

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)
CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1310

By: Shedrick of the Senate

and

Steidley and Pope (Clay)
of the House

CONFERENCE COMMITTEE SUBSTITUTE

An act relating to workers' compensation; amending 85 O.S. 1991, Sections 3, as last amended by Section 1 of Enrolled House Bill No. 2469 of the 2nd Session of the 45th Oklahoma Legislature, 14, as last amended by Section 2 of Enrolled House Bill No. 2469 of the 2nd Session of the 45th Oklahoma Legislature, Section 24, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (85 O.S. Supp. 1995, Section 14.2), as amended by Section 3 of Enrolled House Bill No. 2469 of the 2nd Session of the 45th Oklahoma Legislature, Section 25, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, 64, as amended by Section 14, Chapter 349, O.S.L. 1993, 131a, 134, as amended by Section 40, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, 145, 146 and 174 (85 O.S. Supp. 1995, Sections 14.3, 64 and 134), which relate to the Workers' Compensation Act; modifying definition; authorizing certain insured to contract with certified workplace medical plan under certain circumstances; modifying choice of physicians under certified workplace medical plan; modifying number of physicians an employee may select under a certified workplace medical plan; conforming language; updating language; adding statutory reference; changing conditions for certification of workplace medical plan; excluding certain amounts from calculation of insured's employer's experience modifier; creating a task force to study and develop twenty-four-hour coverage; defining term; specifying certain issues for study by task force; providing for composition of task force; providing for selection of chairperson; providing for reimbursement of certain expenses; providing for staff assistance; authorizing certain contract for services by task force; requiring certain report; modifying meeting schedule of the Board of Managers of the State Insurance Fund; limiting authority of the State Insurance Fund Commissioner to reinsure certain risks; changing penalty for failure to keep certain records; changing penalty for misrepresentation of certain facts; increasing percentage of amount of certain compensation awards required for payment for use of the Special Indemnity Fund; amending 36 O.S. 1991, Sections 309.3 and 1509, which relate to appointment of examiners and increase of inadequate reserves; requiring examiners services to be competitively bid; requiring

notation of certain actuaries; allowing insurers to use present value discounting for computing reserves for certain entities; specifying discount rate; amending 74 O.S. 1991, Section 840.22A, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 14, Chapter 283, O.S.L. 1994 (74 O.S. Supp. 1995, Section 840-2.14), which relates to the Oklahoma Personnel Act; exempting the State Insurance Fund from hiring freeze provisions; construing certain amendment; providing for codification; providing for noncodification; providing an effective date; and declaring an emergency.

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 1 of Enrolled House Bill No. 2469 of the 2nd Session of the 45th Oklahoma Legislature, 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. Provided, "employee" shall not include any other person providing or performing voluntary service who receives no wages for the services other than meals, drug or alcohol rehabilitative therapy, transportation, lodging or reimbursement for incidental expenses. "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 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;

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;

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;

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;

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. The Physician Advisory Committee may, pursuant to Section 201.1 of this title, recommend the adoption of a method or system to evaluate permanent impairment that shall be used in place of or in combination with the American Medical Association's "Guides to the

Evaluation of Permanent Impairment". Such recommendation shall be made to the Administrator of the Workers' Compensation Court who may adopt the recommendation in part or in whole. The adopted method or system shall be submitted by the Administrator to the Speaker of the House of Representatives and the President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such method or system to evaluate permanent impairment that shall be used in place of or in combination with the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be subject to disapproval in whole or in part by joint or concurrent resolution of the Legislature during the legislative session in which submitted. Such method or system shall be operative one hundred twenty (120) days after the last day of the month in which the Administrator submits the adopted method or system to the Legislature if the Legislature takes no action or one hundred twenty (120) days after the last day of the month in which the Legislature disapproves it in part. If adopted, permanent impairment shall be evaluated only in accordance with the latest version of the alternative method or system in effect at the time of 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, and before January 1, 1995, shall be operative one hundred twenty (120) days after the last day of the month of publication. Revisions to the guides made by the American Medical Association which are published after December 31, 1994, may be adopted in whole or in part by the Administrator following recommendation by the Physician Advisory Committee. Revisions adopted by the Administrator shall be submitted by the Administrator to the Speaker of the House of Representatives and the President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such revisions shall be subject to disapproval in whole or in part by joint or concurrent resolution of the Legislature during the legislative session in which submitted. Revisions shall be operative one hundred twenty

