

SHORT TITLE: Workers' compensation; providing for health care programs; effective date.

STATE OF OKLAHOMA

2nd Extraordinary Session of the 44th Legislature (1994)

SENATE BILL NO. 2

By: Long (Lewis)

AS INTRODUCED

An Act relating to workers' compensation; amending 85 O.S. 1991, Sections 3, as last amended by Section 33, Chapter 2, O.S.L. 1994, 5, as amended by Section 3, Chapter 294, O.S.L. 1992, and 14, as last amended by Section 7, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1994, Sections 3, 5 and 14), which relate to the Workers' Compensation Act; defining terms; prohibiting certain acts by employers; providing penalty; allowing cause of action to include punitive damages; modifying the authority of an employee to select a physician and providing procedures thereto; providing for health care programs; allowing for selection of health care plan; providing for procedures and enrollment of employees; construing provisions of sections of law; reducing workers' compensation insurance premiums of certain employers; allowing application for certain health care plans; stating contents of application; requiring Commissioner to refuse to certify or revoke or suspend certification under certain circumstances; prohibiting certain actions; requiring promulgation of certain rules; stating certain duties of the Insurance Commissioner of the State of Oklahoma; providing procedures relating to certification and supervision of health care

programs; requiring certain rules; 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 3, as last amended by Section 33, Chapter 2, O.S.L. 1994 (85 O.S. Supp. 1994, 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~~;~~;
2. "Court" means the Workers' Compensation Court~~;~~;
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~~;~~;
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-;

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-;

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

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 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. 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 201.1 of this title. These officially adopted guides or modifications thereto 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; 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-;

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

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

14. "Certified workers' compensation employee choice health care incentive plan" 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. Certified plans shall only include such plans which provide medical services and payment for services on a fee-for-service basis to medical providers and shall not include other plans which contract in some other manner, such as capitalized or pre-paid plans; and

15. "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 2. AMENDATORY 85 O.S. 1991, Section 5, as amended by Section 3, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 1994, 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 employee choice health care incentive plan as provided in Section 3 of this act a condition of employment. A violation of this provision shall be a civil infraction and subject to a fine of not more than Ten Thousand

Dollars (\$10,000.00). An employee shall have a cause of action which may include punitive damages against an employer who is in violation of the provisions of this subsection.

SECTION 3. AMENDATORY 85 O.S. 1991, Section 14, as last amended by Section 7, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1994, 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 employee choice health care incentive plan and has previously selected a primary care physician, the employee may select a physician of his choice 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, 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 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.~~ Such change of physician application shall be reviewed within twenty-one (21) days of the request for a change of physician by an injured worker. Any order for a change of physician shall supersede any contract for health care as provided in Section 3 of this title. If a change of physician is ordered a copy of the order shall be sent to the Insurance Commissioner to aid in review of the certified workers' compensation employee choice health care incentive plan. 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 4. 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 an individually self-insured employer approved by the Workers' Compensation Court or an employer's workers' compensation insurance carrier has contracted with a certified workers' compensation employee choice health care incentive plan, an employee may select that plan for necessary medical treatment as provided under the Workers' Compensation Act. If an individually self-insured employer approved by the Workers' Compensation Court has in force a collective bargaining agreement with its employees, the certified plan shall be selected with the approval of both the

employer and the employees. Notwithstanding any other provision of law, those employees who are subject to such certified plan shall receive medical treatment in the manner prescribed by the plan. When a contract of employment is made, qualified employers shall provide the employee with the opportunity to enroll in the insurer's certified plan. 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 certified plan shall be the employer's. After enrollment, an employee shall seek treatment under the certified plan for one calendar year. The employee may opt out of the plan, 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 certified plan, treatment must be rendered under the certified plan 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 plan 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 certified plan from the list of certified plan 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 plan 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 certified plan organization.

SECTION 5. 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 employee choice health care plan 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 plan 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 plan, 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 plan.

B. 1. The Commissioner shall certify a plan if the Commissioner finds that the plan:

- 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 plan 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 plan,
- g. authorizes necessary emergency medical treatment for an injury provided by a medical provider not a part of the plan,
- h. assures reasonable access to medical providers available under the plan 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 plan, 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 plan 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 plan is not being provided in accordance with the terms of a plan.

D. No person who participates in forming consortiums collectively negotiating fees or otherwise solicits or enters into 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 plan. Before engaging in such activities, the person shall provide notice of intent to the Commissioner in a form prescribed by the Commissioner.

E. 1. No insurance carrier which provides workers' compensation coverage to the employer shall have a financial interest in a managed care organization or provider of services pursuant to this act which provides medical treatment to the employees of such employer.

2. For a period of five (5) years following a term of public service, no public officer of any branch of state government shall have a financial interest in a managed care organization or provider of medical or other health care services pursuant to this act. A violation of this paragraph shall constitute and be punishable as a misdemeanor.

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

SECTION 6. This act shall become effective July 1, 1995.

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