

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

SENATE BILL 770

By: Pruitt

AS INTRODUCED

An Act relating to workers' compensation; amending 85 O.S. 1991, Sections 1, 1.2, as last amended by Section 1, Chapter 349, O.S.L. 1993, 1.3, 3, as last amended by Section 3, Chapter 361, O.S.L. 1997, 3.4, as amended by Section 3, Chapter 349, O.S.L. 1993, 3.6, as last amended by Section 1, Chapter 262, O.S.L. 1997, 3.7, as amended by Section 19, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, 3.8, as amended by Section 5, Chapter 349, O.S.L. 1993, 4, 11, as last amended by Section 5, Chapter 361, O.S.L. 1997, 14, as last amended by Section 2, Chapter 248, O.S.L. 2000, Section 24, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, as last amended by Section 4, Chapter 353, O.S.L. 1998, Section 25, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, as amended by Section 5, Chapter 363, O.S.L. 1996, 16, as last amended by Section 7, Chapter 361, O.S.L. 1997, 17, as last amended by Section 8, Chapter 361, O.S.L. 1997, 22, as last amended by Section 5, Chapter 420, O.S.L. 1999, 24.1, as amended by Section 32, Chapter 335, O.S.L. 1992, 24.2, as last amended by Section 10, Chapter 361, O.S.L. 1997, 28, 41, as amended by Section 9, Chapter 294, O.S.L. 1992, 42, as last amended by Section 6, Chapter 420, O.S.L. 1999, 43, as last amended by Section 12, Chapter 361, O.S.L. 1997, 44, 61, as last amended by Section 2, Chapter 22, O.S.L. 1994, Section 14, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, 63, 66.1, 66.2, 69.5, 85, 93, as last amended by Section 2, Chapter 262, O.S.L. 1997, 93.2, 102, 104, 112, as amended by Section 37, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, 149.1, as amended by Section 12, Chapter 363, O.S.L. 1996, 149.2, 173, as last amended by Section 10, Chapter 248, O.S.L. 2000, 175, as amended by Section 11, Chapter 420, O.S.L. 1999, 177, as last amended by Section 28, Chapter 5, O.S.L. 1998, 201, as last amended by Section 14, Chapter 361, O.S.L. 1997, Section 18, Chapter 349, O.S.L. 1993, as last amended by Section 15, Chapter 361, O.S.L. 1997, Section 34, Chapter 349, O.S.L. 1993, as last amended by Section 12, Chapter 420, O.S.L. 1999 (85 O.S. Supp. 2000, Sections 1.2, 3, 3.4, 3.6, 3.7, 3.8, 11, 14, 14.2, 14.3, 16, 17, 22, 24.1, 24.2, 41, 42, 43, 61, 61.2, 93, 112, 149.1, 173, 175, 177, 201, 201.1 and 211), which relate to the Workers' Compensation Act and the Workers' Compensation Court; modifying short title; eliminating the Workers' Compensation Court and the office of Workers' Compensation Court Administrator; creating position of magistrate within the Workers' Compensation System; specifying number of magistrates, jurisdiction, number of position, and

term of office; making judges of the Workers' Compensation Court magistrates; providing for appointment of magistrates; deleting obsolete language; stating qualifications of magistrates; making magistrates eligible for reappointment; providing for salary of magistrates; creating office of Chief Magistrate, providing for appointment, stating term, limiting terms, and stating powers and duties; providing for acting Chief Magistrate under certain circumstances; providing for adoption of administrative rules; stating quorum requirement for certain meetings; deleting requirement for rules to be submitted to Supreme Court; declaring findings of magistrates to be findings of court of record; providing for principal office of Workers' Compensation System; requiring county commissioners and district judges to provide quarters for hearings; authorizing magistrates to punish for contempt; creating office of Workers' Compensation System Administrator and providing for appointment, salary and removal, stating qualifications, and stating powers and duties; requiring administrator maintain list of certified facilitators; creating Workers' Compensation Nominating Commission, stating membership, stating chair, requiring majority vote, stating duties, and providing for expenses; requiring Governor to make appointments from candidates provided; defining terms and modifying definitions; modifying procedures for workers' compensation claims, allowing current claimants to use modified procedures, and stating duties of parties, Administrator, facilitators, and magistrates; providing for appearance of various parties; limiting fees of attorneys; providing procedures for assignment of requests for assistance, and disputes to facilitators and magistrates; stating time limits for various procedures and acts; providing for burden of proof; prohibiting certain discovery with certain exception; limiting extension or continuance of hearing in certain cases; modifying appellate procedures; stating duties of Administrator of Workers' Compensation Court and limiting duration; conforming language; prohibiting solicitations by Administrator and employees; stating penalties; prohibiting ex parte communications with magistrate; providing procedures for submission and resolution of requests for assistance; providing for forms and specifying contents; requiring signature and verification; stating venue for dispute process; stating duties of Administrator; requiring selection of facilitators; stating duties of facilitators and providing related procedures; requiring disclosure of certain information; stating penalty for failure to provide requested information; providing for payment of fees and certain reimbursement; providing for recommendations, providing forms, and specifying contents; stating when recommendations become final, binding, enforceable and closed; providing procedures for objections; requiring physicians to state opinion regarding impairment; requiring certain determination on opinion testimony; requiring physician to make report and specifying contents; providing for maintenance of records; requiring Administrator to

establish and maintain facilitator pool and providing for establishment of qualifications and procedures for certification of facilitators; exempting appointment from Central Purchasing Act; stating employment status of facilitators, and providing for reimbursement for services and travel; providing for designation and assignment of facilitators from pool upon request for assistance; stating request for assistance forms are subject to Oklahoma Open Records Act; clarifying and conforming language; modifying procedures for changing physician; requiring attending physician to issue treatment plan and detail and specify certain information within certain time period; restricting treatment of plan and modifying provisions for release from care; providing for objection to treatment plan and for selection of physician by employer; deleting certain fee provision; modifying provisions relating to certified workplace medical plans and to rehabilitation services; modifying procedures for determination of disability; modifying procedures and requirements for notices and selection of physician from independent medical examiner system; providing for initiation of claims process under certain circumstances and modifying procedure for resolving differences in impairment rating; prohibiting splitting difference of opinion; prohibiting certain treatment of employee; requiring certain benefits cease if independent medical examiner determines employee is able to return to work; requiring consideration of impairment rating by independent medical examiner; deleting requirement that certain recommendations, methods, and rules be submitted to Legislature and subject to legislative disapproval; providing for requests for assistance and modifying procedures for certain awards; modifying certain notice provisions; making language consistent with changes in certain powers, duties, and authority; deleting certain filing requirements and deleting related obligations; transferring powers, duties, and responsibilities for regulation of workers' compensation group self-insurance associations from Workers' Compensation Court Administrator to Insurance Commissioner and stating certain responsibilities and providing for transition; conforming procedures relating to the Multiple Injury Trust Fund; providing for representation of employer in proceedings before magistrate; repealing Section 8, Chapter 384, O.S.L. 1997, Section 4, Chapter 361, O.S.L. 1997, as amended by Section 4, Chapter 420, O.S.L. 1999, and 85 O.S. 1991, Sections 3.5, 26, as amended by Section 30, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, 80, and 151 (85 O.S. Supp. 2000, Section 1.2A, 3.10 and 26), which relate to salaries of judges of the Workers' Compensation Court, venue, mediation, notice forms, enforcement of orders, and severability; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 85 O.S. 1991, Section 1, is amended to read as follows:

Section 1. ~~This act~~ Sections 1 through 122 and Sections 171 through 203 of this title shall be known and may be referred to as the "Workers' Compensation Act".

SECTION 2. AMENDATORY 85 O.S. 1991, Section 1.2, as last amended by Section 1, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 2000, Section 1.2), is amended to read as follows:

Section 1.2 A. 1. There is hereby created the position of magistrate within the Workers' Compensation Court which shall consist of ten (10) judges System. There shall be ten magistrates appointed by the Governor, each to serve a six-year term.

2. After the conclusion of all proceedings involving a facilitator, magistrates shall have jurisdiction to hear and decide any matter arising pursuant to the Workers' Compensation Act.

3. Each judge of the Court magistrate shall be appointed to a designated numbered position on the Court. The positions shall be numbered one through ten. The initial terms of office for magistrates shall be the same as the terms of office for the Workers' Compensation Court judges on the effective date of this act. The terms, by current position number, shall expire on the following dates:

Position 1 shall expire ~~7-1-84~~ July 1, 2003.

Position 2 shall expire ~~7-1-84~~ July 1, 2003.

Position 3 shall expire ~~7-1-84~~ July 1, 2003.

Position 4 shall expire ~~7-1-82~~ July 1, 2007.

Position 5 shall expire ~~7-1-82~~ July 1, 2007.

Position 6 shall expire ~~7-1-80~~ July 1, 2005.

Position 7 shall expire ~~7-1-80~~ July 1, 2005.

Position 8 shall expire ~~7-1-88~~ July 1, 2007.

Position 9 shall expire ~~7-1-88~~ July 1, 2007.

Position 10 shall expire ~~7-1-96~~ after being appointed under the provisions hereinafter set forth effective ~~September 1, 1993~~ July 1, 2003.

4. The judges of the Workers' Compensation Court, on the effective date of this act, shall serve as magistrates for the remainder of their respective terms of office.

Thereafter, each position shall be filled by a ~~judge appointed to serve a six-year term~~ appointment by the Governor as provided for in the Workers' Compensation Act.

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

B. A ~~judge of the Court~~ magistrate shall ~~have been~~ be licensed to practice law in this state for a period of not less than five (5) years prior to appointment. Each ~~judge~~ magistrate, before entering upon the duties of ~~his~~ office, shall take and subscribe to an oath

of office and shall file the same with the Secretary of State. Each ~~judge~~ magistrate shall continue to serve until ~~his~~ a successor ~~shall~~ have has been appointed ~~and qualified~~. A ~~judge~~ magistrate shall be eligible for reappointment, ~~provided that he~~ and may be removed for cause by the ~~Court on the Judiciary~~ Governor prior to the expiration of ~~his~~ the magistrate's term.

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

D. The Governor shall appoint from among the ~~judges of the Workers' Compensation Court a presiding judge of that Court~~ magistrates a Chief Magistrate who shall serve for a two-year term commencing with the initial appointment beginning January 1, ~~1987~~ 2002. Any ~~judge~~ magistrate so appointed shall not serve more than two times in succession. The ~~presiding judge~~ Chief Magistrate shall ~~preside at all hearings held by the Court,~~ preside at such all meetings of the ~~judges of the Court as may be necessary and perform such other supervisory duties as the needs of the Court may require~~ magistrates. The ~~presiding judge~~ Chief Magistrate may designate one of the other ~~judges~~ magistrates to act as ~~presiding judge in his~~ place Chief Magistrate whenever necessary during the disqualification, disability, or absence of the ~~presiding judge~~ Chief Magistrate. During the disqualification, disability, or absence of the ~~presiding judge~~ Chief Magistrate, the acting ~~presiding judge~~ Chief Magistrate shall exercise all of the powers of the ~~presiding judge~~ Chief Magistrate.

E. The ~~Court~~ magistrates shall have the authority to adopt reasonable rules ~~within its respective areas of responsibility including the rules of procedure for the Court en banc, after notice and public hearing,~~ for effecting the purposes of the Workers' Compensation Act. All Not less than seven of the ~~judges of the~~

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

F. ~~The Court is hereby designated and confirmed as a court of record, findings of the magistrates shall be considered findings of a court of record with respect to any matter within the limits of its jurisdiction, and within such limits the judges thereof shall possess the powers and prerogatives of the judges of the other courts of record of this state.~~

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

H. ~~All county commissioners and presiding district judges of this state shall make quarters available for the conducting of magistrates to conduct hearings by a judge of the Court upon request by the Court, as necessary.~~

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

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

SECTION 3. AMENDATORY 85 O.S. 1991, Section 1.3, is amended to read as follows:

Section 1.3 A. The chief administrative officer of the Workers' Compensation ~~Court~~ System shall be the Administrator, ~~who~~

~~shall be subject to the general supervision of the presiding judge of the Court, subject to the general administrative authority of the Chief Justice of the Supreme Court.~~

B. ~~The person serving as Administrator on the date of passage and approval of this act shall continue to serve as Administrator of the Court, provided said person is serving as Administrator on the effective date of this act~~ of the Workers' Compensation System shall be appointed by the Governor from a list of eligible persons furnished by the Workers' Compensation Nominating Commission created in Section 4 of this act.

C. ~~Except as provided in subsection B of this section, the Administrator shall be appointed by the presiding judge of the Court from a list of eligible persons established by the Special Workers' Compensation Administrator Selection Committee of five (5) members, to consist of:~~

~~(1) One member, who shall not have been admitted to the practice of law in the State of Oklahoma, selected by the Governor;~~

~~(2) One member selected by the Chief Justice of the Supreme Court;~~

~~(3) One member, who shall not be a member of the Oklahoma Legislature, selected by the President Pro Tempore of the Senate;~~

~~(4) One member, who shall not be a member of the Oklahoma Legislature, selected by the Speaker of the House of Representatives; and~~

~~(5) One member, who shall be an attorney licensed to practice in the State of Oklahoma, selected by the Board of Governors of the Oklahoma Bar Association.~~

~~Said members shall serve without compensation and shall convene at the request of the presiding judge of the Court whenever a vacancy shall occur in the position of Administrator.~~

D. The salary of the Administrator shall be ninety percent (90%) of the authorized salary of a ~~judge of the Court~~ magistrate.

~~E. D.~~ The Administrator may be removed from office ~~only for~~ cause by the ~~presiding judge of the Court, subject to the approval of the Chief Justice of the Supreme Court~~ in the same manner as magistrates may be removed.

~~F. E.~~ An Administrator who otherwise qualifies to serve as a ~~judge of the Court~~ magistrate shall not be eligible to serve as a ~~judge of the Court~~ magistrate for a period of one (1) year from the last date served as Administrator ~~of the Court.~~

~~G. F.~~ In addition to ~~his~~ any other duties ~~set forth in Title 85 of the Oklahoma Statutes~~ imposed upon the Administrator by law, the Administrator, ~~subject to approval of the presiding judge,~~ shall organize, direct and develop the administrative work of the ~~Court~~ Workers' Compensation Act, including the docketing, clerical, technical, and financial work, ensure that medical protocol is uniform and consistent for work-related injuries and non-work-related injuries among medical providers providing services within and under this act, establish hours of operation, and perform such other duties relating to matters within the purview of the ~~Court as any judge of the Court may request~~ Workers' Compensation Act.

~~H. G.~~ The Administrator shall employ other employees ~~of the Court,~~ within budgetary ~~limitation~~ limitations, necessary to carry out the work ~~and orders of the Court~~ of the Workers' Compensation Act in an efficient and expedient manner.

H. The Administrator shall maintain a list of certified facilitators pursuant to Section 6 of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1.4 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Workers' Compensation Nominating Commission which shall consist of the following officers:

1. The Lieutenant Governor of Oklahoma;
2. The Attorney General of Oklahoma;

3. The Commissioner of Labor of Oklahoma;
4. The Insurance Commissioner of Oklahoma; and
5. A member of the Board of Managers of the State Insurance Fund other than the Lieutenant Governor.

B. The Lieutenant Governor shall serve as Chair.

C. The concurrence of a majority of the Commission shall be required to decide any question or to take any official action.

D. When a vacancy occurs in the office of Administrator or magistrate, the Commission shall choose and submit to the Governor three nominees to fill the vacancy. In replacing a magistrate, one of the three nominees shall be the current magistrate, if the magistrate seeks to continue serving in that capacity.

E. Members of the Commission shall serve without additional compensation for service on the Commission, but may be reimbursed by the Workers' Compensation Administration for travel expenses pursuant to the State Travel Reimbursement Act.

F. The Governor shall appoint one of the three nominees submitted by the Commission within thirty (30) days after receipt of the Commission's recommendations.