(120) days after the last day of the month in which the Administrator submits the revisions to the Legislature if the Legislature takes no action or one hundred twenty (120) days after the last day of the month in which the Legislature disapproves them in part. The examining physician shall not follow the guides based on race or ethnic origin. The examining physician shall not deviate from said guides or any alternative thereto except as may be specifically provided for in the guides or modifications to the guides or except as may be specifically provided for in any alternative or modifications thereto, 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 or alternative system or method of evaluating permanent impairment 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 or alternative to 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. "Maximum medical improvement" means that no further material improvement would reasonably be expected from medical treatment or the passage of time;

15. "Independent medical examiner" means a licensed physician authorized to serve as a medical examiner pursuant to Section 17 of this title;

16. "Certified workplace medical plan" means an organization of health care providers or any other entity, certified by the Commissioner of Health pursuant to Section 14.3 of this title, that ~~has entered~~ is authorized to enter into a contractual agreement with a self-insured employer, group self-insurance association plan, an employer's workers' compensation insurance carrier or ~~an insured, which shall include any member of an approved group self-insured association, policyholder or public entity, regardless of whether such entity is insured by the State Insurance Fund~~, 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 capitated or pre-paid plans. If any of the aforementioned entities fail to contract with or provide access to a certified workplace medical plan on or before November 1, 1996, an insured, which shall include any policyholder, public entity, or member of an approved group self-insured association, shall be authorized to contract independently with a plan of his or her choice for a period of one (1) year, to provide medical care under the Workers' Compensation Act. The insured shall be authorized to contract for additional one-year periods if his or her insurer has not contracted with or provided access to a certified workplace medical plan; and

17. "Treating physician" or "attending physician" means the licensed physician who has provided or is providing medical care to the injured employee.

SECTION 2. AMENDATORY 85 O.S. 1991, Section 14, as last amended by Section 2 of Enrolled House Bill No. 2469 of the 2nd Session of the 45th Oklahoma Legislature, is amended to read as follows:

Section 14. A. 1. 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.

2. The attending physician who renders treatment to the employee at any time shall promptly notify the employee and employer or the employer's insurer in writing after the employee has reached maximum medical improvement and is released from active medical care. If the employee is capable of returning to modified light duty work, the attending physician shall promptly notify the employee and the employer or the employer's insurer thereof in writing and shall also specify what restrictions, if any, must be followed by the employer in order to return the employee to work. In the event the attending physician provides such notification to the employer's insurer, the insurer shall promptly notify the employer.

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. Unless a self-insured employer, group self-insurance association plan, or an employer's workers' compensation insurance carrier has previously contracted with a certified workplace medical plan, 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. If a self-insured employer, group self-insurance association plan, an employer's workers' compensation insurance carrier or an insured, which shall include any member of an approved group self-insured association, policyholder or public entity, regardless of whether such entity is insured by the State Insurance Fund, has previously contracted with a certified workplace medical plan, the employee shall have two choices:

1. The employee shall have the right to select ~~a physician~~ physicians from each of the classes of physicians as defined in Section 725.2 of Title 59 of the Oklahoma Statutes who has:

a. have maintained the employee's medical records prior to an injury and ~~has~~ have a documented history of treatment with the employee prior to an injury, ~~or a physician who has~~

b. have maintained the medical records of an immediate family member of the employee prior to an injury and ~~has~~ have a documented history of treatment with an immediate family member of the employee prior to an injury. For purposes of this ~~paragraph~~ subparagraph, immediate family member means the employee's spouse, children, parents, stepchildren, and stepparents. An attending physician selected under this paragraph must agree to comply with all the rules, terms, and conditions of the certified workplace medical plan. An attending physician selected under this paragraph may refer the employee to a physician outside the certified workplace medical plan only if the physician to whom the employee is referred agrees to comply with all the rules, terms, and conditions of the certified workplace medical plan; or

2. The employee shall elect to participate in the certified workplace medical plan.

D. The term "physician" as used in this section shall mean any person licensed in Oklahoma as a medical doctor, chiropractor,

podiatrist, 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 January 1, 1996, 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. Before April 1, 1995, the Administrator shall adopt a new fee and treatment schedule to be effective no later than January 1, 1996, based on a relative value system which weights professional medical services based on the time, skill, complexity, intensity, severity of illness, patient risk, and medicolegal risk to the medical

provider, with conversion factors appropriate to the State of Oklahoma. To the extent practicable, the new fee and treatment schedule shall result in a net projected savings system-wide of not less than five percent (5%). 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 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 3. AMENDATORY Section 24, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (85 O.S. Supp. 1995, Section 14.2), as amended by Section 3 of Enrolled House Bill No. 2469 of the 2nd Session of the 45th Oklahoma Legislature, is amended to read as follows:

