provisions of this section, such heirs-at-law shall receive compensation for their pecuniary loss not to exceed an aggregate of Five Thousand Dollars (\$5,000.00).

10. ~~In the event that no~~ addition to other benefits under other provisions of this section are paid to the dependents or the heirs-at-law of the deceased, ~~an amount not to exceed Five Thousand Dollars (\$5,000.00)~~ reasonable and necessary funeral expenses shall be paid ~~for funeral expenses~~.

11. (a) If there is a surviving spouse and surviving children entitled to receive death benefits herein, such survivors shall be entitled to an immediate lump-sum payment of ~~Ten Thousand Dollars (\$10,000.00)~~ Thirty Thousand Dollars (\$30,000.00) to the spouse and ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Five Thousand Dollars (\$5,000.00) to each surviving child not to exceed two children.

(b) If there is no surviving spouse but there are surviving children entitled to receive death benefits herein, such surviving children shall be entitled to a lump-sum payment of Ten Thousand Dollars (\$10,000.00) to be divided among all the children to share and share alike.

(c) Any claim under this paragraph shall be substantiated by the filing of a properly executed and authenticated proof of loss, which form shall be prescribed by the Administrator, and payment of such sum shall be made within fifteen (15) days after adjudication of entitlement by the Court. Such sum shall not be

subject to any award of attorney fees in uncontested cases, except the Court shall appoint a guardian ad litem to represent known and unknown minor children and said guardian ad litem shall be paid a reasonable fee for his services.

Provided, that all judgments rendered awarding lump-sum death benefits, except lump-sum attorney fee awards, may, at the discretion of the Court, provide that said benefits be paid in trust to an interest-bearing account in a federally insured banking institution in the county wherein the judgment was rendered. The banking institution may make appropriate charges to the beneficiary for costs of trust management. These charges shall be fixed by agreement of such institution and the judge rendering the judgment. The judgment awarding lump-sum death benefits shall contain instructions for regularly scheduled disbursements to be fixed by the Court which may be modified by the Court upon a proper showing of change of circumstance. The banking institution shall issue a numbered receipt to the person paying the benefits into trust and deliver a copy of the receipt to the Administrator. Each banking institution receiving trust funds for deposit shall receive a schedule of disbursements and shall monthly pay said disbursements to the beneficiary as ordered by the Court. An annual accounting of all such trust funds received and deposited shall be rendered by each banking institution to the Court granting the judgment.

12. No payments on any permanent impairment order, including an award for permanent partial disability or permanent total disability, shall start until payments on any pre-existing permanent impairment orders have been completed.

13. a. Any employee convicted of a misdemeanor or felony and sentenced to a term of incarceration of at least ninety (90) days in this state or in any other jurisdiction shall have all benefits for temporary total disability awarded by the Workers' Compensation Court forfeited by order of the Court on motion of the employer or the employer's insurer after confirmation of the employee's incarceration.

The Court also may order the forfeiture of such benefits on its own motion upon receipt of notice from the Director of the Oklahoma Department of Corrections that the person awarded the benefits is incarcerated as an inmate in a facility operated by or under contract with the Department. The provisions of this subparagraph shall not apply to any benefits awarded to an inmate for compensable injuries sustained by the inmate while in the employ of a private for-profit employer or while employed in private prison industries, involving a for-profit employer, which deal in interstate commerce or which sell products or services to the federal government.

- b. Any employee convicted of a misdemeanor or felony and sentenced to a term of incarceration of at least ninety (90) days in this state shall have all benefits for permanent total disability or temporary partial disability awarded by the Workers' Compensation Court and paid during the period of incarceration deposited to the credit of an account established pursuant to Section 549 of Title 57 of the Oklahoma Statutes for distribution in full to the Department of Corrections for costs of incarceration. The State Board of Corrections shall have the power to collect workers' compensation benefits on behalf of the prisoner as provided in this subparagraph and to distribute the benefits as provided by law.

SECTION 12. AMENDATORY 85 O.S. 1991, Section 24.1, as amended by Section 32, Chapter 335, O.S.L. 1992 (85 O.S. Supp. 1993, Section 24.1), is amended to read as follows:

Section 24.1 A. Every employer shall keep a record of injuries, which result in the loss of time beyond the shift or which require medical attention away from the work site, fatal or otherwise, received by his employees in the course of their employment.

B. Within ten (10) days or a reasonable time thereafter, after the occurrence of such injury a report thereof shall be made in writing by the employer to the Court and to the employer's workers' compensation insurance carrier, if any, upon blanks to be procured from the Court for that purpose. Such reports shall state the name and nature of the business of the employer, the location of his establishment or place of work, the name, address and occupation of the injured employee, the time, nature, and cause of the injury and such other information as may be required by the Administrator. Within ten (10) days of receiving the employer's report of injury, the Court shall send to the named injured employee a "Notice of Ombudsman Services". Such notice shall contain a description of the services available under the ombudsman program established by the Administrator of the Workers' Compensation Court pursuant to Section 3.9 of this title, and shall list the mailing address and telephone number where such services may be obtained.

C. If the employee is enrolled in a certified workers' compensation managed care organization as provided in Section 8 of this act, the report shall identify the employee as such and shall name the primary care physician chosen by the employee. Any employer who refuses or neglects to make a report as required by this section shall be liable for an administrative violation and subject to a fine by the Administrator of not more than One Thousand Dollars (\$1,000.00).

