ENROLLED SENATE
BILL NO. 1310

By: Shedrick of the Senate

and

Steidley, Pope (Clay), Boyd (Laura), Hutchison, Kinnamon, Rice and Settle of the House

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, 11, as amended by Section 6, Chapter 349, O.S.L. 1993, 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, 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, 139, as amended by Section 2, Chapter 60, O.S.L. 1992, 145, 146, 149.1, 174, and Section 18, Chapter 349, O.S.L. 1993, as amended by Section 45, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (85 O.S. Supp. 1995, Sections 11, 14.3, 64, 134, 139 and 201.1), which relate to the Workers' Compensation Act; modifying definitions; authorizing certain insureds to contract with certified workplace medical plan under certain circumstances; requiring use of certain standard when determining cause of injury of employee using certain substances; increasing choice of physicians under certified workplace medical plan; conforming language; providing for modification of list of physicians; updating language; adding statutory reference; changing conditions for certification of workplace medical plan; excluding certain amounts from calculation of insured employer's experience modifier; modifying meeting schedule of the Board of Managers of the State Insurance Fund; clarifying authority of the State Insurance Fund Commissioner to reinsure certain risks; allowing Board of Managers of State Insurance Fund to use present value discounting for computing certain reserves; specifying discount rate; clarifying when certain audit may be conducted; requiring intent to defraud and changing penalty for failure to keep certain records; changing

penalty for misrepresentation of certain facts; exempting certain group self-insurers from the provisions of the Oklahoma Securities Act; increasing percentage of amount of certain compensation awards required for payment for use of the Special Indemnity Fund; conforming language; amending 36 O.S. 1991, Section 1509, which relates to insurance company reserves; allowing insurers to use present value discounting for computing reserves for certain entities; specifying discount rate; amending Section 20, Chapter 349, O.S.L. 1993 (40 O.S. Supp. 1995, Section 415.1), which relates to the Oklahoma Occupational Health and Safety Standards Act; clarifying language; requiring Commissioner of Labor to make certain inquiry of person applying for certificate of noncoverage under the Workers' Compensation Act; requiring Commissioner to develop certain form and procedures for determining eligibility for certificate; requiring certain notice of crime on certain form; requiring Commissioner to report certain violations and cooperate in certain investigations; requiring deposit of certain fees in certain fund; specifying use of certain fees; 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 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. a. "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.

b. If any insurer except, the State Insurance Fund, fails to contract with or provide access to a certified workplace medical plan, an insured, after sixty (60) days' written notice to its insurance carrier, 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, after sixty (60) days' written notice to its insurance carrier, for additional one-year periods if his or her insurer has not contracted with or provided access to a certified workplace medical plan.

c. If the State Insurance Fund fails to contract with at least three certified workplace medical plans, each covering at least fifty counties, then the insured, after sixty (60) days' written notice to the State Insurance Fund, 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, after sixty (60) days' written notice to the State Insurance Fund, for additional one-year periods if the State Insurance Fund has not contracted with or fails to continue contracts with at least three certified workplace medical plans covering at least fifty counties; 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 11, as amended by Section 6, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 1995, Section 11), is amended to read as follows:

Section 11. A. Every employer subject to the provisions of the Workers' Compensation Act shall pay, or provide as required by the Workers' Compensation Act, compensation according to the schedules of the Workers' Compensation Act for the disability or death of ~~his~~ an employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of ~~his~~ employment,

without regard to fault as a cause of such injury, and in the event of disability only, except ~~where the~~ as follows:

1. An injury ~~is~~ occasioned by the willful intention of the injured employee to bring about injury to himself or ~~of~~ another~~, or where the~~;

2. An injury ~~results~~ resulting directly from the willful failure of the injured employee to use a guard or protection against accident furnished for ~~his~~ use pursuant to any statute or by order of the Commissioner of Labor~~, or results~~; and

3. An injury resulting directly from the ~~intoxication or drug or chemical abuse of the injured employee while on duty~~ use or abuse of alcohol, illegal drugs or chemicals, or the abuse of prescription drugs; provided, this paragraph shall only apply when the use or abuse rendered the employee incapable of acting in the manner in which an ordinarily prudent and cautious person, in full possession of his or her faculties, and using reasonable care, would have acted at the time of the injury.