Section 14.2 If a self-insured employer, group self-insurance association plan, an employer's workers' compensation insurance carrier or an insured, which shall include any member of an approved group self-insured association, policyholder or public entity, regardless of whether such entity is insured by the State Insurance Fund, has contracted with a workplace medical plan that is certified by the Commissioner of Health as provided in Section 14.3 of this title, an employee shall exercise the election for which provision is made in subsection C of Section 14 of this title. If a self-insured employer approved by the Workers' Compensation Court has in force a collective bargaining agreement with its employees, the certified workplace medical plan shall be selected with the approval of both parties signatory to the collective bargaining agreement. Notwithstanding any other provision of law, those employees who are subject to such certified workplace medical plan shall receive medical treatment in the manner prescribed by the plan. Qualified employers shall, when a contract of employment is made or on the annual open enrollment date for the insurer's certified plan, provide the employee with written notice of and the opportunity to enroll in the plan or to indicate his desire to select ~~a physician~~

physicians who ~~has~~ have maintained the employee's medical records or the medical records of a member of the employee's immediate family. The election must be made in writing: ~~(1) within~~

1. Within thirty (30) days of employment; ~~(2) within~~

2. Within thirty (30) days after an employee receives notice that a self-insured employer, group self-insurance association plan, or an employer's workers' compensation insurance carrier implements a certified workplace medical plan; or ~~(3) on~~

3. On the annual open enrollment date of the certified workplace medical plan.

Procedures and forms for enrollment shall be provided by the self-insured employer, group self-insurance association plan, insurance carrier or insured, which shall include any member of an approved group self-insured association, policyholder or public entity, regardless of whether such entity is insured by the State Insurance Fund. The burden for notification of an employee's enrollment in a certified workplace medical plan shall be the employer's. After enrollment, an employee shall seek treatment under the certified workplace medical plan for one (1) calendar year. The employee may opt out of the plan, effective on the next annual open enrollment date only if the employee is changing to a physician or physicians selected pursuant to the requirements of paragraph 1 of subsection C of Section 14 of this title. However, if the date of the injury falls under a period of enrollment in a certified workplace medical plan, treatment must be rendered under the certified workplace medical 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 attending physician within the certified workplace medical plan or for a change of physician outside the plan, if the physician agrees to comply with all the rules, terms and conditions of the certified workplace medical plan. Nor shall the provisions of this section preclude an employee from seeking emergency medical treatment as provided in Section 14 of this title. The provisions of this section shall not apply to treatment received by an employee for

Req. No. 2845Page 14

an accepted accidental injury or occupational disease for which treatment began prior to ~~the effective date of this act~~ November 4, 1994.

SECTION 4. AMENDATORY Section 25, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (85 O.S. Supp. 1995, Section 14.3), is amended to read as follows:

Section 14.3 A. Any person or entity may make written application to the Commissioner of Health of the State of Oklahoma to have a workplace medical plan certified that provides management of quality treatment to injured employees for injuries and diseases compensable under the Workers' Compensation Act, Section 1 et seq. of this title. Each application for certification shall be accompanied by a fee of One Thousand Five Hundred Dollars (\$1,500.00). A workplace medical plan may be certified to provide services to a limited geographic area. A certificate is valid for a five-year period, 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 not certify a plan unless the Commissioner finds that the plan:

- a. proposes to provide quality services for all medical services ~~that~~ which:
- (1) may be required by the Workers' Compensation Act in a manner that is timely, effective and convenient for the employee, and
 - (2) utilizes the medical treatment guidelines and protocols, established for use by medical service providers, which have been recommended

by the Physician Advisory Committee and adopted
by the Administrator pursuant to subsection B of
Section 201.1 of this title,