SECTION 13. AMENDATORY 85 O.S. 1991, Section 24.2, as amended by Section 11, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1993, Section 24.2), is amended to read as follows:

Section 24.2 A. Unless an employee gives oral or written notice to the employer within sixty (60) days of the date an injury occurs or the employee receives medical attention from a licensed physician during the sixty-day period from the date an injury occurred, the claim shall be forever barred, unless, in the discretion of the trial judge, good cause is shown by the employee to the Court to excuse such failure of notice or treatment.

Provided, for an occupational disease or repeated trauma, notice

shall be given to the employer within the statutory period for occupational disease set out in Section 43 of this title.

Provided further, there shall be a rebuttable presumption that injury from occupational disease or injury caused by repeated trauma does not arise out of and in the course of employment unless oral or written notice is given by the employee to the employer within one hundred eighty (180) days of the employee's separation from employment.

B. If the employer has notice of the injury and the injury is not disputed and weekly temporary total disability benefit payments are not commenced within ~~twenty (20)~~ fifteen (15) days of such notice or if any subsequent installment of temporary total disability benefits is not made within ten (10) days after it becomes due, the insurer of the employer shall pay to the employee a penalty of ~~fifteen percent (15%)~~ thirty percent (30%) of the unpaid or delayed weekly benefits. This penalty ~~may~~ shall be imposed by the Court ~~for good cause shown on a case by case basis.~~

C. The Administrator, on the basis of information collected, may ask the Court to impose the penalty provided in subsection B of this section.

D. Any penalty imposed pursuant to subsections B or C of this section shall not be reported or used for ratemaking purposes.

SECTION 14. AMENDATORY 85 O.S. 1991, Section 42, is amended to read as follows:

Section 42. A. If payment of compensation or an installment payment of compensation due under the terms of an award, except in case of appeals from an award, is not made within ten (10) days after the same is due by the employer or insurance carrier liable therefor, the Court may order a certified copy of the award to be filed in the office of the court clerk and the county clerk of any county, which award whether accumulative or lump sum shall be entered on the judgment docket of the district court, and shall have the same force and be subject to the same law as judgments of the district court. Any compensation awarded and all payments thereof directed to be made by order of the Court shall bear interest at the rate of eighteen percent (18%) per year from the

Req. No. 9170Page 36

date ordered paid by the Court until the date of satisfaction. Upon the filing of the certified copy of the Court's award a writ of execution shall issue and process shall be executed and the cost thereof taxed, as in the case of writs of execution, on judgments of courts of record, as provided by Title 12 of the Oklahoma Statutes. Provided, however, the provisions of this section relating to execution and process for the enforcement of awards shall be and are cumulative to other provisions now existing or which may hereafter be adopted relating to liens or enforcement of awards or claims for compensation.

B. If any insurance carrier intentionally, knowingly, or willfully violates any of the provisions of the Workers' Compensation Act, including provisions governing timely payment of benefits, or any published rules ~~or regulations~~ promulgated thereunder, ~~the Insurance Commissioner, on the request of~~ a Judge of the Court or the Administrator, shall notify the Insurance Commissioner thereof and the Insurance Commissioner shall suspend or revoke the license or authority of such insurance carrier to do a compensation business in this state.

SECTION 15. AMENDATORY 85 O.S. 1991, Section 43, is amended to read as follows:

Section 43. A. The right to claim compensation under the Workers' Compensation Act shall be forever barred unless, within two (2) years after the date of accidental injury or death, a claim for compensation is filed with the Workers' Compensation Court. Provided however, a claim may be filed within two (2) years of the last payment of any compensation or remuneration paid in lieu of compensation or medical treatment which was authorized by the employer or the insurance carrier. Provided further however, with respect to disease or injury caused by repeated trauma causally connected with employment, a claim may be filed within two (2) years of the date of last trauma or hazardous exposure. Provided further however, in the case of asbestosis, silicosis or exposure to nuclear radiation causally connected with employment, a claim may be filed within two (2) years of the date of last hazardous exposure or within two (2) years from the date

said condition first becomes manifest by a symptom or condition from which one learned in medicine could, with reasonable accuracy, diagnose such specific condition, whichever last occurs. The filing of any form or report by the employer or insurance carrier shall not toll the above limitations.

B. When a claim for compensation has been filed with the Administrator as herein provided, unless the claimant shall in good faith request a hearing and final determination thereon within five (5) years from the date of filing thereof or within five (5) years from the date of last payment of compensation or wages in lieu thereof, same shall be barred as the basis of any claim for compensation under the Workers' Compensation Act and shall be dismissed by the Court for want of prosecution, which action shall operate as a final adjudication of the right to claim compensation thereunder. Provided, that any claims heretofore filed and pending on the effective date of the Workers' Compensation Act before the State Industrial Court shall likewise be barred after the expiration of five (5) years from the filing date or within five (5) years from the date of last payment of compensation or wages in lieu thereof.

C. The jurisdiction of the Court to reopen any cause upon an application based upon a change in condition shall extend for that period of time measured by the maximum number of weeks that could be awarded for the particular scheduled member where the change of condition occurred, or for three hundred (300) weeks in the case of injuries to the body or injuries not otherwise scheduled under the provisions of Section 22 of this title, and unless filed within said period of time after the date of the last order, shall be forever barred.

D. Each employer shall post a notice advising employees that they are covered by the Workers' Compensation Act ~~and~~, that ombudsman services are available at the Workers' Compensation Court and that the employer may be authorized under the Workers' Compensation Act to direct employees' medical care by selecting a managed care organization. The form of the notice shall be prescribed by the rules of the Court. No other notice to the

employee shall be required other than said poster required by this section; provided that nothing in this subsection shall be construed to toll the Statute of Limitations provided above.