SECTION 5. AMENDATORY 85 O.S. 1991, Section 3, as last amended by Section 3, Chapter 361, O.S.L. 1997 (85 O.S. Supp. 2000, Section 3), is amended to read as follows:

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

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

2. "Amount in dispute" means either the dollar amount claimed by the employee which is in excess of the dollar amount agreed to and paid by the employer, or in the event no amount is offered and tendered by the employer and accepted by the employee, the dollar amount which is in excess of the recommendation of the facilitator;

3. "Claimant" means a person who claims benefits for an injury pursuant to the provisions of the Workers' Compensation Act;

4. "Claims process" means the procedure an employee or employer utilizes in resolving any dispute pursuant to the Workers' Compensation Act and which is initiated by the filing of a Request For Assistance Form;

~~3.~~ 5. "Court" means the ~~Workers' Compensation Court~~ Supreme Court of Oklahoma;

~~4.~~ 6. "Cumulative trauma" means an injury resulting from employment activities which are repetitive in nature and engaged in over a period of time;

~~5.~~ 7. "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;

~~6.~~ 8. "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. "Employee" shall not include a person referred to as a drive-away owner-operator who privately owns and utilizes a tow vehicle in drive-away operations and operates independently for hire, if the drive-away owner-operator actually utilizes the tow vehicle and if the person contracting with the drive-away owner-operator is not the lessor of the tow vehicle. Provided, however, a drive-away owner-operator shall not be precluded from workers' compensation coverage under the Workers' Compensation Act if the drive-away owner-operator elects to participate as a sole proprietor;

~~7.~~ 9. "Drive-away operations" include every person engaged in the business of transporting and delivering new or used vehicles by

driving, either singly or by towbar, saddle mount or full mount method, or any combination thereof, with or without towing a privately owned vehicle;

~~8.~~ 10. "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;

~~9.~~ 11. "Compensation" means the money allowance payable to an employee as provided for in the Workers' Compensation Act;

~~10.~~ 12. 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. Only injuries having as their source a risk not purely personal but one that is causally connected with the conditions of employment shall be deemed to arise out of the employment.

b. "Injury" or "personal injury" includes heart-related or vascular injury, illness or death only 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, except in the case of rape which arises out of and in the course of employment;

~~11.~~ 13. "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;

~~12.~~ 14. "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;

~~13.~~ 15. "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. An occupational disease arises out of the employment only if there is a direct causal connection between the occupational disease and the conditions under which the work is performed;

~~14.~~ 16. "Permanent impairment" means any anatomical or functional abnormality or loss after maximum medical improvement 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~~ System for reference or use by facilitators or magistrates as needed. The magistrates may adopt the recommendation in part or in whole. ~~The adopted method or system shall be submitted by the Administrator to the Governor, 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~~ by rule. 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 Governor, 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 Governor and 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;

~~15.~~ 17. "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;

~~16.~~ 18. "Permanent partial disability" means permanent disability which is less than total and shall be equal to or the same as permanent impairment;

~~17.~~ 19. "Maximum medical improvement" means that no further material improvement would reasonably be expected from medical treatment or the passage of time;

~~18.~~ 20. "Independent medical examiner" means a licensed physician authorized to serve as a medical examiner pursuant to Section 17 of this title;

~~19.~~ 21. 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 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~~ the insured's 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~~ the 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~~ the insured's 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

~~20.~~ 22. "Treating physician" or "attending physician" means the licensed physician who has provided or is providing medical care to the injured employee.

SECTION 6. AMENDATORY 85 O.S. 1991, Section 3.4, as amended by Section 3, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 2000, Section 3.4), is amended to read as follows:

Section 3.4 A. ~~All claims for any~~ 1. Beginning September 1, 2001, all disputes involving compensation or benefits under the Workers' Compensation Act shall be commenced with the filing of a ~~notice of injury~~ Request For Assistance Form with the Administrator. If a claimant is covered by a Certified Workplace Medical Plan, the claimant must exhaust all dispute resolution processes before filing a request for assistance for medical disputes.

2. For claims filed prior to September 1, 2001, the party who filed the claim or on whose behalf the claim was filed may choose to resolve the dispute pursuant to the provisions set forth herein by

filing a form, designated by the magistrates by rule, with the Administrator indicating a desire to opt in to the claims process set forth in this act. Provided, to effectuate the transition of the claims process from the Workers' Compensation Court to the Workers' Compensation System, a magistrate or the Chief Magistrate, notwithstanding subparagraph a of paragraph 5 and subparagraph b of paragraph 6 of subsection C of this section, may, for good cause, schedule the opt-in claim for hearing within a reasonable time after assignment of the dispute.

B. 1. All ~~claims filed for workers' compensation benefits~~ Request For Assistance Forms shall contain a statement that all matters stated therein are true and accurate, and shall be signed by the ~~claimant and his agent~~ employer or employee or an agent of the employer or employee, if any. Any person who signs this statement or causes another to sign this statement knowing the statement to be false shall be guilty of perjury. An individual who signs on behalf of a ~~claimant~~ an employer or employee may be presumed to have the authorization of the ~~claimant~~ respective party and to be acting at ~~his~~ the party's direction.

2. All responses to a Request For Assistance Form, whether answers and, defenses to claims, or other documents filed on behalf of a respondent or the respondent's insurer in a workers' compensation case, inclusive of medical records and reports, including, but not limited to, evaluations conducted by a licensed physical therapist for both preoffer and postoffer employment, shall be provided to the facilitator at the first meeting of the parties and shall contain a statement that all matters stated therein are true and accurate, and shall be signed by the ~~respondent, the insurer, party~~ or ~~their~~ a respective agents agent, if any. Any person who signs such a statement or causes another to sign such a statement, knowing the statement to be false, shall be guilty of perjury. An individual who signs on behalf of a ~~respondent, its~~

~~insurer, or its agent party~~ may be presumed to have the authorization of the ~~respondent, its insurer and agent to be acting at their direction~~ party.

C. 1. All requests and related filings required by the Workers' Compensation Act shall be filed with the Administrator. All matters issues pertaining to such elaims requests shall be presented to the Administrator until such time as the Administrator is notified in writing by a party that there is a controverted issue that cannot be resolved by the parties or that the parties have received an agreed final order from the Court disposition, whether through a facilitator or a magistrate.

2. The Administrator shall, within seven (7) days of the immediately upon receipt of such notification set the matter for hearing at the earliest available time to be heard by the Court in the appropriate judicial district as provided in Section 3.5 of this title a Request For Assistance Form, instruct the parties to select a facilitator from the certified list of facilitators maintained by the Administrator, and shall assign the matter to the facilitator. If the parties cannot agree on a facilitator, the Administrator shall assign a facilitator on a random basis. Provided, if the employer denies that the employee's claim is compensable, the Administrator shall refer the dispute directly to the Chief Magistrate. If a claim is based on an occupational disease as defined herein, the Chief Magistrate shall assign the claim to a magistrate to make a finding that the injury is properly classified as an occupational disease. The facilitator may require any party to provide any information relevant to the injury or dispute. The Administrator shall assign a member of the Court to hear a docket in each judicial district of the state at least once each calendar month when there has been a request for a hearing in the judicial district. The Administrator shall assign Judges to the state judicial districts on a rotating basis for the purpose of holding

~~prehearing conferences and hearing cases. At the request of either party, a prehearing conference shall be held before the member of the Court assigned to the case within forty-five (45) days of the filing of a claimant's request for a hearing. The purpose of the prehearing conference shall be to mediate and encourage settlement of the case or determine issues in dispute. The Court shall be vested with jurisdiction over all claims filed pursuant to the Workers' Compensation Act. The Court shall determine the lawfulness of any claim for compensation under the Workers' Compensation Act based on the weight of evidence; provided, however, any claim, and subsequent disability, that has as its source a physical condition resulting from incremental damage or injury or a gradual deterioration of physical health, which is caused by a condition arising out of and in the course of employment, must be proven by a preponderance of the evidence presented to the Court.~~

~~B. All claims so filed shall be heard by the Judge sitting without a jury. All petitions for final orders or awards filed pursuant to the provisions of Section 84 of this title must be approved by the Court having jurisdiction before a final order or award may be entered. All matters relating to a claim for benefits under the Workers' Compensation Act shall be filed with the Administrator.~~

3.
  - a. The employee or employer may appear on the employee's or employer's own behalf. An employer which is not a natural person shall appear by a designated person who possesses authority to settle disputes. Appearance of an officer of the employer shall not constitute the unauthorized practice of law.
  - b. An attorney retained to advise an employee prior to referral of the claim to a magistrate, may charge a reasonable fee for time expended and expenses incurred which shall not exceed fifteen percent (15%) of the

amount in dispute to the employee exclusive of medical and rehabilitation expenses.

4. a. If at any time it appears to the facilitator that a dispute requires resolution by a magistrate, the facilitator shall notify the Administrator who shall refer the dispute to the Chief Magistrate. The facilitator shall forward all materials relating to the dispute to the Administrator.
- b. Once a dispute has been assigned to a magistrate, by the Chief Magistrate, the facilitator shall, within three (3) days after notice of assignment, forward all materials relating to the dispute to the assigned magistrate, including the facilitator's findings and recommendations, if any.
5. a. Within seven (7) calendar days after assignment of a dispute to a magistrate, the magistrate shall set the matter for hearing. The hearing shall be scheduled for a day within twenty-one (21) calendar days after the assignment.
- b. Hearings may be conducted by video conference, and shall be conducted in accordance with rules adopted by the magistrates.
- c. (1) Except as provided in division (2) of this subparagraph, the burden shall be on the requesting party to establish all essential elements of its request by the weight of the evidence.  
(2) Any dispute, and subsequent disability, that has as its source a physical condition resulting from incremental damage or injury or a gradual deterioration of physical health, which is caused by a condition arising out of and in the course

of employment, must be proven by a preponderance of the evidence.

- d. The burden shall be on the non-requesting party to establish all essential elements of any response to a dispute by the weight of the evidence.
  - e. No discovery initiated by the parties pursuant to the Oklahoma Discovery Code shall be permitted.
  - f. The magistrate shall issue a final order within ten (10) calendar days after the hearing or any continuance thereof.
  - g. An attorney retained to represent an employee before a magistrate may charge a reasonable fee for time expended and expenses incurred which shall not exceed fifteen percent (15%) of the amount in dispute to the employee exclusive of medical and rehabilitation expenses.
6. In cases where the employer denies that the employee's claim is compensable, or if the claim is based upon an occupational disease, except that occupational disease, for purposes of this paragraph only, shall not include occupational diseases that possess no objective evidence of injury consistent with paragraph 2 of subsection A of Section 20 of this act:
- a. notwithstanding other provisions of this act, for purposes of this paragraph only, an attorney retained to represent an employee may charge a reasonable fee for time expended and expenses incurred which shall not exceed fifteen percent (15%) of the amount in dispute to the employee exclusive of medical and rehabilitation expenses;

- b. no extensions or continuances may be granted which would allow the hearing to extend more than sixty (60) calendar days after the assignment; and
- c. discovery may be conducted by the parties pursuant to the Oklahoma Discovery Code.

SECTION 7. AMENDATORY 85 O.S. 1991, Section 3.6, as last amended by Section 1, Chapter 262, O.S.L. 1997 (85 O.S. Supp. 2000, Section 3.6), is amended to read as follows:

~~Section 3.6 A. All the evidence pertaining to each case, except upon agreed orders, shall, insofar as may be possible, be heard by the judge initially assigned to the case. Upon the completion of such hearing or hearings, the judge hearing the cause shall make such order, decision or award as is proper, just and equitable in the matter. Either party feeling himself aggrieved by such order, decision or award shall, within ten (10) days, have the right to take an appeal from the order, decision or award of the Judge to the Workers' Compensation Court sitting en banc. Such appeal shall be allowed as a matter of right to either party upon filing with the Administrator a notice of such appeal. Such Court en banc shall consist of three (3) Judges of the Court, none of whom shall have presided over any of the previous hearings on the claim. The Court en banc may reverse or modify the decision only if it determines that such decision was against the clear weight of the evidence or contrary to law. Upon completion of the appeal, the members of the Court sitting en banc shall issue such order, decision or award as is proper, just and equitable. Only those members participating in the hearing on appeal shall participate in the making of the order, decision or award. All orders, decisions or awards shall be approved by a majority of the members of the Court sitting en banc. Provided, there may be more than one Court en banc sitting at the same time for purposes of hearing the appeals provided for herein. Appeals shall be allowed on a question of law~~

~~or a question of fact, or a mixed question of law and fact, and shall be determined on the record made before the Judge. Provided, when the order of the Judge of the Court making an award to a claimant is appealed by the employer or the insurance carrier, interest shall be allowed on the accrued amounts of the award due from the date the award was filed, if the award is not modified or vacated on appeal.~~

~~B. In each case filed in the Court en banc, and at the time of filing same, the appellant shall deposit with the clerk as costs One Hundred Twenty-five Dollars (\$125.00) of which no rebate of any part thereof shall be made. The fee collected under this subsection shall be deposited as follows: One Hundred Dollars (\$100.00) to the credit of the Administrator of Workers' Compensation Revolving Fund created by Section 95 of this title for the costs of administering the Workers' Compensation Act; and Twenty-five Dollars (\$25.00) to the credit of the Administrator of Workers' Compensation Revolving Fund for purposes of implementing the provisions of this act, including strengthening and providing additional funding for the Attorney General's Workers' Compensation Fraud Unit, providing counseling services pursuant to the workers' compensation counselor program and safety in the workplace.~~

~~C. The order, decision, or award of the Court a magistrate shall be final and conclusive upon all questions ~~within its jurisdiction~~ between the parties, unless, within twenty (20) days after a copy of ~~such~~ the order, decision, or award has been sent by the Administrator to the parties affected, an ~~action~~ appeal is commenced in the Supreme Court ~~of the state~~, to review ~~such~~ the order, decision, or award. ~~Any order, decision or award made by a judge of the Court shall be considered as final under the provisions of this section unless appealed to the Workers' Compensation Court sitting en banc as provided for in subsection A of this section.~~ ~~The order, decision or award of a judge of the Court shall be final~~~~

~~and conclusive upon all questions within his jurisdiction between the parties unless appealed directly to the Supreme Court or to the Workers' Compensation Court sitting en banc as hereinbefore provided. Any party litigant desiring to appeal directly from such order, decision or award to the Supreme Court, shall, within twenty (20) days after a copy of the order, decision or award has been sent by the Administrator to the parties affected, commence an action in the Supreme Court of the state to review such order, decision or award. The Supreme Court shall have original jurisdiction of such action, and shall prescribe rules for the commencement and trial of the same. Such action~~

B. An appeal shall be commenced by filing with the Clerk of the Supreme Court a certified copy of the order, decision, or award of the ~~Workers' Compensation Court sitting en banc or the judge magistrate~~ attached to the petition by the ~~complaint~~ wherein the ~~complainant or petitioner shall make his assignments or specifications as to wherein said order, decision or award is erroneous or illegal. Provided, however, no proceeding to reverse, vacate or modify any order, decision or award of the Workers' Compensation Court sitting en banc or judge of the Court wherein compensation has been awarded an injured employee shall be entertained by the Supreme Court unless the Administrator shall take a written undertaking to the claimant executed on the part of the respondent or insurance carrier, or both, with one or more sureties to be approved by the Administrator, to the effect that the appellant will pay the amount of the award rendered therein, together with interest thereon from the date of the award by the judge of the Court and all costs of the proceeding, or on the further order of the Workers' Compensation Court sitting en banc or judge of the Court after the appeal has been decided by the Supreme Court, except that municipalities and other political subdivisions of the State of Oklahoma are exempt from making such written~~

~~undertakings. Before the Clerk of the Supreme Court shall accept the action for filing, a certificate from the Administrator shall be required, showing that this provision has been complied with. Said proceedings.~~

C. Appeals of a decision of a magistrate shall be heard in a summary manner and shall have precedence over all other civil cases in the Supreme Court, except preferred Corporation Commission appeals. The Supreme Court shall require the appealing party to file within forty-five (45) days from the date of the filing of an appeal or an order appealed from, a transcript of the record of the proceedings before the ~~Workers' Compensation Court~~ magistrate, or upon application and for good cause shown, the Supreme Court may extend the time for filing ~~said the~~ the transcript of the record for a period of time not to exceed ninety (90) days from ~~said the~~ the date, and such action shall be subject to the law and practice applicable to other civil actions cognizable in ~~said the~~ the Supreme Court. The ~~Court~~ magistrate whose action was appealed shall enter any order directed by the Supreme Court under the final determination.

D. When the only controverted issue in a death claim is the determination of proper beneficiaries entitled to receive death benefits, and the parties-beneficiary appeal the decision of the ~~Court~~ magistrate, the employer or insurance carrier may pay the proceeds, as they accrue, to the Administrator. The Administrator shall hold the proceeds in trust in an interest-bearing account during the appeal period and shall distribute the proceeds and interest to the proper beneficiaries upon written direction of the ~~Court~~ magistrate. The employer or insurance carrier shall not be taxed interest or cost on the order of the death claim if payments have been made to the Administrator as they accrue.