- b. is reasonably geographically convenient to residents of the area for which it seeks certification,
- 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 providers who violate these treatment standards,
- e. requires the dispute resolution procedure of the plan to include a requirement that disputes on an issue related to medical care under the plan be attempted to be resolved within ten (10) days of the time the dispute arises and if not resolved within ten (10) days, the employee may pursue remedies in the Workers' Compensation Court,
- f. provides aggressive case management for injured employees and a program for early return to work,
- g. provides workplace health and safety consultative services,
- h. 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,
- i. authorizes necessary emergency medical treatment for an injury provided by a provider of medical, surgical, and hospital services who is not a part of the plan; allows employees to receive medical, surgical, and hospital services from a physician who is not a member of the plan if such attending

physician has been selected by the employee pursuant to paragraph 1 of subsection C of Section 14 of ~~Title 85 of the Oklahoma Statutes~~ this title; and allows a physician selected by the employee pursuant to paragraph 1 of subsection C of Section 14 of ~~Title 85 of the Oklahoma Statutes~~ this title to refer the employee to a physician outside the plan only if the physician to whom the employee is referred agrees to comply with all the rules, terms, and conditions of the plan,

- j. does not discriminate against or exclude from participation in the plan any category of providers of medical, surgical, or hospital services and includes an adequate number of each category of providers of medical, surgical, and hospital services to give participants access to all categories of providers and does not discriminate against ethnic minority providers of medical services, and
- k. 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. An employee shall exhaust the dispute resolution procedure of the certified workplace medical plan before seeking legal relief on an issue related to medical care under the plan, provided the dispute resolution procedure shall create a process which shall attempt to resolve the dispute within ten (10) days of the time the dispute arises and if not resolved within ten (10) days, the employee may pursue remedies in the Workers' Compensation Court.

D. The Commissioner shall refuse to certify or shall revoke or suspend the certification of 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.

E. The Commissioner shall adopt such rules as may be necessary to implement the provisions of Section ~~24~~ 14.2 of this ~~act~~ title and this section. Such rules shall authorize any person to petition the Commissioner of Health for decertification of a certified workplace medical plan for material violation of any rules promulgated pursuant to this section.

SECTION 5. AMENDATORY 85 O.S. 1991, Section 64, as amended by Section 14, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1995, Section 64), is amended to read as follows:

Section 64. A. Every policy of insurance covering the liability of the employer for compensation issued by a stock company or by a mutual association or other concern authorized to transact workers' compensation insurance in this state shall contain a provision setting forth the right of the Administrator to enforce in the name of the people of the State of Oklahoma, for the benefit of the person entitled to the compensation insured by the policy either by filing a separate application or by making the insurance carrier a party to the original application, the liability of the insurance carrier in whole or in part for the payment of such compensation; provided, however, that payment in whole or in part of said compensation by either the employer or the insurance carrier shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

B. Every such policy shall contain a provision that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be on the part of the insurance carrier, that jurisdiction of the employer shall, for the purpose incorporated in this title, be jurisdiction of the insurance carrier, and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer for

the payment of compensation under the provisions incorporated in this title.

C. Every such policy shall contain a provision to the effect that the insolvency or bankruptcy of the employer shall not relieve the insurance carrier from the payment of compensation for injuries sustained by an employee during the life of such policy.

D. 1. Every such policy issued to cover a risk in this state shall include provisions giving the insured employer the option of choosing a deductible amount for medical benefits in amounts ranging from Five Hundred Dollars (\$500.00) to Two Thousand Five Hundred Dollars (\$2,500.00) in increments of Five Hundred Dollars (\$500.00). The insured employer, if choosing to exercise the option, shall choose only one deductible amount.

2. If an insured employer exercises the option and chooses a deductible, the insured employer shall be liable for the amount of the deductible for the medical benefits paid for each claim of work injury suffered by an injured employee.

3. The Insurance Commissioner in exercising his authority to approve the form of the policy to be issued shall not approve any policy form that permits, directly or indirectly, any part of the deductible to be charged to or passed on to the injured worker or insurer.

4. The insurer shall pay the entire cost of medical bills directly to the provider of the services and then seek reimbursement from the insured employer for the deductible amount.

5. If the insured employer does not reimburse the deductible amount directly to the insurer within sixty (60) days of a written demand therefor, the insurer shall pay the compensable medical claim and may seek to recover the full amount of such claim from the insured employer.

6. Claim amounts paid under the medical benefits deductible pursuant to this subsection shall be excluded from the calculation of the employer's experience modifier.

7. The provisions of this subsection shall be fully disclosed to the prospective purchaser in writing.

E. Every contract or agreement of an employer the purpose of which is to indemnify him from loss or damage on account of the injury of an employee by accidental means, or on account of the negligence of such employer or his officer, agent or servant shall be absolutely void unless it shall also cover liability for the payment of the compensation provided for in this title.