B. Liability of any person, firm, or corporation having an interest in the subject matter, employers and contracting employers, general or intermediate, for compensation under the Workers' Compensation Act, when other than the immediate employer of the injured employee, shall be as follows:

1. The independent contractor shall, at all times, be liable for compensation due to his direct employees, or the employees of any subcontractor of such independent contractor, and the principal employer shall also be liable in the manner hereinafter specified for compensation due all direct employees, employees of the independent contractors, subcontractors, or other employees engaged in the general employer's business; provided however, if an independent contractor relies in good faith on proof of a valid workers' compensation insurance policy issued to a subcontractor of the independent contractor or on proof of a Certification of Non-Coverage Under the Workers' Compensation Act filed by the subcontractor with the Commissioner of Labor under Section ~~20~~ 415.1 of ~~this act~~ Title 40 of the Oklahoma Statutes, then the independent contractor shall not be liable for injuries of any employees of the subcontractor. Provided further, such independent contractor shall not be liable for injuries of any subcontractor of the independent contractor unless an employer-employee relationship is found to exist by the Workers' Compensation Court despite the filing of a Certification of Non-Coverage Under the Workers' Compensation Act.

2. The person entitled to such compensation shall have the right to recover the same directly from his immediate employer, the independent contractor or intermediate contractor, and such claims may be presented against all such persons in one proceeding. If it appears in such proceeding that the principal employer has failed to require a compliance with the Workers' Compensation Act of this state, by his or their independent contractor, then such employee may proceed against such principal employer without regard to liability of any independent, intermediate or other contractor; provided, however, if a principal employer relies in good faith on proof of a valid workers' compensation insurance policy issued to an independent contractor of the employer or to a subcontractor of the independent contractor or on proof of a Certification of Non-Coverage Under the Workers' Compensation Act filed by the independent contractor or subcontractor with the Commissioner of Labor under Section ~~20~~ 415.1 of ~~this act~~ Title 40 of the Oklahoma Statutes, then the principal employer shall not be liable for injuries of any employees of the independent contractor or subcontractor. Provided further, such principal employer shall not

be liable for injuries of any independent contractor of the employer or of any subcontractor of the independent contractor unless an employer-employee relationship is found to exist by the Workers' Compensation Court despite the filing of a Certification of Non-Coverage Under the Workers' Compensation Act. Provided, however, in any proceeding where compensation is awarded against the principal employer under the provisions hereof, such award shall not preclude the principal employer from recovering the same, and all expense in connection with said proceeding from any independent contractor, intermediate contractor or subcontractor whose duty it was to provide security for the payment of such compensation, and such recovery may be had by supplemental proceedings in the cause before the Court or by an independent action in any court of competent jurisdiction to enforce liability of contracts.

3. Where work is performed on a single family residential dwelling or its premises occupied by the owner, or for a farmer whose cash payroll for wages, excluding supplies, materials and equipment, for the preceding calendar year did not exceed One Hundred Thousand Dollars ($100,000.00), such owner or farmer shall not be liable for compensation under the Workers' Compensation Act. Such owner or farmer shall not be liable to the employee of any independent contractor or subcontractor, where applicable, or the farmer's own employee.

4. Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier, provided, however, that in the case of silicosis or asbestosis, the only employer and insurance carrier liable shall be the last employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide (SiO 2) dust on each of at least sixty (60) days or more, and the insurance carrier, if any, on the risk when the employee was last so exposed under such employer.