E. An action to reopen any case on or after March 1, 2002, under the provisions of the Workers' Compensation Act shall be ~~assigned in the same manner as original assignments made hereunder~~

reopened in accordance with the Workers' Compensation System  
regardless of the date of injury.

F. Benefits for an injury shall be determined by the law in effect at the time of injury; benefits for death shall be determined by the law in effect at the time of death.

G. For purposes of this section, interest shall be computed pursuant to Section 727 of Title 12 of the Oklahoma Statutes.

SECTION 8. AMENDATORY 85 O.S. 1991, Section 3.7, as amended by Section 19, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994 (85 O.S. Supp. 2000, Section 3.7), is amended to read as follows:

Section 3.7 ~~The~~ A. Until September 1, 2001, the Administrator of the Workers' Compensation Court shall have the following powers and duties:

1. To hear and approve settlements pursuant to direction by the judges of the Court for claims filed prior to September 1, 2000;

2. To review and approve "own-risk" applications and group self-insurance associations applications;

3. To monitor "own-risk", self-insurer and group self-insurance programs in accordance with the rules of the Court;

4. To establish a toll free telephone number in order to provide information and answer questions about the Court;

5. To hear and determine claims concerning disputed medical bills;

6. To promulgate necessary rules subject to the approval of the presiding judge; and

7. Such other duties and responsibilities authorized by law or as the judges of the Court may prescribe~~+~~.

B. Until September 1, 2001, the Administrator of the Workers' Compensation Court shall have the following powers and duties:

~~8.~~ 1. To adopt rules which require every insurance company, the State Insurance Fund and every self-insurer authorized to transact

workers' compensation insurance in this state to report to the Administrator its statistical experience and its experience regarding the utilization of independent medical examiners in permanent disability cases during the period from July 1, 1995, to July 1, 1997. The information regarding utilization of independent medical examiners shall include, but not be limited to, the number of independent medical examiner appointments, the parties requesting the independent medical examiner, the doctors participating and the number of evaluations done by each, a summary of awards and settlements, medical costs, and duration of temporary total disability. The Administrator shall compile the information collected and present a report of ~~his~~ the findings to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Governor, the Advisory Council on Workers' Compensation and the Physician Advisory Committee; and

~~9.~~ 2. To adopt rules which impose an administrative penalty of One Hundred Dollars (\$100.00) for each day an insurance company or self-insurer fails to provide the information required pursuant to paragraph ~~8~~ 1 of this section.

C. On and after September 1, 2001, the Administrator for the Workers' Compensation System, in addition to the duties imposed in the Workers' Compensation Act, shall have the following additional powers and duties:

1. To establish and maintain a toll-free telephone number for the purpose of providing information and answering questions regarding the Workers' Compensation System;

2. To administer rules adopted by the magistrates; and

3. To carry out such other duties as directed by the Chief Magistrate.

SECTION 9. AMENDATORY 85 O.S. 1991, Section 3.8, as amended by Section 5, Chapter 349, O.S.L. 1993 (85 O.S. Supp. 2000, Section 3.8), is amended to read as follows:

Section 3.8 A. No employee of the Administrator shall be competent to testify on any matter before a court concerning any information ~~he has~~ received through the performance of ~~his~~ duties ~~under~~ performed pursuant to the provisions of the Workers' Compensation Act.

B. The Administrator and ~~his employees~~ any full- or part-time employee shall not solicit employment for any attorney or physician nor shall they recommend or refer any ~~claimant~~ employee or employer to an attorney or physician. If the Administrator or any ~~of his employees~~ employee makes such a solicitation, recommendation, or reference, that person, upon conviction, shall be guilty of a misdemeanor punishable, for each offense, by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment not to exceed one (1) year, or by both such fine and imprisonment. The Administrator shall immediately terminate the employment of any such employee who is guilty of such solicitation, recommendation or reference. An Administrator guilty of such solicitation, recommendation, or reference shall be ~~subject to removal~~ removed from office.

C. No ~~judge~~ magistrate of the Workers' Compensation ~~Court System~~ shall engage in any ex parte communication with any party to an action pending before the ~~Court~~ magistrate or with any medical provider regarding the merits of a specific matter pending before the ~~judge~~ magistrate for resolution. Any violation of this provision shall subject the ~~judge~~ magistrate to disqualification from the action or matter upon presentation of an application for disqualification.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3.11 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Upon receipt of a Request For Assistance Form from either an employee or an employer, the Administrator shall provide a printed

form to both parties, specifying designation of issues, the name and social security number of the employee, the name of the employer, the county of residence of the employee at the time of the injury, the address of the principal place of business of the employer at the time of the injury and the county where the injury occurred. The form shall be signed and verified by both parties and forwarded to the Administrator.

B. Venue shall be in the judicial district where the employee resides at the time of the injury; or the judicial district in which the principal place of business of the employer is located, if the employee had not established residence at the time of the injury. The venue determined by the Administrator shall be the venue for the entirety of the dispute process.

C. The Administrator shall randomly select and appoint a facilitator from a list of certified facilitators to facilitate a resolution of the dispute, only if the parties cannot agree on selection of a facilitator pursuant to the provisions of the Workers' Compensation Act.

1. The facilitator shall, upon assignment, contact both parties to establish an initial first meeting to discuss generally the Request For Assistance Form and matters at issue, and, further, to direct the parties to collect and obtain all documentation specified by the facilitator for the administration of the claim. Disclosure shall include, but not be limited to, any and all treating physicians, all medical records, impairment ratings, if any, whether the employee received payment for impairment or not, existence of non-work related injury to the relevant body part, evaluations conducted by a licensed physical therapist for both preoffer and postoffer employment, all prior claims, and a medical release for such medical records and history. The facilitator shall schedule a second and subsequent meetings as necessary to administer the claim.

2. a. The documentation and information requested and designated by the facilitator shall be disclosed by the parties and shall be used and considered by the facilitator and magistrate, if not resolved by the facilitator.
- b. A party who fails to provide requested information shall be liable in a civil action in district court for three times the amount of any damage caused by the failure. A judgment pursuant to this subparagraph shall attach to any award in favor of the non-disclosing party. An action may be brought pursuant to this subparagraph within one year after the formal resolution of any dispute.

3. The facilitator shall administer, facilitate, and mediate the claim at the second and other meetings, if any, using best efforts to resolve the claim. The facilitator shall use all customary and ordinary skills and practices, consistent with normal mediation exercises, in the administration of the claim. The facilitator shall offer no legal advice to the parties, but rather shall mediate the claim as an independent third party. If the employee and employer reach an agreement, then the agreement shall be deemed binding, final and closed to any further relief upon the parties, and further shall be designated as such on a form provided by the magistrates by rule. The parties may enter into a binding, final and closed agreement and leave open medical issues, and further such agreement shall be designated on a form provided by the magistrates by rule.

D. The fee for proceedings involving a facilitator shall be paid by the employer or the employer's insurer at the commencement of facilitation, and in no event later than the first meeting with the facilitator. At the conclusion of the facilitation or upon a final order by a magistrate if the facilitation is unsuccessful, the

employer or the employer's insurer shall be reimbursed for one-half of the fee from the employee's award, if any award is made.

E. The facilitator shall make a recommendation in the form of findings to the parties, specifying findings of fact and proposed resolutions. The recommendations shall be forwarded to the Administrator and the parties. If neither party objects within ten (10) calendar days of the date of the recommendation, then the recommendations shall be final, binding, enforceable and closed to any further relief. The Administrator shall adopt a form to be used by the facilitator for the recommendation to the parties. If any party objects to the recommendations and findings of the facilitator, then the Administrator shall collect any and all information and forward same to the Chief Magistrate for assignment.

F. In all instances, whether impairment is disputed or not, the treating physician shall be required to specify and opine as to permanent impairment, if any, in the treating physician's report and as part and parcel of the medical records. Disclosure shall include any and all treating physicians, impairment ratings, if any, whether the employee received payment for the impairment or not, existence of non-work-related injuries to the relevant body part, evaluations conducted by a licensed physical therapist for both preoffer and postoffer employment, all prior claims, and a medical release for such medical records and history.

G. When the facilitator's recommendations and findings become binding and final, on default or otherwise, the recommendations and findings shall be maintained by the Administrator of record.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3.12 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. The Administrator shall maintain a pool of resident, certified facilitators to assist in the resolution of disputes involving workplace injuries.

B. Retention of facilitators shall be exempt from the provisions of the Oklahoma Central Purchasing Act.

C. 1. When maintaining a pool of facilitators or when replacing a facilitator, the Administrator shall utilize best efforts to maintain a sufficient pool of facilitators.

2. Upon receipt of applications for appointment to the pool of facilitators, the Administrator may interview applicants or request additional information from applicants prior to making appointments. Qualified facilitators shall be appointed by the Administrator from among these applicants unless the Administrator rejects all applicants for cause. Qualifications and procedures for certification of facilitators shall be established by rule of the magistrates.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3.13 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Qualifications for Workers' Compensation Facilitators shall be established by the magistrates by rule.

B. Facilitators shall be independent contractors of the Workers' Compensation System, but shall be treated as employees of the System for the purposes of the Governmental Tort Claims Act.

C. Facilitators shall receive a fee for services rendered at a rate established by the Administrator. The rate may be either hourly or otherwise, but shall be applied uniformly for all facilitators.

D. Facilitators shall receive reimbursement for travel expenses as provided by the State Travel Reimbursement Act.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3.14 of Title 85, unless there is created a duplication in numbering, reads as follows:

A. Upon receipt of a request for assistance, the parties shall designate a facilitator from the pool; however, if the parties

cannot agree, the Administrator shall designate a facilitator on a random basis. If the assigned facilitator is unable to accept the assignment for any reason, the facilitator shall immediately notify the Administrator, and the Administrator shall designate a replacement on a random basis.

B. Requests for assistance shall be subject to the Oklahoma Open Records Act.

SECTION 14. AMENDATORY 85 O.S. 1991, Section 4, is amended to read as follows:

Section 4. ~~From and after the passage and effective date of the Workers' Compensation Act, all~~ All of the provisions of the Workers' Compensation Act ~~of this state, Sections 1 et seq. of this title,~~ shall apply to employers and to employees, irrespective of where an accident resulting in injury may occur, whether within or without the territorial limits of ~~the State of Oklahoma~~ this state, when the contract of employment was entered into within ~~the State of Oklahoma~~ this state, and the ~~said~~ employee was acting in the course of such employment and performing work outside the territorial limits of this state under direction of such employer. In such case the injured employee may elect to commence and maintain ~~his action~~ a claim for benefits and compensation in ~~the State of Oklahoma~~ this state as provided in the Workers' Compensation Act ~~and the Court is hereby vested with jurisdiction thereof as fully as if such injury or accident had occurred within this state.~~ Such right of election shall, however, not preclude the injured employee from recovering any benefits or compensation provided under any law of the state where injury occurred, and if such action be so commenced in such other state, or under the law of another state, and is prosecuted to final determination, such employee shall thereupon be precluded from a right of action under the Workers' Compensation Act of this state. Provided, the injured employee may exercise a right of election to file a claim or commence an action or proceeding in the State of

Oklahoma, at any time prior to final adjudication or determination of the employee's rights under the laws of another state, and the fact that the employee shall have been furnished or provided with medical, surgical, hospital or other treatment care, or paid temporary disability compensation in such other state, or under the laws thereof, shall not preclude such injured employee from recovering further benefits and compensation under the Workers' Compensation Act of this state. Provided, further, no ~~award made by the Court of this state~~ benefits received by virtue of a claim filed shall include any compensation paid by the employer or insurance carrier before commencement of the action or proceeding in this state and any payments so made shall be treated as compensation voluntarily paid and credit therefor shall be allowed.

The State of Oklahoma accepts the provisions of the Acts of Congress designated as Public Law No. 814, 49 Statutes 1938, and hereby extends the territorial jurisdiction of the Workers' Compensation Act of this state to all lands and premises owned or held by the Government of the United States of America, by deed or act of cession, by purchase or otherwise, which are within the exterior boundaries of this state, and to all purchases, buildings, constructions, improvements or property belonging to the Government of the United States of America, which are within the exterior boundaries of this state, in the same manner and to the same extent as if said premises were under the exclusive jurisdiction of the State of Oklahoma, subject only to the limitations placed thereon by the Act of Congress.

SECTION 15. AMENDATORY 85 O.S. 1991, Section 11, as last amended by Section 5, Chapter 361, O.S.L. 1997 (85 O.S. Supp. 2000, 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 an employee resulting from an accidental personal injury sustained by the employee arising out of and in the course of employment, without regard to fault as a cause of such injury, and in the event of disability only, except as follows:

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

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

3. An injury resulting directly from the 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. For the purposes of this paragraph, post-accident alcohol or drug testing results shall be admissible as evidence; and

4. Except for innocent victims, an injury caused by a prank, horseplay, or similar willful or intentional behavior.

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~~ the independent contractor's direct employees, or the employees of any subcontractor of ~~such~~ the 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 415.1 of 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~~ the 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~~ pursuant to the Workers' Compensation ~~Court~~ Act 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~~ the person's 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 the 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 415.1 of 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~~ pursuant to the Workers' Compensation ~~Court~~ Act 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~~ the 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<sub>2</sub>) 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 16. 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~~ the 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~~ the 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~~ the examination shall be furnished the injured employee within seven (7) days after ~~such~~ the 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~~ the 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~~ magistrate 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~~ the 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~~ The 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. 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) calendar days, have the right to request a hearing on ~~such~~ the medical and treatment charges by a ~~judge of the Workers' Compensation Court~~ magistrate. The ~~judge of the Court~~ magistrate may affirm the decision of the Administrator, or reverse or modify ~~said~~ the 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~~ magistrate 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~~ order of the magistrate, 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~~ the 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~~ sought review by the magistrate only 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 request of the employee or the employer ~~or its insurance carrier~~ to ~~order~~ initiate the claims process for a change of physicians at the expense of the employer ~~when, in its judgment,~~

~~such~~ to determine whether the 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~~ magistrate 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~~ notice to the employer and Administrator and  
subsequent approval by the employer, 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~~ the 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 17. AMENDATORY Section 24, Chapter 1, 2nd  
Extraordinary Session, O.S.L. 1994, as last amended by Section 4,  
Chapter 353, O.S.L. 1998 (85 O.S. Supp. 2000, Section 14.2), 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 State 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~~ Insurance Commissioner 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.

B. Qualified employers shall, when a contract of employment is made and prior to the annual open enrollment date for the insurer's certified workplace medical plan, provide the employee with written notice of and the opportunity to make the election for which provision is made in subsection C of Section 14 of this title. The written notice must be given by the employer in the form and manner prescribed by the State Commissioner of Health. The election must be made on the form specified in subsection C of this section and must be signed by the employee:

1. Within thirty (30) days of employment;

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 has implemented a certified workplace medical plan; or

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

C. 1. If an employee elects not to enroll in the certified workplace medical plan, the employee shall, on the election form, 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 election form made available to the employee prior to the annual open enrollment date of the certified workplace medical plan.

2. Procedures and the form for making the election for which provision is made in subsection C of Section 14 of this title shall be prescribed by the State Commissioner of Health; however, the election form shall:

- a. be provided to the employee at least fifteen (15) days prior to the date when the employee must make the election,
- b. fully inform the employee of the employee's right to select the certified workplace medical plan provider network or to select the employee's personal physician or physicians who meet the requirements set forth in paragraph 1 of subsection C of Section 14 of this title,
- c. fully inform the employee of the consequences of the election insofar as medical care is concerned,
- d. fully inform the employee that the employee cannot be discharged by the employer because the employee has in good faith elected to select the certified workplace medical plan provider network or to select the employee's personal physician or physicians who meet the requirements set forth in paragraph 1 of subsection C of Section 14 of this title, and
- e. provide adequate space for the employee to list ~~his or her~~ the employee's personal physician or physicians, by category of physician as specified in subsection D of Section 14 of this title, who meet the requirements set forth in paragraph 1 of subsection C of Section 14 of this title.

D. 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.

E. The provisions of this section shall not preclude:

1. An employee from ~~petitioning the Workers' Compensation Court or the Administrator of the Workers' Compensation Court~~ requesting, by filing a Request For Assistance Form with the Administrator, 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 after exhausting the dispute process; or

2. An employee from seeking emergency medical treatment as provided in Section 14 of this title.

F. 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 November 4, 1994.

SECTION 18. AMENDATORY Section 25, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, as amended by Section 5, Chapter 363, O.S.L. 1996 (85 O.S. Supp. 2000, Section 14.3), is amended to read as follows:

Section 14.3 A. Any person or entity may make written application to the State 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 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~~ magistrate pursuant to subsection B of Section 201.1 of this title. If the ~~Administrator has~~ magistrates have 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~~ magistrates 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~~ through the Workers' Compensation ~~Court~~ System,
- 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 this title; and allows a physician selected by the employee pursuant to paragraph 1 of subsection C of Section 14 of 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~~ administrative 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~~ through the Workers' Compensation ~~Court~~ System.