F. No contract of insurance issued by a stock company or mutual association or other concern against the liability arising under this title shall be canceled within the time limited in such contract for its expiration until at least ten (10) days after notice of intention to cancel such contract, on a date specified in such notice, shall be filed in the office of the Administrator and also served on the employer. Such notice shall be served on the employer by delivering it to him or by sending it by mail, by registered letter, addressed to the employer at his or its last-known place of residence; provided, that if the employer be a partnership, then such notice may be so given to any one of the partners, and if the employer be a corporation, then the notice may be given to any agent or officer of the corporation upon whom legal process may be served. Provided, however, if a contract of insurance has been terminated by an employer insured thereunder who has obtained other compensation insurance, as evidenced by filing in compliance with Section 61 of this title, and no intervening rights of any employee are involved, omission of a predecessor insurer to file notice of time of termination of liability shall not constitute basis for imposition of liability against such predecessor insurer.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 114 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created to continue until January 1, 1998, a task force to study and develop recommendations to the Legislature for the cost-effective implementation of a voluntary twenty-four-hour coverage plan for Oklahoma employees. For the purposes of this act, "twenty-four-hour coverage plan" means a system of medical coverage, which shall not include disability

coverage or death and dismemberment coverage, adequate to protect an employee twenty-four (24) hours a day. The study shall include, but not be limited to, the following issues:

1. Benefits required to be provided under the plan;
2. Rights of the employee to benefits in the event of cancellation of coverage or termination of employment;
3. Reporting requirements;
4. Grievance procedures;
5. Financial requirements for carriers of twenty-four-hour health coverage;
6. Policy language;
7. Safety, wellness, and loss control programs; and
8. Enactment of fines, penalties, and prohibitive practices by insurance carriers.

B. The task force shall be composed of ten (10) members. The President Pro Tempore of the Senate shall appoint five members who shall be members of the Senate and the Speaker of the House of Representatives shall appoint five members who shall be members of the House of Representatives. All members shall serve at the pleasure of their appointing authority. The chairperson of the task force shall be chosen and jointly selected by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and shall be one of the ten members.

C. Members of the task force shall receive no compensation for serving on the task force, but shall receive travel reimbursement for their necessary travel expenses incurred in the performance of their duties in accordance with Section 456 of Title 74 of the Oklahoma Statutes.

D. The Oklahoma State Senate and the Oklahoma House of Representatives may provide staff assistance to the task force as necessary to assist the task force in the performance of its duty to develop a voluntary twenty-four-hour coverage plan. Other state agencies, boards, and commissions shall assist the task force in the performance of its duties as needed. The Legislative Service Bureau may contract for the services of appropriate consultants or consulting firms expert in the field of health

insurance to assist the task force in the performance of its duties and responsibilities. The Legislative Service Bureau shall select consultants on the basis of a request for proposal which shall be developed by the Legislative Service Bureau and approved by the task force. The selection of consultants shall be subject to the approval of the task force.

E. The task force shall present a report of its activities, findings, and recommendations relative to the twenty-four-hour coverage plan to the President Pro Tempore of the Senate and the Speaker of the House of Representatives by January 1, 1998.

SECTION 7. AMENDATORY 85 O.S. 1991, Section 131a, is amended to read as follows:

Section 131a. A. There is hereby created a Board to be known as the "Board of Managers of the State Insurance Fund", which Board shall have supervision over the administration and operation of the State Insurance Fund, and shall be composed of nine (9) members as follows:

1. The Director of State Finance or a designee;
2. The Lieutenant Governor or a designee;
3. The State Auditor and Inspector or a designee;
4. The Director of Central Purchasing of the ~~Office of Public Affairs~~ Department of Central Services;
5. One member appointed by the Governor;
6. Two members appointed by the Speaker of the House of Representatives, one of whom shall be representative of employers; and
7. Two members appointed by the President Pro Tempore of the Senate, one of whom shall be representative of employees.

The appointed members of the Board shall serve at the pleasure of the appointing authority.