SECTION 3. 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~~ the employee's 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~~ the employee's 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. a. The employee shall have the right, for each work-related injury, to select ~~a~~ any physician from a list of physicians provided by the employee at the time of making an election not to participate in the certified workplace medical plan. The list shall consist only of physicians who ~~has~~ have:

   (1) 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~~

   (2) 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~~ division, immediate family member means the employee's spouse, children, parents, stepchildren, and stepparents.

   b. 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~~ this state 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~~ an injured employee should ~~become deceased~~ die, whether or not ~~he~~ the employee has filed a claim, ~~such~~ that 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~~ the 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 4. 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 A. 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~~ the employee's desire to select a physician ~~who has maintained the employee's medical records or the medical records of a member of the employee's immediate family~~ pursuant to paragraph 1 of subsection C of Section 14 of this title. 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.

B. If an employee elects not to enroll in the certified workplace medical plan, the employee shall provide a list of physicians who meet the requirements set forth in paragraph 1 of subsection C of Section 14 of this title. The employee's list of physicians may be updated 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 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. 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 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 an accepted accidental injury or occupational disease for which treatment began prior to ~~the effective date of this act~~ November 4, 1994.

SECTION 5. 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 medical treatment guidelines and protocols substantially similar to those 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. If the Administrator has not adopted medical treatment guidelines and protocols, the Commissioner may certify a plan that utilizes medical guidelines and protocols established by the plan if, in the discretion of the Commissioner, the guidelines and protocols are reasonable and will carry out the intent of the Workers' Compensation Act. Certified plans must utilize medical treatment guidelines and protocols substantially similar to those adopted by the Administrator pursuant to Section 201.1 of this title, as such guidelines and protocols become adopted,

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 6. 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 up to Five Hundred Dollars ($500.00) annually which are paid under the medical benefits deductible pursuant to this subsection shall be excluded from the calculation of the insured 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 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~~ The 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~~ purchase reinsurance for any risk or any ~~part thereof~~ portion 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 139, as amended by Section 2, Chapter 60, O.S.L. 1992 (85 O.S. Supp. 1995, Section 139), is amended to read as follows:

Section 139. The entire expenses of administering "The State Insurance Fund" shall be paid out of such fund upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment. On or before the first day of June of each year, or as soon thereafter as possible, there shall be submitted to the Board of Managers of the State Insurance Fund, for approval, an estimated budget of expenses for the succeeding fiscal year. The State Insurance Fund Commissioner may not expend from the funds belonging to the State Insurance Fund for purposes of administering any sum in excess of the amount specified in such budget for any item of expense therein set forth unless such expenditure is authorized by the Board of Managers of the State Insurance Fund. In no event shall the entire expenses of administration of the State Insurance Fund, as authorized for the entire year, exceed twenty percent (20%) of the earned premiums of said year. The Board of Managers may use present value discounting at a rate of four percent (4%) for computing reserves. The Board of Managers shall cause to be made and completed within ninety (90) days after the end of each calendar year, an audit of the books of account and financial records of the fund for such calendar year, such audit to be made by an independent certified public accountant, a licensed public accountant, a firm of certified public accountants, or an accounting firm or individual holding a permit to practice accounting in this state.

The Fund shall submit to the State Insurance Commissioner an annual financial statement in the same manner as a domestic insurance carrier. The Insurance Commissioner may audit the State Insurance Fund in the same manner as a domestic insurance company if an audit does not conflict with any specific provision contained herein. The State Insurance Fund Commissioner shall provide a copy of the annual financial statement to the Governor and State Insurance Fund Board of Managers.

SECTION 10. 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,~~ and shall furnish upon demand a sworn statement of the same. ~~Such~~ The 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 willfully fail to keep ~~such record~~ the required records or who shall willfully falsify any such record, shall be guilty of a ~~misdemeanor~~ felony.

SECTION 11. 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 12. AMENDATORY 85 O.S. 1991, Section 149.1, is amended to read as follows:

Section 149.1 A. The Workers' Compensation Court shall adopt rules permitting two or more employers not otherwise subject to the provisions of Section 2b of this title to pool together liabilities under this act for the purpose of qualifying as a group self-insurer and each such employer shall be classified as a self-insurer.

