

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 650

By: Leftwich

AS INTRODUCED

An Act relating to workers' compensation; amending 85 O.S. 1991, Sections 14, as last amended by Section 2, Chapter 248, O.S.L. 2000, 134, as last amended by Section 8, Chapter 363, O.S.L. 1996, 142 and 175, as last amended by Section 11, Chapter 420, O.S.L. 1999 (85 O.S. Supp. 2000, Sections 14, 134 and 175), which relate to medical attention, authority of Commissioner, premiums, and the Multiple Injury Trust Fund; limiting when certain payments are due; defining term; expanding records for review by Commissioner; modifying certain auditing procedure; clarifying language; making language gender neutral; requiring approval of certain records by Administrator of Multiple Injury Trust Fund; stating exception; deleting obsolete language; repealing 85 O.S. 1991, Section 2c and Section 2, Chapter 361, O.S.L. 1997 (85 O.S. Supp. 2000, Section 2.6), which relate to authorization of claims, and certain employees of family members; 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 14, as last amended by Section 2, Chapter 248, O.S.L. 2000 (85 O.S. Supp. 2000, Section 14), 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 medical treatment within three (3) days 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 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 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 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 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 have:

(1) maintained the employee's medical records prior to an injury and have a documented history of treatment with the employee prior to an injury, or

(2) maintained the medical records of an immediate family member of the employee prior to an injury and have a documented history of treatment with an immediate family member of the employee prior to an injury. For purposes of this 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 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 an injured employee should die, whether or not the employee has filed a claim, that fact shall not affect liability for medical attention previously rendered, and any person entitled to such benefits may enforce charges therefor as though the employee had survived.

E. 1. 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.

2. Such charges and duration of treatment shall be limited to the usual, customary and reasonable charges and duration of treatment as prescribed and limited by a schedule of fees and treatment for all medical providers to be adopted, after notice and public hearing, by the Administrator. Said fee and treatment schedule shall be based on the usual, customary and reasonable medical charges of health care providers in the same trade area for comparable treatment of a person with similar injuries and the duration of treatment prevailing in this state for persons with similar injuries. The fee and treatment schedule shall be reviewed biennially by the Administrator and, after such review, and notice and public hearing, the Administrator shall be empowered to amend or alter said fee and treatment schedule to ensure its adequacy. The Administrator shall not increase the overall medical costs in an

amount exceeding the cumulative percentage of change of the Consumer Price Index - Urban (CPI-U) for medical costs since the last biennial review.

3. The Administrator shall adopt a new fee and treatment schedule to be effective not later than January 1, 1998, which establishes maximum allowable reimbursement levels for preparation for or testimony at a deposition or court appearance which shall not exceed Two Hundred Dollars (\$200.00) per hour and for work related or medical disability evaluation services.

4. Payments for medical and treatment charges pursuant to this section are due and owing only upon proper invoice. For purposes of this paragraph, "proper invoice" means an invoice which is complete in all requirements for processing for payment in accordance with the terms of the applicable fee and treatment schedule.

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. When a medical care provider has brought a claim in the Workers' Compensation Court to obtain payment for services, a party who prevails in full on the claim shall be entitled to a reasonable attorney's fee.

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 prior approval of the Court or Administrator except when prior approval is waived for good cause shown, 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 2. AMENDATORY 85 O.S. 1991, Section 134, as last amended by Section 8, Chapter 363, O.S.L. 1996 (85 O.S. Supp. 2000, 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 purchase reinsurance for any risk or any portion of any risk of the State Insurance Fund;

5. To inspect and audit, ~~or~~ cause to be inspected and audited, or require production of the payrolls records of employers insured with or applying for insurance with the State Insurance Fund 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 3. AMENDATORY 85 O.S. 1991, Section 142, is amended to read as follows:

Section 142. Premiums for any policy period shall be paid into the State Insurance Fund ~~at the beginning of the period~~ and adjusted according to the ~~estimated expenditure of wages for the period.~~ ~~At the end of the period an adjustment of the premium shall be made~~

~~according to the actual expenditure of wages~~ contract of insurance.

If such adjusted premium is more than the premium paid at the beginning of the period, the employer shall pay the difference immediately upon notification of the amount of ~~the true premium paid in advance,~~ due. If such adjusted premium is less than the premium paid at the beginning of the period, the employer shall at ~~his~~ the employer's option receive either refund of the difference or a credit of the amount thereof on ~~his~~ the employer's account with "The State Insurance Fund."

SECTION 4. AMENDATORY 85 O.S. 1991, Section 175, as last amended by Section 11, Chapter 420, O.S.L. 1999 (85 O.S. Supp. 2000, Section 175), is amended to read as follows:

Section 175. A. The State Insurance Fund of the State of Oklahoma shall be charged with the administration and protection of the Multiple Injury Trust Fund and shall be notified by the Administrator of all proceedings which may affect such fund.

B. Any party interested shall have a right to bring a proceeding in the Supreme Court of the State of Oklahoma to review an award of the Court affecting such Multiple Injury Trust Fund, in the same manner as is now provided by law with reference to other awards by the Court.

C. The State Treasurer shall allocate to the State Insurance Fund out of the Multiple Injury Trust Fund, sufficient funds for administration expenses thereof in amounts to be fixed and approved by the Administrator for the Multiple Injury Trust Fund, unless rejected by the Governor, and Attorney General, ~~and Secretary of the State Board for Property and Casualty Rates.~~

SECTION 5. REPEALER 85 O.S. 1991, Section 2c, and Section 2, Chapter 361, O.S.L. 1997 (85 O.S. Supp. 2000, Section 2.6) are hereby repealed.

SECTION 6. This act shall become effective July 1, 2001.

SECTION 7. 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.

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