B. The members of the Board shall elect annually from their number a Chairman and a Secretary. The Secretary shall keep true and complete records of all proceedings of the Board. Said Board shall meet ~~monthly~~ quarterly, and at all other times when a meeting is called by the Chairman, and at such meetings the Board may consider the condition of the State Insurance Fund and

quarterly shall make a detailed examination into the condition of its reserves and investments and at each meeting may examine all other matters relating to the administration of such fund. The time and place of the regular meetings and the manner in which special meetings may be called shall be set forth in the bylaws of the said Fund. Except as otherwise provided in this act or in the bylaws, all actions shall be taken by the affirmative vote of a majority of the Board members present at a meeting, except that no investment policy and no amendment of bylaws shall be valid unless authorized or ratified by the affirmative vote of at least four Board members.

C. Appointed members of the Board shall be reimbursed for expenses as provided in the State Travel Reimbursement Act. Said reimbursement, not to exceed thirty (30) days in any calendar year, shall be paid only when the Board is transacting official business. Any reimbursement in excess of thirty (30) days shall be approved by a majority of the Board. The Board shall have access to all records and books of account and shall have power to require the presence or appearance of any officer or employee of the State Insurance Fund. All information obtained by the members of the Board shall be confidential unless disclosed by order of the Board.

D. No person or organization in a position to influence official action of members of the Board of Managers of the State Insurance Fund, the Commissioner, and the employees of the State Insurance Fund shall furnish presents, gratuities, transportation, lodging, educational seminars, conferences, meetings, or similar functions to the Board of Managers of the State Insurance Fund, the Commissioner, and the employees of the State Insurance Fund other than as provided by ~~the Oklahoma Campaign Compliance and Ethical Standards Act~~ law and the rules of the Ethics Commission.

SECTION 8. AMENDATORY 85 O.S. 1991, Section 134, as amended by Section 40, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (85 O.S. Supp. 1995, Section 134), is amended to read as follows:

Section 134. A. 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 Section 133 of this title, shall have full power and authority:

1. To enter into contracts of insurance, insuring employers against liability for compensation, and insuring to employees and other persons entitled thereto compensation as provided by the Workers' Compensation Act, Section 1 et seq. of this title;

2. To 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;

3. To 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;

4. To reinsure any risk or any part ~~thereof~~ of any risk of the State Insurance Fund;

5. To inspect and audit, or cause to be inspected and audited the pay rolls of employers applying for insurance against liability for compensation;

6. To 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;

7. To meet the reasonable expenses of conducting the business of the State Insurance Fund;

8. To produce a reasonable surplus to cover catastrophe hazard; and

9. To administer a program in compliance with Section 924.3 of Title 36 of the Oklahoma Statutes, whereby employers may appeal rating classification decisions which are disputed. The State

Insurance Fund shall notify employers of the availability of the program.

B. The State Insurance Fund must be funded through actuarially sound rates and premiums charged to its policyholders.

C. The State Insurance Fund shall establish and use rates and rating plans to assure that it is self-funding while those rates are in effect.

D. No later than September 1 of each year, the State Insurance Fund shall obtain an independent actuarial certification of the results of its operations for prior years.

E. Any premium or assessments collected by the State Insurance Fund in excess of the amount necessary to fund its projected ultimate incurred losses and expenses and not paid to policyholders insured under the State Insurance Fund in conjunction with dividend programs shall be retained by the State Insurance Fund.

F. State Insurance Fund losses are the sole and exclusive responsibility of the State Insurance Fund, and payment for such losses must be funded in accordance with this section and must not come, directly or indirectly, from insurers or any guaranty association for such insurers, except for reinsurance purchased by the State Insurance Fund.

SECTION 9. AMENDATORY 85 O.S. 1991, Section 145, is amended to read as follows:

Section 145. Every person, firm, or corporation who has insured in "The State Insurance Fund" shall keep, a true and accurate record of the number of employees and the wages paid by ~~him~~ the person, firm, or corporation, and shall furnish upon demand a sworn statement of the same. Such record shall be open to inspection at any time, and as often as may be necessary to verify the number of employees and the amount of the pay roll. Any person, firm, or corporation who shall fail to keep such record or who shall willfully falsify any such record, shall be guilty of a ~~misdemeanor~~ felony.

SECTION 10. AMENDATORY 85 O.S. 1991, Section 146, is amended to read as follows:

Section 146. Any person who willfully misrepresents any fact in order to obtain insurance in "The State Insurance Fund" at less than the proper rate for such insurance, or in order to obtain payment out of such fund shall be guilty of a ~~misdemeanor~~ felony.