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 14.2 of this title and this section. ~~Such~~ The 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 19. AMENDATORY 85 O.S. 1991, Section 16, as last amended by Section 7, Chapter 361, O.S.L. 1997 (85 O.S. Supp. 2000, Section 16), is amended to read as follows:

Section 16. A. An employee who has suffered an accidental injury or occupational disease covered by the Workers' Compensation Act shall be entitled to prompt and reasonable physical rehabilitation services. When, as a result of the injury, the employee is unable to perform the same occupational duties ~~he~~ the employee was performing prior to the injury, ~~he~~ the employee shall be entitled to such vocational rehabilitation services provided by an area vocational-technical school, a public vocational skills center or public secondary school offering vocational-technical education courses, or a member institution of The Oklahoma State System of Higher Education, which shall include retraining and job placement so as to restore ~~him~~ the employee to gainful employment. No person shall be adjudicated to be permanently and totally disabled unless first having been evaluated as to the practicability

of restoration to gainful employment through vocational rehabilitation services or training. If an employee claiming permanent total disability status unreasonably refuses to be evaluated or to accept vocational rehabilitation services or training, permanent total disability benefits shall not be awarded during the period of ~~such~~ refusal, and the employee shall be limited to permanent partial disability benefits only. The ~~Administrator~~ magistrates shall promulgate rules governing notice to an injured employee of the right to receive vocational rehabilitation. If rehabilitation services are not voluntarily offered by the employer and accepted by the employee, ~~the judge of the Court may on his own motion, or if requested by a requesting party may, after affording all parties an opportunity to be heard, refer the employee to request the appointment of a qualified physician or facility for evaluation of the practicability of, need for and kind of rehabilitation services or training necessary and appropriate in order to restore the employee to gainful employment. The Administrator shall then initiate the claims process.~~ The cost of the evaluation shall be paid by the employer. Following the evaluation, if the employee refuses the services or training ~~ordered by the court stipulated by the physician or facility,~~ or fails to complete in good faith the vocational rehabilitation training ~~ordered by the court,~~ then the cost of the evaluation and services or training rendered may, in the discretion of the ~~court~~ magistrate, be deducted from any award of benefits to the employee which remains unpaid by the employer. Upon receipt of such report, and ~~after affording all parties an opportunity to be heard~~ if rehabilitation is indicated, the ~~Court~~ magistrate shall order that any rehabilitation services or training, ~~recommended in the report, or such other rehabilitation services or training as the Court may deem necessary,~~ provided the employee elects to receive such services, shall be provided at the expense of the employer. Except as

otherwise provided in this subsection, refusal to accept rehabilitation services by the employee shall in no way diminish any benefits allowable to an employee.

B. Vocational rehabilitation services or training shall not extend for a period of more than fifty-two (52) weeks. This period may be extended for an additional fifty-two (52) weeks or portion thereof by agreement or special order ~~of the Court~~, after affording the interested parties an opportunity to be heard. A request for vocational rehabilitation services or training may be filed with the Administrator by an interested party at any time after the date of injury but not later than ~~sixty (60) days from~~ the date of the final determination that permanent partial disability benefits are payable to the employee.

C. Where rehabilitation requires residence at or near the facility or institution which is away from the employee's customary residence, reasonable cost of ~~his~~ the employee's board, lodging, travel, tuition, books and necessary equipment in training shall be paid for by the insurer in addition to weekly compensation benefits to which the employee is otherwise entitled under the Workers' Compensation Act.

D. During the period when an employee is actively participating in a retraining or job placement program for purposes of evaluating permanent total disability status, the employee shall be entitled to receive benefits at the same rate as the employee's temporary total disability benefits computed pursuant to Section 22 of this title. No attorney fees shall be awarded or deducted from such benefits received during this period. All tuition related to vocational rehabilitation services shall be paid by the employer or the employer's insurer on a periodic basis directly to the facility providing the vocational rehabilitation services or training to the employee.

SECTION 20. AMENDATORY 85 O.S. 1991, Section 17, as last amended by Section 8, Chapter 361, O.S.L. 1997 (85 O.S. Supp. 2000, Section 17), is amended to read as follows:

Section 17. A. 1. ~~The determination~~ If a dispute arises regarding disability, finding of disability shall be the responsibility of the Court determined through the claims process. Any claim submitted by an employee for compensation for permanent disability must be supported by competent medical testimony which shall ~~include~~ mean only, in the case of an employee, an evaluation by a the injured employee's primary treating physician stating ~~his~~ the physician's opinion of the employee's percentage of permanent impairment and whether or not the impairment is job-related and caused by the accidental injury or occupational disease. Medical opinions addressing compensability and permanent impairment must be stated within a reasonable degree of medical certainty. For purposes of this section, a physician shall have the same meaning as defined in Section 14 of this title and shall include a person licensed by another state who would be qualified to be a licensed physician under the laws of this state.

2. When the medical testimony to be introduced on behalf of the employee ~~and employer is divergent by more than twenty-five percent (25%) as to the extent of permanent impairment of the employee or when there is any disagreement in the evidence~~ disputed by the employer as to the medical cause of the medical permanent impairment or the percentage of impairment, or if the employee has no lost time from employment, ~~any party~~ the employer may challenge such testimony by giving written notice to all other parties and to the Administrator. ~~The written notice shall be given prior to or during any prehearing conference.~~ Upon receipt of ~~such~~ the notice, the ~~challenging party and the party challenged shall select a third physician~~ Administrator shall permit the employer to select a physician of the employer's choice who shall be afforded a

reasonable opportunity to examine the employee together with all medical records involved and any other medical data or evidence that ~~he~~ the physician may consider to be relevant. The ~~third~~ physician shall issue a verified written report on a form provided by the Administrator ~~to the Court~~ stating ~~his~~ the physician's finding of the percentage of permanent impairment of the employee and whether or not the impairment is job-related and caused by the accidental injury or occupational disease. For evidentiary purposes, the treating physician's testimony shall be given deference for rating purposes only, and only after a determination of both relevance and reliability of testimony based on scientific, technical, or other specialized knowledge. In determining the reliability of the testimony, the inquiry may include, but not be limited to, testing, peer review, error rates, and acceptability in the relevant scientific community, depending on the nature of the issue, the physician's particular expertise, and the subject of the testimony. In determining the relevance of the testimony, the court shall determine whether the opinion may be validly and reliably drawn from the supporting medical evidence and whether the relationship between the opinion and the supporting medical evidence is sufficiently close and congruent so as not to render the opinion speculative. The facilitator and magistrate shall not be permitted to split the difference between the treating physician's and independent medical examiner's opinions. The opinions of the treating physician and independent medical examiner shall be the only medical reports and opinions considered.

~~3. Any party may request the deposition testimony of any physician providing a written medical report on the issue of temporary disability, permanent disability, causation, apportionment or rehabilitation. Except in the case of Independent Medical Examiners appointed by order of the Court, the party requesting the deposition testimony of any such physician shall be responsible for~~

~~the reasonable charges of the physician for such testimony, preparation time, and the expense of the deposition.~~

~~B. When the challenging party and the challenged party are for any reason unable or unwilling to agree upon the appointment of a third physician within ten (10) days, the Court shall appoint the third physician. Upon receipt of the third physician's report, the party shall have the right to object to the introduction into evidence of the report. The objection must be made by giving written notification to all parties and to the Court within five (5) days after receipt of the report. The physicians must then testify in person or by deposition.~~

~~C. Any physician who is appointed or selected pursuant to the provisions of this section shall be reimbursed for the medical examination, reports and fees in a reasonable and customary amount set by the Court magistrate, and these costs shall be borne by the employer.~~

~~D. C. 1. The Court magistrates shall ~~develop and implement~~ maintain an independent medical examiner system ~~by no later than July 1, 1995~~. The Court magistrates shall ~~create~~, maintain and review a list of licensed physicians who shall serve as independent medical examiners from a list of licensed physicians who have completed such course study as the Administrator of the Workers' Compensation Court System may require. Such courses shall provide training to establish familiarity with the American Medical Association's "Guides to the Evaluation of Permanent Impairment", or alternative method or system of evaluating permanent impairment, for the category of injury established by the Administrator for which such physician desires to be an independent medical examiner. The Court magistrates shall, to the best of ~~its~~ their ability, include the most experienced and competent physicians in the specific fields of expertise utilized most often in the treatment of injured employees. Physicians serving as third physicians before November~~

4, 1994, shall be considered to have met the requirements of this paragraph.

2. The independent medical examiner in a case involving permanent disability may not be a treating physician of the employee and may not have treated the employee with respect to the injury for which the claim is being made or the benefits are being paid. Nothing in this subsection precludes the selection of a health care provider authorized to receive reimbursement under Section 14 of this title to serve in the capacity of an independent medical examiner.

~~3. At any time during the pendency of the action but not less than thirty (30) days before a hearing, any party to the action may request the appointment of an independent medical examiner from the list of independent medical examiners. An independent medical examiner may be appointed less than thirty (30) days before a hearing if mutually acceptable to the parties. If the parties are unable to agree on the independent medical examiner, the Court may make the appointment. An independent medical examiner also may be appointed by the Court on its own motion. The appointment or selection of the independent medical examiner may be made when requested by the parties even in the absence of any medical testimony supporting or contesting an issue.~~

4. The Court magistrates shall, to the best of ~~its~~ their ability, maintain a geographic balance of independent medical examiners.

~~5.~~ 4. The parties are responsible for the expeditious transmittal of the employee's medical records, prior ~~Court~~ orders involving the employee, and other pertinent information to the independent medical examiner. The independent medical examiner may examine the employee as often as the independent medical examiner determines necessary.

~~6.~~ 5. The independent medical examiner shall submit a verified written report to the ~~Court~~ parties as provided ~~in subsection A of this section and shall provide a copy of the report to the parties~~ ~~if the~~ herein. ~~The~~ independent medical examiner ~~undertakes active treatment of the employee, the independent medical examiner shall provide the Court and parties with progress reports, not less often than every thirty (30) days~~ shall not undertake treatment of the employee for any reason. The independent medical examiner's report shall include a determination of whether or not the employee is capable of returning to light duty work, and what restrictions, if any, shall be followed by the employer in order to permit the employee to return to work, where temporary total disability is at issue.

~~7.~~ 6. If the independent medical examiner determines that the employee is capable of returning to work ~~and the claimant elects not to do so~~, temporary total disability and medical benefits shall ~~cease, unless otherwise ordered by the Court~~.

~~8.~~ 7. Any independent medical examiner who is appointed or selected pursuant to the provisions of this subsection shall be reimbursed for the medical examination, reports and fees in a reasonable and customary amount set by the ~~Court~~ magistrates, and these costs shall be borne by the employer.

~~9.~~ 8. The ~~Court~~ magistrates, in consultation with the Advisory Council on Workers' Compensation, shall create a review process to oversee on a continuing basis the quality of performance and the timeliness of the submission of medical findings by independent medical examiners.

~~10.~~ 9. The ~~Court~~ magistrates shall promulgate rules necessary to effectuate the purposes of this subsection.

~~E. Until the implementation of the independent medical examiner system in subsection D of this section, third physicians shall be selected or appointed as provided in subsections A and B of this~~

~~section. Upon implementation of the independent medical examiner system, independent medical examiners shall be selected or appointed as provided in subsection D of this section.~~

~~F. The parties may stipulate to the appointment of a third physician or, upon implementation of the independent medical examiner system in subsection D of this section, an independent medical examiner, even in the absence of divergent medical testimony.~~

~~G. D. The impairment rating determined by the third physician or, upon implementation of the independent medical examiner system, the independent medical examiner, may shall be ~~followed~~ considered by the Court. If the Court deviates from the impairment rating, the Court shall specifically identify by written findings of fact the basis for such deviation in its order magistrate or the facilitator as the case may be.~~

SECTION 21. AMENDATORY 85 O.S. 1991, Section 22, as last amended by Section 5, Chapter 420, O.S.L. 1999 (85 O.S. Supp. 2000, Section 22), is amended to read as follows:

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

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

~~2.~~ B. Temporary Total Disability.

~~(a)~~ 1. With respect to injuries occurring before November 4, 1994, in cases of temporary total disability, seventy percent (70%) of the employee's average weekly wages shall be paid to the employee during the continuance thereof, but not in excess of one hundred fifty (150) weeks, except as otherwise provided in the Workers' Compensation Act. Provided, after compensation has been paid for a period of one hundred forty (140) weeks, the employee may ~~request~~

initiate a review of the case by ~~a judge of the Workers' Compensation Court~~ filing a Request For Assistance Form with the Administrator for continued temporary total disability benefits provided by the Workers' Compensation Act. ~~Upon a finding~~ If it is determined that benefits should be extended beyond the initial one-hundred-fifty-week period, compensation may be continued for an additional one hundred fifty (150) weeks.

~~(b)~~ 2. With respect to injuries occurring on or after November 4, 1994, in cases of temporary total disability, seventy percent (70%) of the employee's average weekly wages shall be paid to the employee during the continuance thereof, but not in excess of fifty-two (52) weeks, except as otherwise provided in the Workers' Compensation Act. Provided, after compensation has been paid for a period of forty-two (42) weeks, the employee may ~~request~~ initiate a review of the case by ~~a judge of the Court~~ filing a Request For Assistance Form with the Administrator for continued temporary total disability benefits provided by the Workers' Compensation Act. Upon a finding that benefits should be extended beyond the initial fifty-two-week period, compensation may be continued for additional successive fifty-two-week periods, provided the employee has ~~requested~~ initiated review of the case at forty-two (42) weeks during each period involved, and upon a finding ~~by the Court~~ that benefits should be extended. Total payments of compensation for temporary total disability may not exceed a maximum of three hundred (300) weeks in the aggregate.

~~(c)~~ 3. With respect to injuries occurring on or after November 1, 1997, total payments of compensation for temporary total disability may not exceed a maximum of one hundred fifty-six (156) weeks in the aggregate except for good cause shown, ~~as determined by the Court.~~

~~3.~~ C. Permanent Partial Disability. ~~(a)~~

1. With respect to injuries occurring prior to November 4, 1994, in case of disability, partial in character but permanent in quality, the compensation shall be seventy percent (70%) of the employee's average weekly wages, and shall be paid to the employee for the period named in the schedule, as follows:

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

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

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

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

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

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

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

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

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

Hand: For the loss of a hand, two hundred (200) weeks

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

Foot: For the loss of a foot, two hundred (200) weeks

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

Eye: For the loss of an eye, two hundred fifty (250) weeks

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

or amendments to the rules become effective pursuant to the procedures set out in the Administrative Procedures Act. 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 in the form of amended rules 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 Governor, the Speaker of the House of Representatives and 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~~ the guides or any alternative thereof 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.

The 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 deafness or hearing impairment.

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

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

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

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

In case of an injury resulting in serious and permanent disfigurement, ~~compensation shall be payable in an amount to be determined by the Court~~ and if a dispute arises involving the same, compensation, if any, shall be determined by the claims process, but not in excess of Twenty Thousand Dollars (\$20,000.00); provided, that compensation for permanent disfigurement shall not be in addition to the other compensation provided for in this section, but shall be taken into consideration in fixing the compensation otherwise provided.

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

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

~~(b)~~ 2. With respect to injuries occurring after November 4, 1994, in case of disability, partial in character but permanent in quality, the compensation shall be seventy percent (70%) of the employee's average weekly wages, and shall be paid to the employee for the period prescribed by the following schedule:

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

weeks of compensation provided by law prior to  
November 4, 1994;

~~(2)~~ b. For each percent of the next eleven percent  
(11%) of disability, the identical number of weeks of  
compensation provided by law prior to November 4,  
1994;

~~(3)~~ c. For each percent of the next thirty percent  
(30%) of disability, one hundred twenty percent (120%)  
of the number of weeks of compensation provided by law  
prior to November 4, 1994; and

~~(4)~~ d. For each remaining percent of disability, the  
identical number of weeks of compensation provided by  
law prior to November 4, 1994.