B. The Court shall approve the distribution of all undistributed policyholders' surplus of a Workers' Compensation Self-Insurance Program if the Program complies with the following criteria:

1. Has been in business for at least five (5) years;

2. Has its financial statements audited by a public accounting firm which audits at least one corporate client which has assets in excess of One Billion Dollars ($1,000,000,000.00) and on which the accounting firm has issued an unqualified opinion as to the fair presentation of the financial position of the Program showing adequate solvency and reserves; and

3. Is in compliance with the provisions of this title and all other regulations as required by the Court.

C. A group self-insurer created pursuant to this section either prior to or after the effective date of this act shall not be subject to the provisions of the Oklahoma Securities Act.

SECTION 13. 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 14. AMENDATORY Section 18, Chapter 349, O.S.L. 1993, as amended by Section 45, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (85 O.S. Supp. 1995, Section 201.1), is amended to read as follows:

Section 201.1 A. 1. There is hereby created a Physician Advisory Committee comprised of nine (9) members to be appointed as follows:

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

b. the President Pro Tempore of the Senate shall appoint three members, one of whom shall be licensed in this state as a doctor of medicine and surgery, one of whom shall be licensed in this state either as a doctor of medicine or a doctor of osteopathy, and one of whom shall be licensed in this state as a podiatric physician,

c. the Speaker of the House of Representatives shall appoint three members, one of whom shall be licensed in this state as an osteopathic physician, one of whom shall be licensed in this state either as a doctor of medicine or a doctor of osteopathy, and one of whom shall be licensed in this state as a chiropractic physician.

2. a. To fill the positions for which the term of office expires on January 1, 1996, the Governor shall appoint a resident of the Fifth Congressional District, the President Pro Tempore of the Senate shall appoint a resident of the First Congressional District and the Speaker of the House of Representatives shall appoint a resident of the Second Congressional District.

b. To fill the positions for which the term of office expires on January 1, 1997, the Governor shall appoint a resident of the Sixth Congressional District, the President Pro Tempore of the Senate shall appoint a resident of the Third Congressional District and the Speaker of the House of Representatives shall appoint a resident of the Fourth Congressional District.

c. To fill the positions for which the term of office expires on January 1, 1998, the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall appoint residents of the state at large.

d. Thereafter, appointments shall be made from the same Congressional District as the original appointment was made pursuant to this paragraph.

B. The Committee shall:

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

2. Assist the Administrator of the Workers' Compensation Court in reviewing medical practices of health care providers, including evaluations of permanent impairment provided by health care providers, as provided for in Section 201 of this title. The Committee shall review and make findings and recommendations to the Administrator with respect to charges of abusive practices by health care providers providing medical services or evaluations of permanent impairment through the workers' compensation system.

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

4. After public hearing, review and make recommendations for an alternative 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". Appropriate and scientific data shall be considered. The alternative method or system to evaluate permanent impairment may be adopted, in part or in whole, by the Administrator to be used as provided for in paragraph 11 of Section 3 and Section 22 of this title. Revisions, deviations and alternatives to the American Medical Association's "Guides to the Evaluation of Permanent

Impairment" shall become effective as provided in paragraph 11 of Section 3 and Section 22 of this title;

5. After public hearing, review and make recommendations for treatment guidelines and protocols and utilization controls for adoption, in part or in whole, by the Administrator ~~no later than January 1, 1996~~. ~~Such treatment~~ Treatment guidelines and protocols and utilization controls may be adopted incrementally in the descending order of utilization frequency;

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

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

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

9. Report its progress annually to the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

C. The term of office for initial appointees shall expire March 1, 1994. Thereafter, successors in office shall serve as follows:

1. The term of office for three positions, one each appointed by the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives, shall expire on January 1, 1996;

2. The term of office for three positions, one each appointed by the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives, shall expire on January 1, 1997;

3. The term of office for three positions, one each appointed by the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives, shall expire on January 1, 1998;

4. Thereafter, successors in office shall be appointed for a three-year term. Members shall be eligible to succeed themselves in office; and

5. Any person appointed to fill a vacancy shall be appointed for the unexpired portion of the term.

D. Members of the Physician Advisory Committee shall receive no compensation for serving on the Committee but shall be reimbursed by the Workers' Compensation Court for their necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes.