SECTION 11. AMENDATORY 85 O.S. 1991, Section 174, is amended to read as follows:

Section 174. Every political or municipal subdivision of the state, covered by the provisions of the Workers' Compensation Act, including counties, cities, and towns, each shall provide sufficient funds in its annual estimate of the needs based on the total compensation paid out or benefits or payments in lieu thereof by such political or municipal subdivision during the prior fiscal year, to pay the amount due under the Workers' Compensation Act for the use and purpose of such Special Indemnity Fund, an amount equal to ~~three percent (3%)~~ five percent (5%) of the amount of compensation awards for permanent total disability or permanent partial disability made by the Court for all employees employed by them. It shall be the duty of the excise board of each county to approve an appropriation in such amount as may be necessary to pay such sum.

SECTION 12. AMENDATORY 36 O.S. 1991, Section 309.3, is amended to read as follows:

Section 309.3 A. Upon determining that an examination should be conducted, the Insurance Commissioner or ~~his~~ a designee ~~shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination,~~ pursuant to the competitive bidding requirements of the Central Purchasing Act, shall requisition the services of one or more examiners to perform the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners. The Commissioner may also employ such other guidelines or procedures as the Commissioner may deem appropriate. The Commissioner shall rotate the actuaries used to perform examinations on a company.

B. Every company or person from whom information is sought, its officers, directors and agents shall provide to the examiners appointed under subsection A of this section timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined. The officers, directors, employees and agents of the company or person shall facilitate such examination and aid in such examination so far as it is in their power to do so. The refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the Commissioner's jurisdiction. Any such proceedings for suspension, revocation or refusal of any license or authority shall be conducted pursuant to Section 619 of ~~Title 36 of the Oklahoma Statutes~~ this title.

C. The Commissioner or any of his examiners shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the Commissioner may petition a court of competent jurisdiction, and upon proper showing, the Court may enter any order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court.

D. When making an examination under Sections ~~1 through 7 of this act~~ 309.1 through 309.7 of this title, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the cost of which shall be borne by the company which is the subject of the examination.

E. Nothing contained in Sections ~~1 through 7 of this act~~ 309.1 through 309.7 of this title shall be construed to limit the Commissioner's authority to terminate or suspend any examination

in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to any examination shall be prima facie evidence in any legal or regulatory action.

F. Nothing contained in Sections ~~1 through 7 of this act~~ 309.1 through 309.7 of this title shall be construed to limit the Commissioner's authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of any examination in the furtherance of any legal or regulatory action which the Commissioner may deem appropriate.

SECTION 13. AMENDATORY 36 O.S. 1991, Section 1509, is amended to read as follows:

Section 1509. A. If the Insurance Commissioner determines in writing that an insurer's unearned premium reserve, however computed is inadequate, he may require the insurer to compute such reserve or any part thereof according to such other method or methods as are prescribed in this article.

B. If the loss experience of an insurer shows that its loss reserves, however estimated, are inadequate, the Insurance Commissioner, in writing, shall require the insurer to maintain loss reserves in such increased amount as is needed to make them adequate.

C. 1. Insurers shall not use present value discounting for computing reserves for property and casualty insurance, except for workers' compensation carriers, the State Insurance Fund and physicians' and hospitals' professional liability insurance written on an occurrence basis. Workers' compensation carriers and the State Insurance Fund may use present value discounting at a rate of four percent (4%) for disability and death claims. Property and casualty insurers which elect to use present value discounting for computing reserves on physicians' and hospitals' professional liability insurance shall file initially, and thereafter annually, an actuarial opinion certifying to the adequacy of such reserves which shall include an analysis of the

propriety of loss payout patterns, interest rate assumptions used in developing the discount and the adequacy of the insurer's rates. Additionally, such actuary shall consider the quality and liquidity of the insurer's assets and the nature and extent of the insurer's reinsurance program. In no event shall the interest rate used to compute the discounted reserves exceed the insurer's average yield on invested assets for the year, less one percent (1%).

2. Annual actuarial opinions required pursuant to this subsection shall be filed by the insurer on or before the first day of April. All actuarial opinions shall be from an independent actuary with membership in the American Academy of Actuaries or The Casualty Actuarial Society.