SECTION 16. AMENDATORY 85 O.S. 1991, Section 45, is amended to read as follows:

Section 45. ~~No~~ Other than unemployment compensation benefits, no benefits, saving or insurance of the injured employee, independent of the provisions of this act shall be considered in determining the compensation or benefit to be paid under this act.

SECTION 17. AMENDATORY 85 O.S. 1991, Section 61, as last amended by Section 12, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1993, Section 61), is amended to read as follows:

Section 61. A. An employer shall secure compensation to his employees in one of the following ways:

1. By insuring and keeping insured the payment of such compensation with any stock corporation, mutual association, or other concerns authorized to transact the business of workers' compensation insurance in this state, or by exchanging contracts of indemnity or interinsurance, pursuant to reasonable rules prescribed by the Administrator providing for and securing the payment of the compensation provided for in the Workers' Compensation Act. When an insurer issues a policy to provide workers' compensation benefits pursuant to the provisions of the Workers' Compensation Act, the insurer shall file, or cause to be filed, with the Administrator a notice in such form and detail as the Administrator may prescribe by rule. The notice shall identify whether the employer is authorized to direct employees' medical care by selecting a managed care organization and shall contain the name, address, and principal occupation of the employer, the number, effective date, and expiration date of the policy, and such other information as may be required by the Administrator. The notice shall be filed by the insurer within thirty (30) days after the effective date of the policy. Any insurer who fails to file the notice required by this subsection shall be liable for an administrative violation and subject to a

fine by the Administrator of not more than One Thousand Dollars (\$1,000.00);

2. By obtaining and keeping in force guaranty insurance with any company authorized to do guaranty business in this state. Each company that issues such guaranty insurance shall file a copy of the contract with the Administrator within thirty (30) days after the effective date of the contract. Any company that fails to file a copy of the contract as required by this subsection shall be liable for an administrative violation and subject to a fine by the Administrator of not more than One Thousand Dollars (\$1,000.00);

3. Subject to the approval of the Administrator, by entering into or continuing an agreement with his employees to provide a scheme of compensation, benefits, or insurance in lieu of the compensation and insurance provided for in the Workers' Compensation Act. The scheme shall not provide less than the benefits secured by the Workers' Compensation Act nor vary the compensation period for disabilities or the provisions of the Workers' Compensation Act with respect to periodic payments or the percentage that those payments shall bear to weekly wages, except that the sums required may be increased. The Administrator shall approve a scheme that provides for contributions by workers, only when it confers benefits commensurate with such contributions and in addition to those required by the Workers' Compensation Act; ~~or~~

4. By furnishing satisfactory proof to the Administrator of the employer's financial ability to pay such compensation. The Administrator, pursuant to rules adopted by the Court or the Administrator for an individual self-insured or a group self-insurance association, shall require an employer that has:

a. less than one hundred ~~(100)~~ employees or less than One Million Dollars (\$1,000,000.00) in net assets to:

(1) deposit with the Administrator securities, an irrevocable letter of credit or a surety bond payable to the state, in an amount determined by the Administrator which shall be at least an

average of the yearly claims for the last three
(3) years; or

(2) provide proof of excess coverage with such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of the Workers' Compensation Act.

b. one hundred ~~(100)~~ or more employees and One Million Dollars (\$1,000,000.00) or more in net assets to:

(1) secure a surety bond payable to the state, or an irrevocable letter of credit, in an amount determined by the Administrator which shall be at least an average of the yearly claims for the last three (3) years; or

(2) secure excess insurance.

The Administrator may waive the requirements of this paragraph in an amount which is commensurate with the ability of the individual self-insured or group self-insurance association to pay the benefits required by the provisions of the Workers' Compensation Act. Irrevocable letters of credit required by this paragraph shall contain such terms as may be prescribed by the Administrator and shall be issued for the benefit of the Workers' Compensation Court by a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation. An employer authorized to self-insure as provided in this paragraph shall file with the Administrator a notice, in such form as may be prescribed by the Administrator, identifying whether the employer is authorized to direct employees' medical care by selecting a managed care organization;

5. By obtaining and keeping in force a workers' compensation equivalent insurance product approved by the Insurance Commissioner and the State Board for Property and Casualty Rates pursuant to Section 19 of this act; or

6. With respect to employers having not more than five employees, by obtaining and keeping in force accident insurance with an insurer authorized to transact insurance in this state. Each employer that secures such accident insurance shall post a

notice as prescribed by the Administrator advising employees that they are covered for workers' compensation purposes by accident insurance.

B. An employer, upon application to become a member of a group self-insurance association, shall file with the Administrator of the Workers' Compensation Court a notice, in such form as prescribed by the Administrator of the Court, acknowledging that the employer, by entering into a group self-insurance association, accepts joint and several liability. Such notice shall be submitted to the Workers' Compensation Court with the application for membership.

C. An employer who fails to comply with the provisions of this section shall be subject to the penalty provided for in Section 12 of this title.

D. Any employer that knowingly provides false information to the Administrator for purposes of becoming self-insured or a group self-insurance association shall be subject to the perjury laws of this state.

E. The provisions of this title shall not be construed to limit or restrict the ability of political subdivisions of this state or employers subject to the provisions of the Workers' Compensation Act from joining together to form group self-insurance associations pursuant to law or rules promulgated by the Court or the Administrator.