4. D. Temporary Partial Disability. ~~(a)~~

1. With respect to injuries occurring before November 4, 1994,  
in case of temporary partial disability, except the particular cases  
mentioned in ~~paragraph 3~~ subsection C of this section, an injured  
employee shall receive seventy percent (70%) of the difference  
between the employee's average weekly wages and the employee's wage-  
earning capacity thereafter in the same employment or otherwise, if  
less than before the injury, during continuance of such partial  
disability, but not to exceed one hundred fifty (150) weeks.  
Provided, after compensation has been paid for a period of one  
hundred forty (140) weeks, the employee may ~~request~~ initiate a  
review of the case by ~~a judge of the Court~~ filing a Request For  
Assistance Form with the Administrator for continued temporary  
partial disability benefits provided by the Workers' Compensation  
Act. ~~Upon a finding~~ If it is determined that benefits should be  
extended beyond the initial one-hundred-fifty-week period,  
compensation may be continued for an additional one hundred fifty  
(150) weeks.

~~(b)~~ 2. With respect to injuries occurring on or after November 4, 1994, in case of temporary partial disability, except the particular cases mentioned in ~~paragraph 3~~ subsection C of this section, an injured employee shall receive seventy percent (70%) of the difference between the employee's average weekly wages and the employee's wage-earning capacity thereafter in the same employment or otherwise, if less than before the injury, during continuance of such partial disability, but not to exceed fifty-two (52) weeks. Provided, after compensation has been paid for a period of forty-two (42) weeks, the employee may ~~request~~ initiate a review of the case by ~~a judge of the Court~~ filing a Request For Assistance Form with the Administrator for continued temporary partial disability benefits provided by the Workers' Compensation Act. ~~Upon a finding~~ If it is determined that benefits should be extended beyond the initial fifty-two-week period, compensation may be continued for additional successive fifty-two-week periods provided the employee has requested review of the case at forty-two (42) weeks during each period involved, and upon a finding ~~by the Court~~ that benefits should be extended. Total payments of compensation for temporary partial disability may not exceed a maximum of three hundred (300) weeks in the aggregate.

~~(c)~~ 3. With respect to injuries occurring on or after November 1, 1997, total payments of compensation for temporary partial disability may not exceed a maximum of one hundred fifty-six (156) weeks in the aggregate except for good cause shown, ~~as determined by the Court.~~

~~5.~~ E. Notwithstanding any other section of the Workers' Compensation Act, temporary disability shall be payable without ~~an award by the Court~~ a finding or order. The first payment of temporary disability compensation shall become due on the tenth day after the employer has received notice of injury as specified in Section 24.2 of this title. All compensation owed on that date

shall be paid and thereafter payments shall be made weekly except when otherwise ordered ~~by the Court~~.

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

~~6.~~ F. Limitation. The compensation payments under the provisions of the Workers' Compensation Act shall not exceed the sum of seventy-five percent (75%) of the state's average weekly wage as determined by the Oklahoma Employment Security Commission, the sum of ninety percent (90%) of the state's average weekly wage beginning January 1, 1995, for injuries occurring after December 31, 1994, and the sum of one hundred percent (100%) of the state's average weekly wage beginning January 1, 1996, for injuries occurring after December 31, 1995, for temporary disability; Sixty Dollars (\$60.00) per week beginning as of the effective date of the Workers' Compensation Act, and Seventy Dollars (\$70.00) per week beginning January 1, 1979, and Eighty Dollars (\$80.00) per week beginning January 1, 1980, and Ninety Dollars (\$90.00) per week beginning January 1, 1981, and to fifty percent (50%) of the state's average weekly wage beginning January 1, 1982, for permanent partial disability; Seventy-five Dollars (\$75.00) per week beginning as of the effective date of the Workers' Compensation Act, and Ninety Dollars (\$90.00) per week beginning January 1, 1979, and One Hundred Ten Dollars (\$110.00) per week beginning January 1, 1980, to sixty-six and two-thirds percent (66 2/3%) of the state's average weekly wage beginning January 1, 1981, to seventy-five percent (75%) of the

state's average weekly wage beginning September 1, 1992, to ninety percent (90%) of the state's average weekly wage beginning January 1, 1995, for injuries occurring after December 31, 1994, and to one hundred percent (100%) of the state's average weekly wage beginning January 1, 1996, for injuries occurring after December 31, 1995, for permanent total disability, or at any time be less than Thirty Dollars (\$30.00) per week; provided, however, that if the employee's wages at the time of the injury are less than Thirty Dollars (\$30.00) per week, the employee shall receive the employee's full weekly wages; provided further, that the compensation received, as provided for temporary partial disability, shall not, when added to the wages received by such employee after such injury, amount to a greater sum than eighty percent (80%) of the average weekly wages of the employee received prior to said injury.

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

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

~~7.~~ G. Previous Disability. The fact that an employee has suffered previous disability or impairment or received compensation therefor shall not preclude the employee from compensation for a later accidental personal injury or occupational disease; but in

determining compensation for the later accidental personal injury or occupational disease the employee's average weekly wages shall be such sum as will reasonably represent the employee's earning capacity at the time of the later accidental personal injury or occupational disease. In the event there exists a previous impairment which produced permanent disability and the same is aggravated or accelerated by an accidental personal injury or occupational disease, compensation for permanent disability shall be only for such amount as was caused by such accidental personal injury or occupational disease and no additional compensation shall be allowed for the preexisting disability or impairment. The sum of all permanent partial disability awards, including awards against the Multiple Injury Trust Fund, shall not exceed one hundred percent (100%) permanent partial disability for any individual. An individual may not receive more than five hundred twenty (520) weeks' compensation for permanent partial disability, but may receive other benefits under the Workers' Compensation Act if otherwise eligible as provided in the Workers' Compensation Act.

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

~~(a)~~ 1. Benefit amounts for particular classes of dependents.

~~(1)~~ a. If there is a surviving spouse, to such surviving spouse seventy percent (70%) of the average weekly wages the deceased was earning. In no event shall this spousal income benefit be diminished.

~~(2)~~ b. If there is a child or children, to such child or children fifteen percent (15%) of the average weekly wages the deceased was earning for each child. Where there are more than two such children, the income benefits payable for the benefit of all

children shall be divided among all children, to share and share alike, subject to the provisions of ~~subparagraphs (c) and (d)~~ paragraphs 3 and 4 of this ~~paragraph~~ subsection.

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

~~(4)~~ d. To the children, if there is no surviving spouse, fifty percent (50%) of the average weekly wages the deceased was earning for one child, and twenty percent (20%) of such wage for each additional child, divided among all children, to share and share alike, subject to the provisions of ~~subparagraphs (c) and (d)~~ paragraphs 3 and 4 of this ~~paragraph~~ subsection.

~~(5)~~ e. The income benefits payable for the benefit of any child under this section shall cease:

~~a.~~ (1) when the child dies, marries, or reaches the age of eighteen (18),

~~b.~~ (2) when the child over eighteen (18) years of age ceases to be physically or mentally incapable of self-support,

~~c.~~ (3) when the actually dependent child ceases to be actually dependent, or

~~d.~~ (4) when the child has been enrolled as a full-time student in any accredited educational institution or has been receiving education by other means, including education at home pursuant to Section 4 of Article XIII of the Oklahoma Constitution, and the child ceases to be so enrolled or educated or reaches twenty-three (23)

years of age. A child who originally qualified as a dependent by virtue of being less than eighteen (18) years of age may, upon reaching eighteen (18) years of age, continue to qualify if the child satisfies the tests of being physically or mentally incapable of self-support, actually dependent, or enrolled in an accredited educational institution or being educated by other means, including education at home pursuant to Section 4 of Article XIII of the Oklahoma Constitution.

~~(6)~~ f. To each parent, if actually dependent, twenty-five percent (25%) of the average weekly wages the deceased was earning subject to the provisions of ~~subparagraphs (c) and (d)~~ paragraphs 3 and 4 of this ~~paragraph~~ subsection.

~~(7)~~ g. To the brothers, sisters, grandparents and grandchildren, if actually dependent, twenty-five percent (25%) of the average weekly wages the deceased was earning to each such dependent. If there should be more than one of such dependents, the total income benefits payable for the benefit of such dependents shall be divided to share and share alike subject to the provisions of ~~subparagraphs (c) and (d)~~ paragraphs 3 and 4 of this ~~paragraph~~ subsection.

~~(8)~~ h. The income benefits of each beneficiary under ~~divisions (6) and (7)~~ subparagraphs f and g above shall be paid until the beneficiary, if a parent or grandparent, dies, marries or ceases to be actually dependent, or, if a brother, sister or grandchild, dies, marries or reaches the age of eighteen (18), is over the age of eighteen (18) and ceases to be

physically or mentally incapable of self-support or ceases to be actually dependent.

~~(9)~~ i. A person ceases to be actually dependent when the person's income from all sources exclusive of workers' compensation income benefits is such that, if it had existed at the time the original determination of actual dependency was made, it would not have supported a finding of dependency. If the present annual income of an actually dependent person including workers' compensation income benefits at any time exceeds the total annual support received by the person from the deceased employee, the workers' compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased employee. In all cases, a person found to be actually dependent shall be presumed to be no longer actually dependent three (3) years after the time as of which the person was found to be actually dependent. This presumption may be overcome by proof of continued actual dependency as defined in this paragraph and paragraph (1) of Section 3.1 of this title.

~~(b)~~ 2. Change in dependents. Upon the cessation of income benefits under this section to or for the benefit of any person, the income benefits payable to the remaining persons who continue to be entitled to income benefits for the unexpired part of the period during which their income benefits are payable shall be that which such persons would have received if they had been the only persons entitled to income benefits at the time of the decedent's death.

~~(c)~~ 3. Maximum income benefits for death. For the purposes of this section, the average weekly wage of the employee shall be taken as not more than the average weekly wage of the state. In no case

shall the aggregate weekly income benefits payable to all beneficiaries under this section exceed the maximum income benefits that were or would have been payable for total permanent disability to the deceased.

~~(d)~~ 4. Maximum total payment. The maximum weekly income benefits payable for all beneficiaries in case of death shall not exceed one hundred percent (100%) of the average weekly wages the deceased was earning, subject to the maximum limits in ~~subparagraph~~ ~~(e)~~ paragraph 3 of this ~~paragraph~~ subsection. The maximum aggregate limitation shall not apply in case of payment of two (2) years' income benefits to the surviving spouse upon remarriage, as provided under ~~division (3)~~ subparagraph c of ~~subparagraph (a)~~ paragraph 1 of this ~~paragraph~~ subsection, to prevent the immediate recalculation and payments of benefits to the remaining beneficiaries as provided under ~~subparagraph (b)~~ paragraph 2 of this ~~paragraph~~ subsection. The weekly income benefits as recalculated to the remaining beneficiaries shall not exceed the weekly benefit that was or would have been payable for total permanent disability to the deceased. The classes of beneficiaries specified in ~~divisions (1)~~ subparagraph a, ~~(2)~~ b and ~~(4)~~ d of ~~subparagraph (a)~~ paragraph 1 of this ~~paragraph~~ subsection shall have priority over all other beneficiaries in the apportionment of income benefits. If the provisions of this ~~subparagraph~~ paragraph should prevent payments to other beneficiaries of the income benefits to the full extent otherwise provided for by this section, the gross remaining amount of income benefits payable to such other beneficiaries shall be apportioned by class, proportionate to the interest of each class in the remaining amount. Parents shall be considered to be in one class and those specified in ~~division (7)~~ subparagraph g of ~~subparagraph (a)~~ paragraph 1 of this ~~paragraph~~ subsection in a separate class.

9. I. Where some pecuniary loss may be shown by heirs-at-law of the deceased, as defined by the descent and distribution statutes of

Oklahoma, who are otherwise not entitled to receive benefits under other provisions of this section, such heirs-at-law shall receive compensation for their pecuniary loss not to exceed an aggregate of Five Thousand Dollars (\$5,000.00).

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

~~11.~~ ~~(a)~~ K. 1. For deaths occurring before January 1, 1995, if there is a surviving spouse and surviving children entitled to receive death benefits herein, such survivors shall be entitled to an immediate lump-sum payment of Ten Thousand Dollars (\$10,000.00) to the spouse and Two Thousand Five Hundred Dollars (\$2,500.00) to each surviving child not to exceed two children. For deaths occurring after December 31, 1994, if there is a surviving spouse and surviving children entitled to receive death benefits herein, ~~such~~ the survivors shall be entitled to an immediate lump-sum payment of Twenty Thousand Dollars (\$20,000.00) to the spouse and Five Thousand Dollars (\$5,000.00) to each surviving child not to exceed two children.

~~(b)~~ 2. If there is no surviving spouse but there are surviving children entitled to receive death benefits herein, ~~such~~ the surviving children shall be entitled to a lump-sum payment of Ten Thousand Dollars (\$10,000.00) to be divided among all the children to share and share alike.

~~(c)~~ 3. Any claim under this ~~paragraph~~ subsection shall be substantiated by the filing of a properly executed and authenticated proof of loss, which form shall be prescribed by the Administrator, and payment of ~~such~~ the sum shall be made within fifteen (15) days after adjudication of entitlement by the ~~Court~~ magistrate. ~~Such~~ The sum shall not be subject to any award of attorney fees in uncontested cases, except the ~~Court~~ magistrate shall appoint a

guardian ad litem to represent known and unknown minor children and ~~said the~~ guardian ad litem shall be paid a reasonable fee for the services.

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

~~12.~~ L. No payments on any permanent impairment order shall start until payments on any preexisting permanent impairment orders have been completed.

~~13.~~ (a) M. 1. Any employee convicted of a misdemeanor or felony and sentenced to a term of incarceration of at least ninety (90) days in this state or in any other jurisdiction shall have all benefits for temporary total disability ~~awarded by the Workers' Compensation Court~~ forfeited by order of the ~~Court~~ magistrate on

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

~~(b)~~ 2. Any employee convicted of a misdemeanor or felony and sentenced to a term of incarceration of at least ninety (90) days in this state shall have all benefits for permanent total disability or temporary partial disability awarded by the Workers' Compensation ~~Court~~ System and paid during the period of incarceration deposited to the credit of an account established pursuant to Section 549 of Title 57 of the Oklahoma Statutes for distribution in full to the Department of Corrections for costs of incarceration. The State Board of Corrections shall have the power to collect workers' compensation benefits on behalf of the prisoner as provided in this subparagraph and to distribute the benefits as provided by law.

SECTION 22. AMENDATORY 85 O.S. 1991, Section 24.1, as amended by Section 32, Chapter 335, O.S.L. 1992 (85 O.S. Supp. 2000, Section 24.1), is amended to read as follows:

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

B. Within ten (10) days or a reasonable time thereafter, after the occurrence of such injury, a report thereof shall be made in writing by the employer to the ~~Court~~ Administrator and to the employer's workers' compensation insurance carrier, if any, upon blanks to be procured from or which are approved by the Court Administrator for that purpose. ~~Such~~ These reports shall state the name and nature of the business of the employer, the location of ~~his~~ the employer's establishment or place of work, the name, address and occupation of the injured employee, the time, nature, and cause of the injury and such other information as may be required by the Administrator.

C. Any employer who refuses or neglects to make a report as required by this section shall be liable for an administrative violation and subject to a fine by the Administrator of not more than One Thousand Dollars (\$1,000.00).

SECTION 23. AMENDATORY 85 O.S. 1991, Section 24.2, as last amended by Section 10, Chapter 361, O.S.L. 1997 (85 O.S. Supp. 2000, Section 24.2), is amended to read as follows:

Section 24.2 A. Unless an employee or former employee gives oral or written notice to the employer or former employer within thirty (30) days of the date an injury occurs or the employee receives medical attention from a licensed physician during the thirty-day period from the date an injury occurred, the rebuttable presumption shall be that the injury was not work related. Such presumption must be overcome by a preponderance of the evidence. For an occupational disease or cumulative trauma, notice shall be given to the employer within the statutory period for occupational disease set out in Section 43 of this title; provided, there shall be a rebuttable presumption that injury from occupational disease or injury caused by cumulative trauma does not arise out of and in the course of employment unless oral or written notice is given by the employee to the employer within ninety (90) days of the employee's

separation from employment. Such presumption must be overcome by a preponderance of the evidence.