3. Insurers discounting reserves pursuant to this subsection shall invest and maintain their funds only in cash; securities described in the following sections of this Code:

a. Section 1607 (securities of or guaranteed by the United States),

b. Section 1608 (state and Canadian public obligations),

c. Section 1609 (county, municipal and district obligations),

d. Section 1610 (public improvement bonds),

e. Section 1611 (obligations payable from public utility revenues) limited to issues which, at time of purchase, are rated A or better by Standard and Poor's Bond Guide or Moody's Bond Record,

f. Section 1614 (corporate obligations) limited to issues which, at time of purchase, are rated A or better by Standard and Poor's Bond Guide or Moody's Bond Record, and

g. Section 1620 (deposits, banks, savings and loans); and any other investment specifically approved by the Commissioner.

4. This subsection applies to reserves established in connection with incidents of loss occurring on or after January 1,

1989. The investment limitations prescribed by this subsection shall be applicable on or after January 1, 1989.

D. During any period of reserve strengthening mandated by the Insurance Commissioner pursuant to the provisions of this section, no insurer shall pay dividends or other benefits which would not be normal payments under the terms of a policy to any stockholder or policyholder of such insurer and such insurer shall be subject to any additional reasonable restrictions as the Commissioner shall deem prudent.

E. Insurers shall report, on a form prescribed by the Insurance Commissioner and filed with their annual statement, all funds collected through policy fees or assessments which were collected in response to a written request to increase inadequate reserves from the Commissioner made pursuant to the provisions of this section.

SECTION 14. AMENDATORY 74 O.S. 1991, Section 840.22A, as renumbered by Section 54, Chapter 242, O.S.L. 1994, and as last amended by Section 14, Chapter 283, O.S.L. 1994 (74 O.S. Supp. 1995, Section 840-2.14), is amended to read as follows:

Section 840-2.14 A. The intent of the Legislature is to increase individual agency skill and accountability in managing the costs associated with personnel and in applying controls that will enhance the ability of the State of Oklahoma to manage the overall costs of human resources as efficiently as possible, while continuing to maintain fairness to employees.

B. All agencies, boards, and commissions shall report all reallocation decisions for both classified and unclassified positions and all adjustments to pay grades or salary assignments for classes in the unclassified service to the Office of Personnel Management on a quarterly basis. The Office of Personnel Management shall submit the quarterly reports to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives, along with an analysis of statewide reallocation decisions.

C. All agencies, boards, and commissions shall report to the Office of Personnel Management on a quarterly basis all

transactions in both the classified and unclassified service involving the establishment of new positions that have not been authorized specifically by legislative action. The Office of Personnel Management shall forward the quarterly reports to the Governor, President Pro Tempore of the Senate, and Speaker of the House of Representatives, accompanied by an analysis of agency decisions concerning such positions.

D. As a further control on human resource costs, the Governor may declare a financial emergency or implement a freeze in hiring, by declaring this section to be in effect, provided, however, the University Hospitals Authority, including all hospitals or other institutions operated by the University Hospitals Authority, shall not be subject to the provisions of this subsection. The State Insurance Fund shall not be subject to the provisions of this subsection. During such periods, no audits of classified positions or reallocation of unclassified positions shall be initiated or conducted at the request of an agency except at the direction of the Governor. The provisions of the Oklahoma Personnel Act relating to agency-requested audits may be suspended during such periods to the extent that they are in conflict with this section. Provided, an audit at the request of an employee who files a classification grievance shall be conducted during such periods in accordance with the provisions of Section ~~840.22~~ 840-4.3 of this title.

E. The Office of Personnel Management shall establish due dates and specify the format for reports required by this section. Agencies that do not respond by the due dates shall be identified in a special section of the quarterly analysis reports forwarded to the Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives.

F. The provisions of this section shall not be construed to suspend the responsibility of any agency to ensure that the duties and responsibilities assigned to an employee are consistent with the current classification of the employee.

SECTION 15. The provisions of Section 11 of this act shall be considered and construed to be a clarification of the law as it

has existed since the enactment of Section 12 of Enrolled House Bill No. 2132 of the 2nd Session of the 43rd Oklahoma Legislature to increase payments to the Special Indemnity Fund. The provisions of Section 11 of this act clarify that the increase in payments to the Special Indemnity Fund also applies to the entities addressed in Section 11 of this act. The provisions of Section 11 of this act shall not be considered or construed to be a change in the law as it has existed since September 1, 1992.

SECTION 16. NONCODIFICATION The provisions of Section 15 of this act shall not be codified in the Oklahoma Statutes.

SECTION 17. Sections 1 through 10 and 12 through 14 of this act shall become effective November 1, 1996.

SECTION 18. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

45-2-2845

KSM