SECTION 18. AMENDATORY 85 O.S. 1991, Section 61, as last amended by Section 12, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1993, Section 61), is amended to read as follows:

Section 61. A. An employer shall secure compensation to his employees in one of the following ways:

1. By insuring and keeping insured the payment of such compensation with ~~any stock corporation, mutual association, or other concerns authorized to transact the business of workers' compensation insurance in this state, or by exchanging contracts of indemnity or interinsurance, pursuant to reasonable rules prescribed by the Administrator providing for and securing the payment of the compensation provided for in the Workers'~~

~~Compensation Act~~ the State Insurance Fund or such depository as has been established by statute for the purpose of providing workers' compensation insurance coverage to all eligible workers in the State of Oklahoma. When ~~an insurer~~ the State Insurance Fund or any such depository issues a policy to provide workers' compensation benefits pursuant to the provisions of the Workers' Compensation Act, the insurer shall file, or cause to be filed, with the Administrator a notice in such form and detail as the Administrator may prescribe by rule. The notice shall contain the name, address, and principal occupation of the employer, the number, effective date, and expiration date of the policy, and such other information as may be required by the Administrator. The notice shall be filed by the insurer within thirty (30) days after the effective date of the policy. Any insurer who fails to file the notice required by this subsection shall be liable for an administrative violation and subject to a fine by the Administrator of not more than One Thousand Dollars (\$1,000.00);
or

2. ~~By obtaining and keeping in force guaranty insurance with any company authorized to do guaranty business in this state. Each company that issues such guaranty insurance shall file a copy of the contract with the Administrator within thirty (30) days after the effective date of the contract. Any company that fails to file a copy of the contract as required by this subsection shall be liable for an administrative violation and subject to a fine by the Administrator of not more than One Thousand Dollars (\$1,000.00);~~

3. ~~Subject to the approval of the Administrator, by entering into or continuing an agreement with his employees to provide a scheme of compensation, benefits, or insurance in lieu of the compensation and insurance provided for in the Workers' Compensation Act. The scheme shall not provide less than the benefits secured by the Workers' Compensation Act nor vary the compensation period for disabilities or the provisions of the Workers' Compensation Act with respect to periodic payments or the percentage that those payments shall bear to weekly wages, except~~

~~that the sums required may be increased. The Administrator shall approve a scheme that provides for contributions by workers, only when it confers benefits commensurate with such contributions and in addition to those required by the Workers' Compensation Act; or~~

4. By furnishing satisfactory proof to the Administrator of the employer's financial ability to pay such compensation. The Administrator, pursuant to rules adopted by the Court or the Administrator for an individual self-insured or a group self-insurance association, shall require an employer that has:

- a. less than one hundred (100) employees or less than One Million Dollars (\$1,000,000.00) in net assets to:
 - (1) deposit with the Administrator securities, an irrevocable letter of credit or a surety bond payable to the state, in an amount determined by the Administrator which shall be at least an average of the yearly claims for the last three (3) years; or
 - (2) provide proof of excess coverage with such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of the Workers' Compensation Act.
- b. one hundred (100) or more employees and One Million Dollars (\$1,000,000.00) or more in net assets to:
 - (1) secure a surety bond payable to the state, or an irrevocable letter of credit, in an amount determined by the Administrator which shall be at least an average of the yearly claims for the last three (3) years; or
 - (2) secure excess insurance.

The Administrator may waive the requirements of this paragraph in an amount which is commensurate with the ability of the individual self-insured or group self-insurance association to pay the benefits required by the provisions of the Workers' Compensation Act. Irrevocable letters of credit required by this paragraph shall contain such terms as may be prescribed by the

Administrator and shall be issued for the benefit of the Workers' Compensation Court by a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.

B. An employer, upon application to become a member of a group self-insurance association, shall file with the Administrator of the Workers' Compensation Court a notice, in such form as prescribed by the Administrator of the Court, acknowledging that the employer, by entering into a group self-insurance association, accepts joint and several liability. Such notice shall be submitted to the Workers' Compensation Court with the application for membership.

C. An employer who fails to comply with the provisions of this section shall be subject to the penalty provided for in Section 12 of this title.

D. Any employer that knowingly provides false information to the Administrator for purposes of becoming self-insured or a group self-insurance association shall be subject to the perjury laws of this state.

E. The provisions of this title shall not be construed to limit or restrict the ability of political subdivisions of this state or employers subject to the provisions of the Workers' Compensation Act from joining together to form group self-insurance associations pursuant to law or rules promulgated by the Court or the Administrator.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 65 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Notwithstanding any provision of the Oklahoma Statutes to the contrary, a workers' compensation equivalent insurance product pilot project is authorized under the provisions of this section and shall comply with Articles 9 and 36 of Title 36 of the Oklahoma Statutes and Title 85 of the Oklahoma Statutes. The Insurance Commissioner and the State Board for Property and Casualty Rates shall adopt rules to enable employers to provide the employees with workers' compensation benefits through a

workers' compensation equivalent insurance product. All pilot project proposals shall be subject to the approval of the Insurance Commissioner and the State Board for Property and Casualty Rates. No proposal for a workers' compensation equivalent insurance product shall be approved unless it complies with the following requirements:

1. The product shall be issued by an insurance carrier admitted to do business in the state having a surplus in regard to policyholders of at least Twenty Million Dollars (\$20,000,000.00);

2. The benefits provided for injured employees must at least equal the benefits required by Title 85 of the Oklahoma Statutes;

3. No contributions may be required from employees as provided in Section 46 of Title 85 of the Oklahoma Statutes;

4. The contract must contain all provisions required of a standard policy of workers' compensation insurance issued in this state, including a workers' compensation benefits policy and an employer liability policy, and one of these policies may not be canceled independently of the other policy. All coverage parts and policy contracts must comply with Titles 36 and 85 of the Oklahoma Statutes;