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

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

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

SECTION 24. AMENDATORY 85 O.S. 1991, Section 28, is amended to read as follows:

Section 28. ~~Upon its own motion or upon the application of any party in interest filing of a Request For Assistance Form, on the ground of a change in conditions, the Court may at any time review the claims process pursuant to this act shall be initiated to review any award, and, on such review, may make an award ending, diminishing or increasing the compensation previously awarded, subject to the maximum or minimum provided in the Workers' Compensation Act, and shall state its conclusions of fact and rulings of law, and the Administrator shall immediately send to the parties a copy of the award. No such review shall effect such award as regards any money already paid. In a change in condition for the better changing a permanent total disability to a permanent partial disability, the weeks paid on the permanent total disability award shall not be deducted from a subsequent permanent partial disability~~

award; however, permanent partial disability awards together with temporary compensation shall not exceed five hundred (500) weeks.

SECTION 25. AMENDATORY 85 O.S. 1991, Section 41, as amended by Section 9, Chapter 294, O.S.L. 1992 (85 O.S. Supp. 2000, Section 41), is amended to read as follows:

Section 41. A. Awards for permanent partial disability under Section 22 of this title shall be made for the total number of weeks of compensation ~~which the Court shall find the claimant will be entitled to receive~~ ordered, less any sums previously paid which ~~the Court may find to be~~ operate as a proper credit thereon. When the award becomes final, the whole sum or any unpaid portion thereof shall operate as a final adjudicated obligation and payment thereof may be enforced by the claimant or in case of his death, by the surviving beneficiary entitled to the proceeds as provided in Section 48 of this title. All awards shall be paid by periodic installments as ~~determined by the Court~~ ordered. Whenever an injured person receives an award for permanent partial disability, permanent total disability or death benefits, the injured employee or claimant, for good cause shown, may have the award commuted to a lump-sum payment by ~~permission of the Court~~ order. This authorization for commutation shall not be applicable to attorney fees in permanent total disability cases. The lump-sum payment shall not exceed Four Thousand Dollars (\$4,000.00) or twenty-five percent (25%) of the total award, whichever is the larger sum. Attorney fees shall be based upon not more than a five-hundred-week award and, with respect to attorney fees in a permanent total disability case, shall be paid periodically. Such commutation shall be in addition to any commutation to a lump-sum payment for legal services. The balance of the total award shall be paid in periodic installments. In case of the death of a claimant due to causes other than ~~his~~ accidental personal injury or occupational disease at any time before satisfaction or payment of the total award is made,

the award shall not abate, but shall be revived in favor of the persons determined ~~by the Court~~ to be entitled thereto. In proceedings to enforce claims for compensation during a period of healing or temporary total disability, the compensation under the provisions of the Workers' Compensation Act shall be payable periodically, in accordance with the method of payment of the wages of the employee at the time of ~~his~~ injury, and shall be so provided for in any award made.

B. Awards for permanent total disability shall be made ~~by the Court under~~ pursuant to Section 22 of this title. ~~The Court shall make a,~~ and said determination shall be made that the ~~claimant~~ employee will be entitled to receive the weekly income benefits provided in this title as long as ~~his~~ permanent total disability continues to exist. When an award for total permanent disability becomes final, the accrued portion thereof shall operate as a final adjudicated obligation and payment thereof may be enforced by the claimant. In proceedings to enforce claims for total permanent disability, the compensation under the provisions of the Workers' Compensation Act shall be payable periodically and shall be so provided in any award made thereon. Total permanent disability awards shall not be commuted to a lump-sum payment.

C. All payments shall be made on any award in the manner and form prescribed by the ~~Court~~ magistrates not to exceed the weekly rate of compensation specified in Section 22 of this title, and employers and insurance carriers shall, for such purposes, be permitted, or when necessary to protect the interests of the beneficiary, may be required to make deposits with the Administrator to secure the prompt and convenient payment of awards made. Provided that, all weekly or periodic payments shall be made through the use of United States legal tender, negotiable instruments payable on demand or negotiable drafts when each such payment does not exceed One Thousand Dollars (\$1,000.00). Failure for ten (10)

days to pay any final award or any portion thereof, as ordered shall immediately entitle the beneficiary to an order finding the respondent and/or insurance carrier to be in default and all unpaid portions, including future periodic installments unpaid, shall immediately become due and may be immediately enforced as provided by Section 42 of this title.

An award for disability may be made after the death of the injured employee, when death results from causes other than the injury. If an employee dies as a result of a compensable injury or an occupational disease, any unaccrued portions of an award or order shall abate.

SECTION 26. AMENDATORY 85 O.S. 1991, Section 42, as last amended by Section 6, Chapter 420, O.S.L. 1999 (85 O.S. Supp. 2000, Section 42), is amended to read as follows:

Section 42. A. If payment of compensation or an installment payment of compensation due under the terms of an award, except in the case of an appeal of an award or an award from the Multiple Injury Trust Fund, is not made within ten (10) days after the same is due by the employer or insurance carrier liable therefor, the ~~Court~~ magistrate may order a certified copy of the award to be filed in the office of the court clerk of any county, which award whether accumulative or lump sum shall have the same force and be subject to the same law as judgments of the district court. Any compensation awarded and all payments thereof directed to be made by order of the ~~Court~~ magistrate, except in the case of an appeal of an award or an award of compensation from the Multiple Injury Trust Fund, shall bear interest at the rate of eighteen percent (18%) per year from the date ordered ~~paid by the Court~~ until the date of satisfaction. Compensation ordered to be paid from the Multiple Injury Trust Fund shall bear interest at the rate of interest applicable to judgments in civil cases pursuant to Section 727 of Title 12 of the Oklahoma Statutes from the date of the award. Any award from the Multiple

Injury Trust Fund prior to November 4, 1994, shall bear interest at the rate of interest applicable to judgments in civil cases pursuant to Section 727 of Title 12 of the Oklahoma Statutes. Upon the filing of the certified copy of the ~~Court's~~ award a writ of execution shall issue and process shall be executed and the cost thereof taxed, as in the case of writs of execution, on judgments of courts of record, as provided by Title 12 of the Oklahoma Statutes; provided, however, the provisions of this section relating to execution and process for the enforcement of awards shall be and are cumulative to other provisions now existing or which may hereafter be adopted relating to liens or enforcement of awards or claims for compensation.

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

SECTION 27. AMENDATORY 85 O.S. 1991, Section 43, as last amended by Section 12, Chapter 361, O.S.L. 1997 (85 O.S. Supp. 2000, Section 43), is amended to read as follows:

Section 43. A. The right to ~~claim compensation~~ initiate a request for assistance review under the Workers' Compensation Act shall be forever barred unless, within two (2) years after the date of accidental injury or death, a ~~claim for compensation~~ request for assistance is filed with the ~~Workers' Compensation Court Administrator~~. Provided, however, a ~~claim~~ request may be filed within two (2) years of the last payment of any compensation or remuneration paid in lieu of compensation or medical treatment which was authorized by the employer or the insurance carrier. Provided further however, with respect to disease or injury caused by

repeated trauma causally connected with employment, a ~~claim~~ request may be filed within two (2) years of the date of last trauma or hazardous exposure. Provided further however, in the case of asbestosis, silicosis or exposure to nuclear radiation causally connected with employment, a ~~claim~~ request may be filed within two (2) years of the date of last hazardous exposure or within two (2) years from the date ~~said~~ the condition first becomes manifest by a symptom or condition from which one learned in medicine could, with reasonable accuracy, diagnose such specific condition, whichever last occurs. The filing of any form or report by the employer or insurance carrier shall not toll the above limitations.

B. ~~When a claim for compensation has been filed with the Administrator as herein provided, unless the claimant shall in good faith request a hearing and final determination thereon within three (3) years from the date of filing thereof or within three (3) years from the date of last payment of compensation or wages in lieu thereof, same shall be barred as the basis of any claim for compensation under the Workers' Compensation Act and shall be dismissed by the Court for want of prosecution, which action shall operate as a final adjudication of the right to claim compensation thereunder. If represented by counsel, the claimant may, upon the payment of the Court's filing fee, dismiss any claim brought by the claimant at any time before final submission of the case to the Court for decision. Any claimant not represented by counsel may, upon the payment of the Court's filing fee and with an order of the Court, dismiss any claim brought by the claimant at any time before final submission of the case to the Court for decision. Such dismissal shall be without prejudice unless the words "with prejudice" are included in the order. If any claim that is filed within the statutory time permitted by this section is dismissed without prejudice, a new claim may be filed within one (1) year~~

~~after the entry of the order dismissing the first claim even if the statutory time for filing has expired.~~

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

~~D.~~ C. Each employer shall post a notice advising employees that they are covered by the Workers' Compensation Act and that workers' compensation counselor services are available ~~at~~ through the Workers' Compensation ~~Court~~ System. The form of the notice shall be prescribed by ~~the rules of the Court~~ rule. ~~No other notice to the employee shall be required other than said poster required by this section; provided that nothing~~ Nothing in this subsection shall be construed to toll the ~~Statute of Limitations provided above~~ statute of limitations stated in this section.

SECTION 28. AMENDATORY 85 O.S. 1991, Section 44, is amended to read as follows:

Section 44. (a) If a worker entitled to compensation under the Workers' Compensation Act is injured or killed by the negligence or wrong of another not in the same employ, such injured worker shall, before any ~~suit or~~ claim under the Workers' Compensation Act, elect whether to take compensation under the Workers' Compensation Act, or to pursue ~~his~~ a remedy against such other. Such election shall be evidenced in ~~such a~~ such a manner as ~~the Administrator may~~ prescribed by rule ~~or regulation~~ prescribe. If ~~he~~ the worker elects to take

compensation under the Workers' Compensation Act, the cause of action against such other shall be assigned to the insurance carrier liable for the payment of such compensation, and if ~~he~~ the worker elects to proceed against such other person or insurance carrier, as the case may be, the employer's insurance carrier shall contribute only the deficiency, if any, between the amount of the recovery against such other person actually collected, and the compensation provided or estimated by the Workers' Compensation Act for such case. The compromise of any ~~such~~ cause of action by the worker at any amount less than the compensation provided for by the Workers' Compensation Act shall be made only with the written approval of the ~~Court~~ magistrate. Whenever recovery against such other person is effected without compromise settlement by the employee or ~~his~~ the employee's representatives, the employer or insurance company having paid compensation under the Workers' Compensation Act shall be entitled to reimbursement as hereinafter set forth and shall pay from its share of ~~said~~ the reimbursement a proportionate share of the expenses, including attorneys fees, incurred in effecting ~~said~~ the recovery to be determined by the ratio that the amount of compensation paid by the employer bears to the amount of the recovery effected by the employee. After the expenses and attorneys fees have been paid, the balance of the recovery shall be apportioned between the employer or insurance company having paid the compensation and the employee or ~~his~~ the employee's representatives in the same ratio that the amount of compensation paid by the employer bears to the total amount recovered; provided, however, the balance of the recovery may be divided between the employer or insurance company having paid compensation and the employee or ~~his~~ the employee's representatives as they may agree.

In the event that recovery is effected by compromise settlement, then in that event the expenses, attorneys fees and the balance of the recovery may be divided between the employer or insurance

company having paid compensation and the employee or ~~his~~ the employee's representatives as they may agree. Provided, that in the event they are unable to agree, then the same shall be apportioned by the district court having jurisdiction of the employee's action against such other person, in such manner as is just and reasonable.

(b) The employer or ~~his~~ the employer's insurance carrier shall not have the right of subrogation to recover money paid by the employer or ~~his~~ the employer's insurance carrier for death claims or death benefits under the Workers' Compensation Act from third persons, with all common law rights against other than the employer and ~~his~~ the employer's employees preserved and to be in those persons who would have had such rights had there been no death claim or death benefits under the Workers' Compensation Act.

(c) The employer or ~~his~~ the employer's insurance carrier shall have the right of subrogation to recover money paid by the employer or ~~his~~ the employer's insurance carrier for the expenses of the last illness or accident under the Workers' Compensation Act from third persons, with all common law rights against other than the employer and ~~his~~ the employer's employees preserved and to be in those persons who would have had such rights had there been no benefits under the Workers' Compensation Act.

(d) All actions for subrogation shall be brought in the district court commencing September 1, 2001.

SECTION 29. AMENDATORY 85 O.S. 1991, Section 61, as last amended by Section 2, Chapter 22, O.S.L. 1994 (85 O.S. Supp. 2000, Section 61), is amended to read as follows:

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

1. By insuring and keeping insured the payment of such compensation with any stock corporation, mutual association, or other concerns authorized to transact the business of workers' compensation insurance in this state, or by exchanging contracts of

indemnity or interinsurance, pursuant to reasonable rules ~~prescribed by the Administrator~~ providing for and securing the payment of the compensation provided for in the Workers' Compensation Act. When an insurer issues a policy to provide workers' compensation benefits pursuant to the provisions of the Workers' Compensation Act, the insurer shall file, or cause to be filed, with the Administrator a notice in such form and detail as the Administrator may ~~prescribe by rule~~ provide. The notice shall contain the name, address, and principal occupation of the employer, the number, effective date, and expiration date of the policy, and such other information as may be required by the Administrator. The notice shall be filed by the insurer within thirty (30) days after the effective date of the policy. Any insurer who fails to file the notice required by this subsection shall be liable for an administrative violation and subject to a fine by the Administrator of not more than One Thousand Dollars (\$1,000.00);

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

3. By obtaining and keeping in force a workers' compensation equivalent insurance product approved by the Insurance Commissioner and the State Board for Property and Casualty Rates pursuant to Section ~~4~~ 65 of this ~~act~~ title; or

4. By furnishing satisfactory proof certified by the Insurance Commissioner to the Administrator of the employer's financial ability to pay such compensation. ~~The Administrator~~, pursuant to rules adopted by the ~~Court or the Administrator~~ Insurance

Commissioner for an individual self-insured or a group self-insurance association, that shall require an employer that has:

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

The ~~Administrator~~ Insurance Commissioner may waive the requirements of this paragraph in an amount which is commensurate with the ability of the individual self-insured or group self-insurance association to pay the benefits required by the provisions of the Workers' Compensation Act. Irrevocable letters of credit

required by this paragraph shall contain such terms as may be prescribed by the ~~Administrator~~ Commissioner and shall be issued for the benefit of the Workers' Compensation ~~Court~~ System by a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.

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

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

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

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

SECTION 30. AMENDATORY Section 14, Chapter 1, 2nd Extraordinary Session, O.S.L. 1994, (85 O.S. Supp. 2000, Section 61.2), is amended to read as follows:

Section 61.2 All self-insured employers and group self-insurance association plans shall be required to develop and implement workplace safety plans by January 1, 1996, and shall

notify the ~~Administrator of the Workers' Compensation Court~~  
Insurance Commissioner, in writing, upon implementation of the plan.  
All private employers who become self-insured after the effective  
date of this act and group self-insurance association plans approved  
by the ~~Administrator of the Workers' Compensation Court~~ Commissioner  
after the effective date of this act November 4, 1994, shall  
implement a workplace safety plan within six (6) months of becoming  
self-insured and shall notify the ~~Administrator of the Workers'~~  
~~Compensation Court~~ Commissioner, in writing, upon implementation of  
the plan.

SECTION 31. AMENDATORY 85 O.S. 1991, Section 63, is  
amended to read as follows:

Section 63. Failure on the part of any employer to secure the  
payment of compensation provided in the Workers' Compensation Act  
shall have the effect of enabling the Administrator to proceed on  
behalf of an injured employee of such employer against the employer  
as provided in ~~Section 12 and Section 61~~ of this title.

SECTION 32. AMENDATORY 85 O.S. 1991, Section 66.1, is  
amended to read as follows:

Section 66.1 A. There is hereby created the "Individual  
Self-Insured Guaranty Fund Board". The Board shall have supervision  
over the administration and operation of the Individual Self-Insured  
Guaranty Fund.

B. The Board shall consist of not less than three ~~(3)~~ nor more  
than nine ~~(9)~~ members. Each member shall be from an employer who  
has been approved by the ~~Workers' Compensation Court~~ Insurance  
Commissioner as an own-risk carrier or self-insured risk. The Board  
shall be appointed by the ~~Administrator~~ Insurance Commissioner.

The initial members of the Board shall be appointed to terms of  
office as follows:

1. One member shall be appointed for one (1) year;
2. One member shall be appointed for two (2) years; and

3. One member shall be appointed for three (3) years.

If more than three members are appointed, the fourth member shall be appointed for four (4) years and each of the others appointed shall be for terms of office in the order of their appointment of one, two, three or four years with the ninth member also serving four (4) years. Thereafter, each person appointed shall serve for four (4) years.

C. The State Treasurer shall establish the Individual Self-Insured Guaranty Fund in the State Treasury.

D. The monies paid into the Fund, together with the interest thereon, shall constitute the Individual Self-Insured's Guaranty Fund.