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

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

G. Upon written request, the State Insurance Commissioner, the State Insurance Fund, and every approved self-insured employer in Oklahoma shall provide the Committee with data necessary to the performance of its duties.

SECTION 15. 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 and physicians' and hospitals' professional liability insurance written on an occurrence basis. Workers' compensation carriers 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~~ Except for workers' compensation insurance carriers, 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 16. AMENDATORY Section 20, Chapter 349, O.S.L. 1993 (40 O.S. Supp. 1995, Section 415.1), is amended to read as follows:

Section 415.1 A. Any person who is not required to be covered under a workers' compensation insurance policy or other plan for the payment of workers' compensation may apply to the Commissioner of Labor for a "Certificate of Non-Coverage Under the Workers' Compensation Act". Applications shall be made on forms prescribed by the Commissioner and shall be accompanied by a nonrefundable application fee in an amount to be set by the Commissioner by rule not to exceed Ten Dollars ($10.00).

B. The Commissioner of Labor shall ~~receive and maintain any "Certification of Non-Coverage Under the Workers' Compensation Act", which, if filed by an~~ issue a certificate to any individual who the Commissioner finds, after reasonable inquiry, to be exempt from the definition of employee under Section 3 of Title 85 of the Oklahoma Statutes~~,~~. Issuance of the certificate by the Commissioner shall establish a rebuttable presumption that the filer is not an employee for purposes of the Workers' Compensation Act.

C. The Commissioner of Labor shall develop necessary ~~rules~~ procedures for ~~the establishment and maintenance of such certificates and shall charge a reasonable filing fee, not to exceed Ten Dollars ($10.00) for each certificate issued~~ determining eligibility for the certificates.

D. Except as otherwise provided in Section 11 of Title 85 of the Oklahoma Statutes, the filing of ~~such~~ a certificate shall not affect the rights or coverage of any employee of the individual filing the certificate.

E. ~~Falsifying~~ 1. Knowingly providing false information to the Department of Labor for ~~purposes~~ the purpose of obtaining a "~~Certification~~ Certificate of Non-Coverage Under the Workers' Compensation Act" shall constitute a misdemeanor punishable by a fine not to exceed One Thousand Dollars ($1,000.00).

2. Application forms for such certificates shall conspicuously state on the front thereof in at least ten-point bold-faced print that it is a crime to falsify information on the form.

3. The Commissioner of Labor shall immediately notify the Workers' Compensation Fraud Unit in the Office of the Attorney General of any violations or suspected violations of this section. The Commissioner shall cooperate with the Fraud Unit in any investigation involving certificates issued pursuant to this section.

F. Application fees collected pursuant to this section shall be deposited in the State Treasury to the credit of the Workers' Compensation Enforcement Revolving Fund. Fees collected pursuant to this section shall only be used for enforcement of the provisions of this section.

SECTION 17. 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 18. The provisions of Section 13 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 13 of this act clarify that the increase in payments to the Special Indemnity Fund also applies to the entities addressed in Section 13 of this act. The provisions of Section 13 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 19. The provisions of Section 18 of this act shall not be codified in the Oklahoma Statutes.

SECTION 20. Sections 1 through 12 and 14 through 17 of this act shall become effective November 1, 1996.

SECTION 21. 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.

Passed the Senate the 28th day of May, 1996.

President of the Senate

Passed the House of Representatives the 29th day of May, 1996.

Speaker of the House of Representatives