5. Any company participating in the workers' compensation equivalent insurance product pilot program shall be required to file statistical data to a designated statistical agency pursuant to Section 934 of Title 36 of the Oklahoma Statutes;

6. Such other standards as are necessary to ensure the compliance of such workers' compensation equivalent insurance product with the provisions of this section as are jointly promulgated by rule of the State Board for Property and Casualty Rates and the Insurance Commissioner;

7. The product shall be a separate policy of insurance from and administered separately from any other insurance offered by the employer and separate from any employee benefit plan or policy of the employer which employee benefit plan or policy is governed by the provisions of the Employee Retirement Income Security Act, 29 U.S.C., Section 1001 et seq;

8. The employer certifies in writing to the Commissioner of Insurance that the policy is obtained solely to comply with the Oklahoma workers' compensation laws; and

9. The product is covered by a guaranty fund which provides payment to the claimant in the full amount of a covered claim for benefits under a workers' compensation insurance coverage.

Unless otherwise approved, the pilot project's maximum capacity for all participating companies shall not exceed Fifty Million Dollars (\$50,000,000.00) in annual written premiums. Furthermore, the maximum capacity for each participating company may not exceed Twenty-five Million Dollars (\$25,000,000.00) in annual written premiums.

B. A workers' compensation equivalent insurance product may be terminated by the Insurance Commissioner on reasonable notice and hearing to the interested parties if it shall appear that the system is not fairly administered or if its operation shall disclose defects threatening its solvency or if for any substantial reason it fails to accomplish the purpose of this section and is not in compliance with the provisions of this section.

C. It is the intent of the Legislature that any workers' compensation equivalent insurance product which is approved by the Insurance Commissioner and the State Board for Property and Casualty Rates pursuant to this section shall preserve an employer's immunity from civil action in district court resulting from an injury which is compensable under Title 85 of the Oklahoma Statutes.

D. On the annual effective date of the approved workers' compensation equivalent insurance product, the insurer shall submit to the State Board for Property and Casualty Rates a current Oklahoma Rate Exhibit (Form A-2) and a current Oklahoma/Countrywide 5-Year Experience and Expense Exhibit.

E. The option provided by this section shall expire July 1, 1996, and all policies issued pursuant hereto must have expiration dates of no later than said date.

SECTION 20. AMENDATORY 85 O.S. 1991, Section 132, is amended to read as follows:

Section 132. The State Insurance Fund Commissioner is hereby vested with full power, authority and jurisdiction over the State Insurance Fund. He shall perform any duties which are necessary or convenient in the exercise of any power, authority, or jurisdiction over the fund in the administration thereof, or in connection with the insurance business to be carried on by him under the provisions of Sections 131 through 151 of this title as fully and completely as a governing body of a private insurance carrier might or could do including the acquisition, operation and maintenance of an electronic data processing facility.

~~The Board of Managers of the State Insurance Fund~~ State Board for Property and Casualty Rates shall have full power and authority to fix and determine the rates to be charged by the State Insurance Fund for insurance. The State Board for Property and Casualty Rates shall not approve rates for insurance for the State Insurance Fund which are excessive, inadequate or unfairly discriminatory.

SECTION 21. AMENDATORY 85 O.S. 1991, Section 134, is amended to read as follows:

Section 134. In conducting the business and affairs of the State Insurance Fund, the Commissioner of the ~~said~~ fund, or other officer to whom such power and authority may be delegated by the Commissioner, as provided by ~~subsection 5, of Section 3, thereof~~ paragraph 5 of Section 133 of this title, shall have full power and authority to:

~~(1) To enter~~ 1. Enter into contracts of insurance, insuring employers against liability for compensation, and insuring to employees and other persons entitled thereto compensation as provided by ~~Chapter 72, Oklahoma Statutes, 1931.~~ the Workers' Compensation Act;

~~(2) To decline~~ 2. Decline to insure any risk in which the minimum requirements of the law with regard to construction, equipment and operation are not observed, or which is beyond the safe carrying of the State Insurance Fund, but shall not have

power or authority, except as otherwise provided in this act to refuse to insure any compensation risk tendered with the premium therefor;i

~~(3) To enter~~ 3. Enter into contracts of insurance insuring persons, firms and corporations against loss, expense or liability by reason of bodily injury, death by accident, occupational disability, or occupational disease suffered by employees for which the insured may be liable or have assumed liability;i

~~(4) To reinsure~~ 4. Reinsure any risk or any part thereof;i

~~(5) To inspect~~ 5. Inspect and audit, or cause to be inspected and audited the payrolls of employers applying for insurance against liability for compensation;i

~~(6) To contract~~ 6. Contract with physicians, surgeons and hospitals for medical and surgical treatment and the care and nursing of injured persons entitled to benefits from said fund;i

~~(7) To meet~~ 7. Meet the reasonable expenses of conducting the business of the State Insurance Fund;i

~~(8) To produce~~ 8. Produce a reasonable surplus to cover catastrophe hazard;i and

9. Create and administer a program whereby employers may appeal classification decisions or other decisions, including but not limited to decisions concerning experience modifiers and audits, which are disputed. The State Insurance Fund shall notify employers of the availability of the program.