E. Until the Individual Self-Insured Guaranty Fund contains One Million Dollars (\$1,000,000.00), the Oklahoma Tax Commission shall assess and collect from the employers carrying their own risk a tax at the rate of one percent (1%) of the total compensation for permanent partial disability awards paid out during each quarter of the calendar year by the employers. The Oklahoma Tax Commission shall forward to the State Treasurer the proceeds of the tax for deposit in the Fund. When the amount in the Fund falls below Seven Hundred Fifty Thousand Dollars (\$750,000.00), the tax made pursuant to this section shall be assessed until the Fund contains One Million Dollars (\$1,000,000.00). The State Treasurer shall place monies in the Fund in interest-bearing accounts.

F. 1. If an employer, who is currently approved by the ~~Workers' Compensation Court~~ Insurance Commissioner as a self-insured or own-risk carrier, is unable to make payment of an award ~~and judgment is rendered against such employer~~ and execution is levied and returned unsatisfied in whole or in part, payments for such liabilities shall be made from the Individual Self-Insured Guaranty Fund.

The Administrator shall proceed to recover such payments from the employer, or the employer's receiver or trustee in bankruptcy, and may commence an action or proceeding or file a claim therefor.

The Attorney General shall appear on behalf of the Administrator in any such action or proceeding. All monies recovered in such action shall be paid into the Fund.

2. Each employer approved as an individual self-insurer or own risk carrier shall pay into the Fund a sum equal to that assessed against such employer as provided for in subsection E of this section. When the award becomes final, the sum shall be payable regardless of whether or not the award made to the claimant is paid.

3. In making and entering awards for compensation for permanent partial disability, the ~~Court~~ Administrator shall determine and fix the amounts that shall be paid to the Tax Commission pursuant to the provisions of subsection E of this section. The amount so determined and fixed shall have the same force and effect as an award ~~of the Court~~ for compensation and all provisions relating to the collection of awards ~~of the Court~~ shall apply to such ~~judgments~~ awards.

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

The Oklahoma Tax Commission shall on or before the first day of April of each year find and determine the amount of money held as of March 1 of that year by the State Treasurer for the benefit of the Individual Self-Insured Guaranty Fund and shall on or before the first day of October of each year find and determine the amount of money held as of September 1 of that year by the State Treasurer for

the benefit of the Individual Self-Insured Guaranty Fund. Promptly after making each such determination, the Oklahoma Tax Commission shall advise the ~~Administrator~~ Insurance Commissioner in writing of its findings.

5. Eighty percent (80%) of all sums held by the State Treasurer to the credit of the Individual Self-Insured Guaranty Fund by order of the ~~Administrator~~ Insurance Commissioner, with the approval of the Individual Self-Insured Guaranty Fund Board, may be invested in or loaned on the pledge of any of the securities in which a state bank may invest the moneys deposited therein by the State Treasurer; or may be deposited in state or national banks or trust companies upon insured time deposit bearing interest at a rate no less than currently being paid upon insured savings accounts in said institutions. "Insured" as used in this section shall mean insurance as provided by an agency of the federal government. All such securities or evidence of indebtedness shall be placed in the hands of the State Treasurer, who shall be the custodian thereof, who shall collect the principal and interest when due, and pay the same into said Fund. The State Treasurer shall pay by vouchers drawn on the Individual Self-Insured Guaranty Fund for the making of such investments, when signed by the ~~Administrator~~ Insurance Commissioner and approved by the Individual Self-Insured Guaranty Board, upon delivery of such securities or evidence of indebtedness to him. The ~~Administrator~~ Insurance Commissioner, upon approval of the individual Self-Insured Guaranty Board, may sell any of such securities, the proceeds thereof to be paid over to the State Treasurer for deposit in the Fund.

6. The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payment of assessments made to the Fund when the Fund has over One Million Dollars (\$1,000,000.00) in it. Refunds shall be paid from the Fund.

7. The Oklahoma Tax Commission shall pay, monthly, to the State Treasurer to the credit of the Individual Self-Insured Guaranty Fund all moneys collected under the provisions of this section. The State Treasurer shall pay out of the Individual Self-Insured Guaranty Fund only upon the order and direction of a court of this state acting under the provisions thereof.

8. Where an award has been made ~~by the Court~~ or a payment in lieu thereof for compensable injury for a permanent partial disability, the employer shall pay to the Oklahoma Tax Commission such sum as is due of which ninety-eight percent (98%) of said sum shall be paid into the Fund and the remaining two percent (2%) thereof shall be paid to the Oklahoma Tax Commission not later than the fifteenth of the month following the close of the calendar quarter in which the award was made.

G. The Board may retain an insurance carrier or approved service organization to process, investigate and pay valid claims. The charge for such service shall be paid from the Fund.

H. The provisions of this section shall not apply to any state entity or any political subdivision of the state.

I. No claim or award shall be allowed against the Fund unless such claim or award is made within (1) one year of the time provided in paragraph 1 of subsection F of this section.

SECTION 33. AMENDATORY 85 O.S. 1991, Section 66.2, is amended to read as follows:

Section 66.2 A. There is hereby created the "Group Self-Insurance Association Guaranty Fund Board". The Board shall have supervision over the administration and operation of the Group Self-Insurance Association Guaranty Fund.

B. The Board shall consist of not less than three ~~(3)~~ nor more than nine ~~(9)~~ members. Each member shall be an administrator of a Group Self-Insurance Association which has been approved by the ~~Workers' Compensation Court~~ Insurance Commissioner as an own-risk

carrier or self-insured risk. The Board shall be appointed by the Administrator. The initial members of the Board shall be appointed to terms of office as follows:

1. One member shall be appointed for one (1) year;
2. One member shall be appointed for two (2) years; and
3. One member shall be appointed for three (3) years.

If more than three members are appointed, the fourth member shall be appointed for four (4) years and each of the others appointed shall be for terms of office in the order of their appointment of one, two, three or four years with the ninth member also serving four (4) years. Thereafter, each person appointed shall serve for four (4) years.

C. The State Treasurer shall establish the Group Self-Insurance Association Guaranty Fund in the State Treasury.

D. The monies paid into the Fund, together with the interest thereon, shall constitute the Group Self-Insurance Association Guaranty Fund.

E. Until the Group Self-Insurance Association Guaranty Fund contains One Million Dollars (\$1,000,000.00), the Oklahoma Tax Commission shall assess and collect from each group self-insurance association carrying their own risk, a tax at the rate of one percent (1%) of the total compensation for permanent partial disability awards paid out during each quarter of the calendar year by each group self-insurance association. The Oklahoma Tax Commission shall forward to the State Treasurer the proceeds of the tax for deposit in the Fund. When the amount in the Fund falls below Seven Hundred Fifty Thousand Dollars (\$750,000.00), the tax made pursuant to this section shall be assessed until the Fund contains One Million Dollars (\$1,000,000.00). The State Treasurer shall place monies in the Fund in interest-bearing accounts.

F. 1. If a group self-insurance association, that is currently approved by the ~~Workers' Compensation Court~~ Insurance Commissioner

as a self-insured or own-risk carrier, is unable to make payment of an award and judgment is rendered against such group self-insurance association and execution is levied and returned unsatisfied in whole or in part, payments for such liabilities shall be made from the Group Self-Insurance Association Guaranty Fund.

The Administrator shall proceed to recover such payments from the group self-insurance association, or the group self-insurance association's receiver or trustee in bankruptcy, and may commence an action or proceeding or file a claim therefor.

The Attorney General shall appear on behalf of the Administrator in any such action or proceeding. All monies recovered in such action shall be paid into the Fund.

2. Each group self-insurance association approved as a self-insurer or own-risk carrier shall pay into the Fund a sum equal to that assessed against such group self-insurance association as provided for in subsection E of this section. When the award becomes final, the sum shall be payable regardless of whether or not the award made to the claimant is paid.

3. In making and entering awards for compensation for permanent partial disability, the ~~Court~~ Administrator shall determine and fix the amounts that shall be paid to the Oklahoma Tax Commission pursuant to the provisions of subsection E of this section. The amount so determined and fixed shall have the same force and effect as an award ~~of the Court~~ for compensation and all provisions relating to the collection of awards ~~of the Court~~ shall apply to such ~~judgments~~ awards.

4. It shall be the duty of the Oklahoma Tax Commission to collect the payments provided for in this section. The Oklahoma Tax Commission is hereby authorized to bring an action for the recovery of any delinquent or unpaid payments required in this section. The Oklahoma Tax Commission may also enforce payments by proceeding in

accordance with the provisions of Section 42 of Title 85 of the Oklahoma Statutes.

The Oklahoma Tax Commission shall on or before the first day of April of each year find and determine the amount of money held as of March 1 of that year by the State Treasurer for the benefit of the Group Self-Insurance Association Guaranty Fund and shall on or before the first day of October of each year find and determine the amount of money held as of September 1 of that year by the State Treasurer for the benefit of the Group Self-Insurance Association Guaranty Fund. Promptly after making each such determination, the Oklahoma Tax Commission shall advise the ~~Administrator~~ Insurance Commissioner in writing of its findings.

5. Eighty percent (80%) of all sums held by the State Treasurer to the credit of the Group Self-Insurance Association Guaranty Fund by order of the ~~Administrator~~ Insurance Commissioner, with the approval of the Group Self-Insurance Association Guaranty Fund Board, may be invested in or loaned on the pledge of any of the securities in which a state bank may invest the moneys deposited therein by the State Treasurer; or may be deposited in state or national banks or trust companies upon insured time deposit bearing interest at a rate no less than currently being paid upon insured savings accounts in said institutions. "Insured" as used in this section shall mean insurance as provided by an agency of the federal government. All such securities or evidence of indebtedness shall be placed in the hands of the State Treasurer, who shall be the custodian thereof, who shall collect the principal and interest when due, and pay the same into said Fund. The State Treasurer shall pay by vouchers drawn on the Group Self-Insurance Association Guaranty Fund for the making of such investments, when signed by the ~~Administrator~~ Insurance Commissioner and approved by the Group Self-Insurance Association Guaranty Board, upon delivery or evidence of indebtedness to him. The ~~Administrator~~ Commissioner, upon

approval of the Group Self-Insurance Association Guaranty Board, may sell any of such securities, the proceeds thereof to be paid over to the State Treasurer for deposit in the Fund.

6. The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payment of assessments made to the Fund when the Fund has over One Million Dollars (\$1,000,000.00) in it. Refunds shall be paid from the Fund.

7. The Oklahoma Tax Commission shall pay, monthly, to the State Treasurer to the credit of the Group Self-Insurance Association Guaranty Fund all moneys collected under the provisions of this section. The State Treasurer shall pay out of the Group Self-Insurance Association Guaranty Fund only upon the order and direction of a court of this state acting under the provisions thereof.

8. Where an award has been made ~~by the Court~~ or a payment in lieu thereof for compensable injury for a permanent partial disability, the employer shall pay to the Tax Commission ~~such~~ the sum as is due of which ninety-eight percent (98%) of ~~said~~ the sum shall be paid into the Fund and the remaining two percent (2%) thereof shall be paid to the Oklahoma Tax Commission not later than the fifteenth of the month following the close of the calendar quarter in which the award was made.

G. The Board may retain an insurance carrier or approved service organization to process, investigate and pay valid claims. The charge for such service shall be paid from the Fund.

H. The provisions of this section shall not apply to any group self-insurance association consisting of state entities or of any political subdivisions of the state.

I. No claim or award shall be allowed against said Fund unless such claim or award is made within one (1) year of the time provided in paragraph 1 of subsection F of this section.

SECTION 34. AMENDATORY 85 O.S. 1991, Section 69.5, is amended to read as follows:

Section 69.5 The ~~Presiding Judge~~ Chief Magistrate shall ~~preside at all hearings before the Court en banc and at all conferences at which appeals and other matters are considered;~~ make all procedural rulings ~~for the court~~ except those to be made in the course of hearings before a single ~~judge~~ magistrate; assign or direct the assignment of cases to the several ~~judges~~ magistrates for hearing at places ~~he~~ the Chief Magistrate shall designate; direct and supervise the work of all employees ~~of the Court~~; handle, oversee and be responsible for all administrative affairs of the ~~Court~~, magistrates including, but not limited to, those of personnel, budgetary and financial management; and bear such other responsibilities and duties as may be necessary to operate ~~the Court~~ in an efficient manner. For the period during which ~~he~~ the Chief Magistrate is disqualified, disabled or absent, the ~~Presiding Judge~~ Chief Magistrate may designate another ~~judge~~ magistrate to act as ~~Presiding Judge in his stead~~ Chief Magistrate.

SECTION 35. AMENDATORY 85 O.S. 1991, Section 85, is amended to read as follows:

Section 85. Annually, on or before the first day of July, commencing with July, 1987, the Administrator shall prepare and submit a report for the prior calendar year to the Governor, the Chief Justice of the Supreme Court, the President Pro Tempore of the Senate, the Speaker of the House of Representatives and each member of the Legislature, which shall include a statement of the number of awards made and the causes of the accidents leading to the injuries for which the awards were made, total work load data of the ~~Court~~ facilitators by judicial district, a detailed report of the work load of each ~~judge of the Court~~ magistrate by judicial district, a detailed statement of the expenses of the office of the Administrator ~~of Workers' Compensation and the Court~~, together with

any other matter which the Administrator deems proper to report to the Governor, including any recommendations ~~he~~ the Administrator may desire to make.

SECTION 36. AMENDATORY 85 O.S. 1991, Section 93, as last amended by Section 2, Chapter 262, O.S.L. 1997 (85 O.S. Supp. 2000, Section 93), is amended to read as follows:

Section 93. A. The following fee shall be collected by the Administrator and taxed as costs to be paid by the party against whom any award becomes final:

A fee of Seventy-five Dollars (\$75.00) per ~~case~~ request for assistance to be deposited as follows:

1. Forty Dollars (\$40.00) to the credit of the Administrator of Workers' Compensation Revolving Fund created by Section 95 of this title;

2. Ten Dollars (\$10.00) to the credit of the Office of the Attorney General's Workers' Compensation Fraud Unit Revolving Fund created by Section 19.2 of Title 74 of the Oklahoma Statutes; and

3. Twenty-five Dollars (\$25.00) to the credit of the Administrator of Workers' Compensation Revolving Fund, created by Section 95 of this title, for purposes of implementing the provisions of this act, including strengthening and providing additional funding for the Attorney General's Workers' Compensation Fraud Unit, providing counseling services pursuant to the workers' compensation counselor program and safety in the workplace.

B. A fee of Seventy-five Dollars (\$75.00) per ~~action~~ request for assistance to reopen any ~~case~~ claim pursuant to Section 28 of this title shall be collected by the Administrator and taxed as costs to be paid by the party that reopens the case. The fee collected pursuant to this subsection shall be deposited to the credit of the Administrator of Workers' Compensation Revolving Fund, created by Section 95 of this title, for purposes of implementing the provisions of this act, including strengthening and providing

additional funding for the Attorney General's Workers' Compensation Fraud Unit, providing counseling services pursuant to the workers' compensation counselor program and safety in the workplace.

SECTION 37. AMENDATORY 85 O.S. 1991, Section 93.2, is amended to read as follows:

Section 93.2 A. All group self-insureds allowed pursuant to the provisions of subsection A of Section 149.1 of Title 85 of the Oklahoma Statutes shall pay an annual application fee of Five Hundred Dollars (\$500.00) to the Administrator.

B. All individual own-risk or self-insured risk employers shall pay an annual application fee of Five Hundred Dollars (\$500.00) to the Administrator.

C. All ~~court~~ approved servicing companies shall pay an annual application fee of Five Hundred Dollars (\$500.00) to the Administrator.

D. All fees collected pursuant to the provisions of this section shall be deposited to the credit of the Administrator of the Workers' Compensation Revolving Fund created by Section 95 of Title 85 of the Oklahoma Statutes.

SECTION 38. AMENDATORY 85 O.S. 1991, Section 102, is amended to read as follows:

Section 102. Every employer shall keep a record of injuries, which result in the loss of time beyond the shift or which require medical attention away from the work site, fatal or otherwise, received by ~~his~~ the employer's employees in the course of their employment. Within ten (10) days or a reasonable time thereafter, after the occurrence of an accident resulting in personal injury a report thereof shall be made in writing by the employer to the ~~Court~~ Administrator upon blanks to be procured from the ~~Court~~ Administrator for that purpose. Such reports shall state the name and nature of the business of the employer, the location of ~~his~~ the establishment or place of work, the name, address and occupation of

the injured employee, the time, nature, and cause of the injury and ~~such~~ other information as may be required by the Administrator. Any employer who refuses or neglects to make a report as required by this section shall be guilty of a misdemeanor, punishable by a fine of not more than Five Hundred Dollars (\$500.00).