SECTION 22. AMENDATORY 85 O.S. 1991, Section 139, as amended by Section 2, Chapter 60, O.S.L. 1992 (85 O.S. Supp. 1993, Section 139), is amended to read as follows:

Section 139. The entire expenses of administering "The State Insurance Fund" shall be paid out of such fund upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment. On or before the first day of June of each year, or as soon thereafter as possible, there shall be submitted to the Board of Managers of the State Insurance Fund, for approval, an estimated budget of expenses for the succeeding fiscal year. The State Insurance Fund Commissioner may not expend from the funds

belonging to the State Insurance Fund for purposes of administering any sum in excess of the amount specified in such budget for any item of expense therein set forth unless such expenditure is authorized by the Board of Managers of the State Insurance Fund. In no event shall the entire expenses of administration of the State Insurance Fund, as authorized for the entire year, exceed twenty percent (20%) of the earned premiums of said year. The Board of Managers shall cause to be made and completed within ninety (90) days after the end of each calendar year, an audit of the books of account and financial records of the fund for such calendar year, such audit to be made by an independent certified public accountant, a licensed public accountant, a firm of certified public accountants, or an accounting firm or individual holding a permit to practice accounting in this state.

The Fund shall submit to the State Insurance Commissioner an annual financial statement in the same manner as a domestic insurance carrier. The Insurance Commissioner ~~may audit~~ shall examine the State Insurance Fund in the same manner as a domestic insurance company. The State Insurance Fund Commissioner shall provide a copy of the annual financial statement to the Governor and State Insurance Fund Board of Managers.

SECTION 23. AMENDATORY 85 O.S. 1991, Section 172, as amended by Section 11, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1993, Section 172), is amended to read as follows:

Section 172. A. If an employee who is a "physically impaired person" receives an accidental personal injury compensable under the Workers' Compensation Act which results in additional permanent disability so that the degree of disability caused by the combination of both disabilities is materially greater than that which would have resulted from the subsequent injury alone, the employee shall receive compensation on the basis of such combined disabilities. ~~Only disability due to an injury to the body as a whole shall be combinable with a prior body disability, except that disability to a major member may be combined with disability to the body as a whole.~~ If such combined disabilities

constitute partial permanent disability as now defined by the Workers' Compensation Act of this state, then such employee shall receive full compensation as now provided by law for the disability resulting directly and specifically from such subsequent injury, and in addition thereto such employee shall receive full compensation for his combined disability as above defined, after deducting therefrom the percent of that disability that constituted the employee a "physically impaired person", as defined herein, all of which shall be computed upon the schedule and provision of the Workers' Compensation Act of this state. Provided the employer shall be liable only for the degree of percent of disability which would have resulted from the latter injury if there had been no preexisting impairment. After payments by the employer or his insurance carrier, if any, have ceased, the remainder of such compensation shall be paid out of the Special Indemnity Fund provided for in Section 173 of this title, in periodic installments.

B. If such combined disabilities constitute permanent total disability, as now defined by the Workers' Compensation Act, then the employee shall receive full compensation as now provided by law for the disability resulting directly and specifically from such subsequent injury. In addition, the employee shall receive full compensation for his combined disability, as above defined, all of which shall be computed upon the schedule and provisions of the Workers' Compensation Act. The employer shall be liable only for the degree of percent of disability which would have resulted from the latter injury if there had been no preexisting impairment. After payments by the employer or his insurance carrier have ceased, the remainder of such compensation shall be paid out of the Special Indemnity Fund provided for in Section 173 of this title, in periodic installments. In permanent total disability cases the same shall be paid in periodic payments, as set forth in Section 22 of this title, and shall not be commuted to a lump-sum payment. The compensation rate for permanent total awards from the Special Indemnity Fund shall be the compensation rate for permanent partial disability paid by the employer in the

Req. No. 9170Page 51

last combinable compensable injury. Permanent total awards from the Special Indemnity Fund shall be payable for a period of five (5) years or until the employee reaches sixty-five (65) years of age, whichever period is the longer.

C. Before a physically impaired person can proceed against the Special Indemnity Fund, the preexisting permanent partial disability and the permanent partial disability from the last injury must exceed a total amount equal to ~~forty percent (40%)~~ twenty percent (20%) to the body.

D. Awards from the Special Indemnity Fund shall abate upon the death, from any cause, of the employee.

SECTION 24. AMENDATORY 85 O.S. 1991, Section 177, as amended by Section 23, Chapter 245, O.S.L. 1993 (85 O.S. Supp. 1993, Section 177), is amended to read as follows:

Section 177. A. There is hereby established with the State Treasurer a Workers' Compensation Administration Fund to be used for the costs of administering the Workers' Compensation Act and for other purposes pursuant to legislative appropriation.

No money on deposit with the State Treasurer to the credit of the Workers' Compensation Administration Fund shall be expended except pursuant to legislative appropriation.

B. For the purpose of providing funds for the Workers' Compensation Administration Fund, each mutual or interinsurance association, stock company, the State Insurance Fund or other insurance carrier writing workers' compensation insurance in this state or providing a workers' compensation equivalent insurance product as provided in Section 19 of this act shall pay to the Oklahoma Tax Commission a tax at a rate of one percent (1%) of all gross direct premiums written during each quarter of the calendar year for workers' compensation insurance on risks located in this state after deducting from such gross direct premiums, return premiums, unabsorbed portions of any deposit premiums, policy dividends, safety refunds, savings and other similar returns paid or credited to policyholders. Such payments to the Tax Commission shall be made not later than the fifteenth day of the month following the close of each quarter of the calendar year in which

such gross direct premium is collected or collectible.

Contributions made by insurance carriers and the State Insurance Fund, under the provisions of this section, to the Workers' Compensation Administration Fund shall be considered losses for the purpose of computing workers' compensation rates.

C. When an employer is authorized to become a self-insurer, the Administrator as directed by the Court shall so notify the Oklahoma Tax Commission, giving the effective date of such authorization. The Oklahoma Tax Commission shall then assess and collect from the employers carrying their own risk a tax at the rate of two percent (2%) of the total compensation for permanent total disability awards, permanent partial disability awards and death benefits paid out during each quarter of the calendar year by the employers. Such tax shall be payable by the employers and collected by the Oklahoma Tax Commission according to the provisions of this section regarding payment and collection of the tax created in subsections B, D, E and F of this section.

D. It shall be the duty of the Oklahoma Tax Commission to collect the payments provided for herein. The Oklahoma Tax Commission is hereby authorized to bring an action for the recovery of any delinquent or unpaid payments required in this section. The Oklahoma Tax Commission may also enforce payments by proceeding in accordance with the provisions of Section 42 of ~~Title 85 of the Oklahoma Statutes~~ this title.

E. The Oklahoma Tax Commission shall pay monthly to the State Treasurer to the credit of the Workers' Compensation Administration Fund all monies collected under the provisions of this section.

F. The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payments made to the Workers' Compensation Administration Fund.

SECTION 25. AMENDATORY Section 18, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1993, Section 201.1), is amended to read as follows:

Section 201.1 A. There is hereby created a Physician Advisory Committee comprised of seven (7) members to be appointed as follows:

1. The Governor shall appoint three members, one of whom shall be licensed in this state as a doctor of medicine and surgery, one of whom shall be engaged in the practice of family medicine in a rural community of the state, and one of whom shall be an osteopathic physician; and

2. The President Pro Tempore of the Senate shall appoint two members, one of whom shall be licensed in this state as a doctor of medicine and surgery and one of whom shall be licensed in this state as a podiatric physician; and

3. The Speaker of the House of Representatives shall appoint two members, one of whom shall be licensed in this state as an osteopathic physician and one of whom shall be licensed in this state as a chiropractic physician.

B. The Committee shall:

1. Assist and advise the Administrator of the Workers' Compensation Court regarding utilization review as it relates to the medical practice and treatment of work-related injuries. Such utilization review shall include a review of reasonable and necessary treatment; abusive practices; needless treatments, testing, or procedures; or a pattern of billing in excess of or in violation of the Schedule of Medical Fees. The Physician Advisory Committee shall review and make findings and recommendations to the Administrator of the Workers' Compensation Court with respect to charges of inappropriate or unnecessary treatment or procedures, abusive practices, or excessive billing disclosed through utilization review-i

2. Assist the Administrator of the Workers' Compensation Court in reviewing medical practices of health care providers as provided for in Section 201 of ~~Title 85 of the Oklahoma Statutes~~ this title. The Committee shall review and make findings and recommendations to the Administrator with respect to charges of abusive practices by health care providers providing medical services through the workers' compensation system-i

3. After public hearing, review and make recommendations for acceptable deviations from the American Medical Association's "Guides to the Evaluation of Permanent Impairment" using appropriate and scientifically valid data. Those recommendations may be adopted, in part or in whole, by the Administrator to be used as provided for in paragraph 11 of Section 3 and Section 22 of ~~Title 85 of the Oklahoma Statutes~~ this title;

4. After public hearing, review and make recommendations for treatment guidelines. Those recommendations may be adopted, in part or in whole, by the Administrator;

5. Provide general recommendations to the judges of the Workers' Compensation Court on the issues of injury causation and apportionment;

6. Conduct educational seminars for the judges of the Workers' Compensation Court, employers, employees, and other interested parties; ~~and~~

7. Assist the judges of the Workers' Compensation Court in accessing medical information from scientific literature; and

8. Develop a list of physicians certified to serve as third physicians for purposes of Section 17 of this title. In certifying, recertifying or decertifying a third physician, the Committee shall consider the qualifications, training, impartiality and commitment of the third physician to the provision of quality medical care at a reasonable cost. The Committee shall require, at a minimum, specialized workers' compensation training or experience under the Oklahoma workers' compensation system and board certification as a condition to certification or recertification. All third physicians shall be licensed to practice medicine or surgery in Oklahoma.

C. The term of office for initial appointees shall expire March 1, 1994. Thereafter, successors in office shall serve at the pleasure of the appointing authority.

D. During their respective terms of office, the physicians appointed to the Physician Advisory Committee shall be strictly prohibited from serving as a third physician appointed by the

Workers' Compensation Court pursuant to Section 17 of ~~Title 85 of the Oklahoma Statutes~~ this title.

E. Members of the Physician Advisory Committee shall receive no compensation for serving on the Committee but shall be reimbursed by the Workers' Compensation Court for their necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

F. Meetings of the Physician Advisory Committee shall be called by the Administrator but held at least quarterly. The presence of five members constitutes a quorum. No action shall be taken by the Physician Advisory Committee without the affirmative vote of at least five members.

G. The Administrator shall provide office supplies and personnel of the Workers' Compensation Court to assist the Committee in the performance of its duties.

SECTION 26. AMENDATORY 36 O.S. 1991, Section 624, is amended to read as follows:

Section 624. Every insurance company, including the State Insurance Fund, copartnership, insurance association, interinsurance exchange, person, insurer, nonprofit hospital service and medical indemnity corporation, or health maintenance organization, doing business in the State of Oklahoma in the execution or exchange of contracts of insurance, indemnity or health maintenance services, or as an insurance company of any nature or character whatsoever, hereinafter referred to in this article as an insurance company, or company, shall, annually, on or before the last day of February, report under oath of the president or secretary or other chief officer of such company to the Insurance Commissioner, the total amount of direct written premiums, membership, application, policy and/or registration fees charged during the preceding calendar year, or since the last return of such direct written premiums, membership, application, policy and/or registration fees was made by such company, from insurance of every kind upon persons or on the lives of persons resident in this state, or upon real and personal property located within this state, and/or upon any other risks insured within this

state, provided, that with respect to the tax payable annually, considerations received for annuity contracts and payments received by a health maintenance organization from the Secretary of Health and Human Services pursuant to a contract issued under the provisions of 42 U.S.C., Section 1395 mm(g) shall no longer be deemed to be premiums for insurance and shall no longer be subject to the tax imposed by this section. Every such company shall, at the same time, pay to the Insurance Commissioner:

(1) An annual license fee as prescribed by Section 321 of this Code, except for the State Insurance Fund, and Health Maintenance Organizations which shall pay the annual license fee provided for in Section 2504 of Title 63 of the Oklahoma Statutes; and

(2) An annual tax on all of said direct written premiums after all returned premiums are deducted, and on all membership, application, policy and/or registration fees collected thereby, for the privileges of having written, continued and/or serviced insurance on lives, property and/or other risks in this state and of having made and serviced investments therein during the then expiring license year except premiums or fees paid by any county, city, town or school district funds or by their duly constituted authorities performing a public service organized pursuant to Sections 1001 through 1008 of Title 74 of the Oklahoma Statutes, or Sections 176 through 180.4 of Title 60 of the Oklahoma Statutes. Provided, no deduction shall be made from premiums for dividends paid to policyholders. The rate of taxation for calendar year 1988 shall be three percent (3%). For all subsequent calendar years, the rate of taxation for all entities subject to said tax shall be two and twenty-five one-hundredths percent (2.25%). No tax shall be levied upon any assessment or policy fee collected during calendar years 1990 and 1991 in response to the requirements of the Insurance Commissioner pursuant to subsection A or subsection B of Section 1509 of this title provided, such funds are used for the sole purpose of paying losses and associated expenses. If any insurance company or other entity uses such funds for any purpose other than payment of

losses and associated expenses, such entity shall be liable for the taxes levied pursuant to the provisions of this section which would have been otherwise levied and collected, including interest thereon at a rate equal to the annual average interest rate earned on state funds by the State Treasurer during such tax period.

For all insurance companies or other entities taxed pursuant to this section, the annual license fee and tax and all required membership, application, policy, registration, and agent appointment fees shall be in lieu of all other state taxes or fees, except those taxes and fees provided for in the Insurance Code and in Sections 2501 through 2510 of Title 63 of the Oklahoma Statutes, and the taxes and fees of any subdivision or municipality of the state, except ad valorem taxes and the tax required to be paid pursuant to Section 50001 of Title 68 of the Oklahoma Statutes. Any company, except the State Insurance Fund and health maintenance organizations, failing to make such returns and payments promptly and correctly shall forfeit and pay to the Insurance Commissioner, in addition to the amount of said taxes and fees, the sum of Five Hundred Dollars (\$500.00); and the company so failing or neglecting for sixty (60) days shall thereafter be debarred from transacting any business of insurance in this state until said taxes, fees and penalties are fully paid, and the Insurance Commissioner shall revoke the license or certificate of authority granted to the agent or agents of that company to transact business in this state. Provided, that when any such insurance company, copartnership, insurance association, interinsurance exchange, person, insurer, or nonprofit hospital service and indemnity corporation, applies for the first time for a license to do business in Oklahoma, it shall, at the time of making such application, pay a license fee as prescribed by Section 1425 of Article 14A of this Code, and, on or before the last day of February, following, pay the premium tax, membership, application, policy, registration, and agent appointment fees, as hereinbefore provided. Such license fee, tax and membership, application, policy, registration, and appointment fees shall be in lieu of all other state taxes or fees, except those taxes and

Req. No. 9170Page 58

fees provided for in the Insurance Code, and the taxes and fees of any subdivision or municipality of the state, except ad valorem taxes and the tax required to be paid pursuant to Section 50001 of Title 68 of the Oklahoma Statutes.

Any health maintenance organization failing to file premium tax returns and payments promptly and correctly shall forfeit and pay to the Insurance Commissioner, in addition to the amount of said taxes, the sum of Five Hundred Dollars (\$500.00). Any health maintenance organization failing or neglecting to pay said tax and penalty shall be debarred from operating in this state and the State Department of Health shall revoke the license of the health maintenance organization, until said taxes and penalties are fully paid.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 723 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. No corporation, employer, agent of an employer or person who is a manager with respect to a product, facility, equipment, process, place of employment or business practice shall engage in neglect or reckless conduct by allowing or creating a situation of unreasonable risk and probability of death or great bodily harm to an employee, while such employee is engaged at work, and by demonstrating a conscious disregard for the safety of others.

B. Any person convicted of violating the provisions of this section shall be guilty of a felony punishable by imprisonment in the State Penitentiary for not less than one (1) year nor more than (10) years, and by the imposition of a fine of not more than One Million Dollars (\$1,000,000.00).

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5006.1 of Title 74, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created within the Oklahoma Department of Commerce, the Office of Ombudsman Services on Workers' Compensation. The Director of the Oklahoma Department of Commerce

shall employ such persons as are necessary to implement the duties of the Office.

B. The Office shall assist employers, prospective employers and economic development specialists by providing information on all aspects of the worker's compensation system, including options for workers' compensation coverage, rates and premiums, employer responsibilities under the system, and available safety programs.

SECTION 29. REPEALER 85 O.S. 1991, Section 2.3 and 2.4, are hereby repealed.

SECTION 30. This act shall become effective September 1, 1994.

44-2-9170 SD