SECTION 39. AMENDATORY 85 O.S. 1991, Section 104, is amended to read as follows:

Section 104. All books, records and payrolls of the employers showing or reflecting in any way upon the amount of wage expenditures of ~~such~~ the employers shall always be open for inspection by the Administrator or any other authorized auditors, accountants, or inspector for the purpose of ascertaining the correctness of the wage expenditure and number of ~~men~~ persons employed and ~~such~~ any other information as may be necessary for the purposes and uses of the Administrator in the administration of the Workers' Compensation Act. No person shall be excused from testifying or from producing any books or papers or documents in any investigation or inquiry, by or upon any hearing before the ~~Court~~ Administrator, when ordered to do so by the ~~Court~~ Administrator, upon the ground that the testimony or payroll or other competent evidence required of ~~him~~ that person may tend to incriminate ~~him~~ or subject ~~him~~ that person to penalty or forfeiture; but no person shall be prosecuted, punished or subjected to any penalty or forfeiture for or on account of any act, transaction, matter or thing concerning which ~~he~~ the person shall under oath, have, by order ~~of the Court~~, testified to or produced documentary evidence of; provided, however, that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by ~~him~~ the person in ~~his~~ testimony.

SECTION 40. AMENDATORY 85 O.S. 1991, Section 112, as amended by Section 37, Chapter 1, 2nd Extraordinary Session, O.S.L.

1994, (85 O.S. Supp. 2000, Section 112), is amended to read as follows:

Section 112. A. There is hereby created an Advisory Council on Workers' Compensation.

B. The voting membership of the Advisory Council shall consist of nine (9) members. The Administrator and ~~Presiding Judge of the Court~~ Chief Magistrate shall be ex officio non-voting members.

1. The Governor shall appoint three ~~(3)~~ members representing employers in this state, one of whom shall be from a list of nominees provided by the predominant statewide broad-based business organization;

2. The Speaker of the House of Representatives shall appoint three ~~(3)~~ members representing employees in this state, one of whom shall be from a list of nominees provided by the most representative labor organization in the state; and

3. The President Pro Tempore of the Senate shall appoint three (3) members who are attorneys representing the legal profession in this state, one of whom shall be an attorney who practices primarily in the area of defense of workers' compensation claims.

C. 1. The term of office for initial appointees shall be as follows:

- a. 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 March 1, 1992,
- b. 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 March 1, 1993, and
- c. 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 March 1, 1994;

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

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

D. The chairman and the vice-chairman of the Advisory Council, one of whom shall be an employee representative and one of whom shall be an employer representative, shall be elected by the Council from among its voting members.

E. Members shall receive their traveling and other necessary expenses incurred in the performance of their duties as provided in the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes.

F. Meetings of the Advisory Council shall be quarterly or as called by the chair or upon petition by a majority of the voting members. The presence of five ~~(5)~~ voting members constitutes a quorum. No action shall be taken by the Advisory Council without the affirmative vote of at least five ~~(5)~~ members.

G. The Administrator ~~of the Court~~ shall provide office supplies and personnel ~~of the Workers' Compensation Court~~ to carry out any of the duties that have been entrusted to the Advisory Council.

H. The Advisory Council shall analyze and review the workers' compensation system, the reports of the Administrator ~~of the Workers' Compensation Court~~, and trends in the field of workers' compensation. The Council may recommend improvements and proper responses to developing trends. The Council shall report its findings annually to the Governor, the Chief Justice of the Supreme Court, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives.

I. In addition to other duties required by this section, the Advisory Council shall consult with the ~~Workers' Compensation Court Administrator~~ regarding oversight of independent medical examiners as provided in Section 17 of this title.

SECTION 41. AMENDATORY 85 O.S. 1991, Section 149.1, as amended by Section 12, Chapter 363, O.S.L. 1996 (85 O.S. Supp. 2000, Section 149.1), is amended to read as follows:

Section 149.1 A. 1. Effective September 1, 2001, the powers, duties, and responsibilities previously of the Workers' Compensation Court and the Workers' Compensation Court Administrator relating to group self-insurance associations shall be transferred to the Insurance Commissioner.

2. All unexpended funds, property, records, personnel, and outstanding financial obligations and encumbrances of the Workers' Compensation Court are hereby transferred to the Insurance Commission. All transferred personnel shall retain their employment position and status as unclassified or classified employees.

3. The Director of State Finance is hereby directed to coordinate the transfer of funds, allotments, purchase orders, and outstanding financial obligations or encumbrances relating to this subsection.

4. The rules of the Workers' Compensation Court relating to regulation of group self-insurance associations shall be the rules of the Insurance Commission until superceded by rules adopted by the Board pursuant to the Administrative Procedures Act.

B. The Insurance Commissioner shall have the following responsibilities:

1. To review and approve "own-risk" applications and group self-insurance associations applications; and

2. To adopt rules which require every insurance company, the State Insurance Fund and every self-insurer authorized to transact workers' compensation insurance in this state to report to the

Commissioner its statistical experience and its experience regarding the utilization of independent medical examiners in permanent disability cases during the period from July 1, 1995, to July 1, 1997. The information regarding utilization of independent medical examiners shall include, but not be limited to, the number of independent medical examiner requests, the parties requesting the independent medical examiner, the doctors participating and the number of evaluations done by each, a summary of awards and settlements, medical costs, and duration of temporary total disability. The Commissioner shall compile the information collected and present a report of the findings to the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Governor, the Advisory Council on Workers' Compensation and the Physician Advisory Committee.

C. ~~The Workers' Compensation Court~~ Insurance Commissioner 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.~~ D. ~~The Court~~ Insurance Commissioner 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~~ Board.

~~E.~~ E. A group self-insurer created pursuant to this section either prior to or after ~~the effective date of this act~~ November 1, 1996, shall not be subject to the provisions of the Oklahoma Securities Act.

SECTION 42. AMENDATORY 85 O.S. 1991, Section 149.2, is amended to read as follows:

Section 149.2 ~~The Workers' Compensation Court~~ Insurance Commission shall adopt rules permitting two or more group self-insurance associations to pool their liabilities under Section 149.1 of this act title for the purpose of ~~providing such group self-insurance associations~~ obtaining specific and aggregate excess insurance.

SECTION 43. AMENDATORY 85 O.S. 1991, Section 173, as last amended by Section 10, Chapter 248, O.S.L. 2000 (85 O.S. Supp. 2000, Section 173), is amended to read as follows:

Section 173. There is hereby created, for the purposes herein declared, a Multiple Injury Trust Fund, formerly known as the Special Indemnity Fund, to be derived from the following sources:

A. 1. Beginning July 1, 2000, and until such time as the Board of Managers of the State Insurance Fund, pursuant to an independent actuarial audit, has certified that there are sufficient funds to satisfy all outstanding obligations of the Multiple Injury Trust Fund, each mutual or interinsurance association, stock company, the State Insurance Fund, or other insurance carrier writing workers' compensation insurance in this state shall pay to the Oklahoma Tax Commission a sum equal to two percent (2%) of the total gross direct premiums written for workers' compensation on risks located in this state. The Oklahoma Tax Commission shall assess and collect from employers carrying their own risk, including group self-insurance associations, a temporary assessment at the rate of four percent

(4%) of the total compensation for permanent total disability awards, permanent partial disability awards and death benefits paid out during each quarter of the calendar year by the employers and group self-insurance associations.

2. All monies received from premium and loss assessments shall be paid to the Multiple Injury Trust Fund. Insurance carriers shall pay the temporary premium assessments to the Oklahoma Tax Commission at the same time and in the same manner as premium taxes are paid. Self-insurers and group self-insurance associations shall pay the temporary loss assessment on the fifteenth day of the month following the close of each quarter of the calendar year. The State Insurance Fund shall pay the temporary premium assessment not later than the fifteenth day of the month following the close of each quarter of the calendar year. Assessments against insurance carriers and the State Insurance Fund, shall not be considered in determining whether any rate is excessive. Insurance carriers and the State Insurance Fund shall not separately state the amount of the assessment on any invoice or billing statement.

B. The Multiple Injury Trust Fund is hereby authorized to receive and expend monies appropriated by the Legislature.

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

D. The Oklahoma Tax Commission shall on or before the first day of April of each year find and determine the amount of money held as of March 1 of that year by the State Treasurer for the benefit of the Multiple Injury Trust Fund and shall on or before the first day of October of each year find and determine the amount of money held as of September 1 of that year by the State Treasurer for the

benefit of the Multiple Injury Trust Fund. Promptly after making each determination, the Oklahoma Tax Commission shall advise the State Insurance Fund and the Administrator in writing of its findings and determination in the foregoing particulars.

E. Eighty percent (80%) of all sums held by the State Treasurer to the credit of the Multiple Injury Trust Fund may by order of the Commissioner of the State Insurance Fund, with the approval of the Board of Managers of the State Insurance Fund, be invested in or loaned on the pledge of any of the securities in which a state bank may invest the monies deposited therein by the State Treasurer; or may be deposited in state or national banks or trust companies upon insured time deposit bearing interest at a rate no less than currently being paid upon insured savings accounts in said institutions. "Insured" as used in this section shall mean insurance as provided by an agency of the federal government. All such securities or evidence of indebtedness shall be placed in the hands of the State Treasurer, who shall be the custodian thereof, who shall collect the principal and interest when due, and pay the same into the Multiple Injury Trust Fund. The State Treasurer shall pay by vouchers drawn on the Multiple Injury Trust Fund for the making of such investments, when signed by the Commissioner and approved by the Board of Managers of the State Insurance Fund, upon delivery of such securities or evidence of indebtedness to the State Treasurer. The Commissioner may, upon like approval of the Board of Managers of the State Insurance Fund, sell any of such securities, the proceeds thereof to be paid over to the State Treasurer for the Multiple Injury Trust Fund.

F. The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payments made to the Multiple Injury Trust Fund. Refunds shall be paid from and out of the Multiple Injury Trust Fund.

G. The Oklahoma Tax Commission shall pay, monthly, to the State Treasurer all monies collected under the provisions of this section to be credited as follows: By the tenth day of each month, the ~~Workers' Compensation Court~~ Administrator shall provide to the Oklahoma Tax Commission the amount of all awards ~~made by the Court~~, or any payments in lieu thereof, for compensable injuries for permanent total disability or permanent partial disability which employers or insurance carriers made during the previous month. An amount equal to eight-tenths of one percent (.8%) of the amount of these awards and payments in lieu thereof shall be deducted from the temporary assessment collected pursuant to this section during the previous month divided and paid to the following agencies: fifty percent (50%) to the Oklahoma Department of Labor, twenty-five percent (25%) to the Office of the Attorney General and twenty-five percent (25%) to the ~~State Department of Vocational and Technical Education~~ Oklahoma Department of Career and Technology Education. The remaining amount of monies collected by the Oklahoma Tax Commission under the provisions of this section shall be paid to the Multiple Injury Trust Fund. Monies received by the Department of Labor under this section shall be used for safety consultation and the regulation of the safety of public employees through the Occupational Safety and Health Act of 1970. Monies received by the Office of the Attorney General shall be deposited to the credit of the Attorney General's Workers' Compensation Fraud Unit Revolving Fund created pursuant to Section 19.2 of Title 74 of the Oklahoma Statutes. Monies received by the ~~State Department of Vocational and Technical Education~~ Oklahoma Department of Career and Technology Education shall supplement other funding to the Department for purposes of implementing the provisions of subsection B of Section 414 of Title 40 of the Oklahoma Statutes. The State Treasurer shall pay out of the Multiple Injury Trust Fund only upon the order and

direction of the ~~Court of this state~~ Administrator acting under the provisions hereof.

SECTION 44. AMENDATORY 85 O.S. 1991, Section 175, as 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 Governor, Attorney General, and Secretary of the State Board for Property and Casualty Rates.

SECTION 45. AMENDATORY 85 O.S. 1991, Section 177, as last amended by Section 28, Chapter 5, O.S.L. 1998 (85 O.S. Supp. 2000, Section 177), is amended to read as follows:

Section 177. A. 1. There is hereby established with the State Treasurer a Workers' Compensation Administration Fund to be used for the costs of administering the Workers' Compensation Act and for other purposes pursuant to legislative appropriation.

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

B. For the purpose of providing funds for the Workers' Compensation Administration Fund until July 1, 1997, and for the General Revenue Fund beginning July 1, 1997, each mutual or

interinsurance association, stock company, the State Insurance Fund or other insurance carrier writing workers' compensation insurance in this state or providing a workers' compensation equivalent insurance product as provided in Section 65 of this title shall pay to the Oklahoma Tax Commission a tax at a rate of one percent (1%) of all gross direct premiums written during each quarter of the calendar year for workers' compensation insurance on risks located in this state after deducting from such gross direct premiums, return premiums, unabsorbed portions of any deposit premiums, policy dividends, safety refunds, savings and other similar returns paid or credited to policyholders. Such payments to the Oklahoma Tax Commission shall be made not later than the fifteenth day of the month following the close of each quarter of the calendar year in which such gross direct premium is collected or collectible. Contributions made by insurance carriers and the State Insurance Fund, under the provisions of this section, shall be considered for the purpose of computing workers' compensation rates.

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

D. It shall be the duty of the Oklahoma Tax Commission to collect the payments provided for herein. The Oklahoma Tax Commission is hereby authorized to bring an action for the recovery

of any delinquent or unpaid payments required in this section. The Oklahoma Tax Commission may also enforce payments by proceeding in accordance with the provisions of Section 42 of this title.

E. Until July 1, 1997, the Oklahoma Tax Commission shall pay monthly to the State Treasurer to the credit of the Workers' Compensation Administration Fund all monies collected under the provisions of this section. Beginning July 1, 1997, the Oklahoma Tax Commission shall pay monthly to the State Treasurer to the credit of the General Revenue Fund all monies collected under the provisions of this section.

F. The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payments made pursuant to this section.

G. After fiscal year 1997 appropriations have been satisfied, any monies remaining in the Workers' Compensation Administration Fund shall be transferred to the General Revenue Fund.

SECTION 46. AMENDATORY 85 O.S. 1991, Section 201, as last amended by Section 14, Chapter 361, O.S.L. 1997 (85 O.S. Supp. 2000, Section 201), is amended to read as follows:

Section 201. A. A health care provider who knowingly charges more for treatment under workers' compensation than that normally charged for similar treatment to a payor outside the workers' compensation system, except for mandated or negotiated charges, shall be subject to penalties prescribed in this section.

B. The Administrator shall adopt rules to establish a system of review of medical practices of health care providers through the workers' compensation system to evaluate on an aggregate basis the quantity and quality of treatment, charges and evaluations of permanent impairment by such providers. The Administrator may refer charges of abusive practices by health care providers under the workers' compensation system to the Physician Advisory Committee for review and recommendation and to the appropriate licensing body for

the health care provider. The findings and recommendation of the Committee shall be only advisory to the Administrator and shall not be binding or conclusive upon ~~him~~ the Administrator. If the Administrator determines that a health care provider has, on an aggregate basis, established a pattern of over or under treating, failing to adhere to the AMA Guides or modifications thereto when evaluating permanent impairment, or overcharging, the Administrator shall impose administrative penalties for abusive practices and may waive payment for medical services or evaluations of permanent impairment of the health care provider rendered under the Workers' Compensation Act, Section 1 et seq. of this title, for not to exceed five (5) years. A pattern of abusive practices shall include, but not be limited to, a pattern of referral to a medical facility for treatment found to be in excess of treatment guidelines adopted by the Administrator under Section 201.1 of this title. Physicians providing treatment under the Workers' Compensation Act shall disclose to the Administrator ~~of the Workers' Compensation Court~~, on a form prescribed by the Administrator, any ownership or interest in any health care facility that is not the physician's primary place of business. Such disclosure shall include, but not be limited to, any employee leasing arrangement between the physician and any health care facility that is not the physician's primary place of business.

C. If the Administrator determines that there is a reasonable likelihood that a violation has occurred, the Administrator shall notify the health care provider, by certified mail, return receipt requested, delivery restricted. This notice shall contain the following:

1. The substance of the alleged violation;
2. The amount of any fees, fines, penalties and costs which may be imposed if the provider is found guilty or fails to respond; and

3. The date that a response must be made or a hearing requested.

D. The provider shall file a response to the allegations or request a hearing within twenty (20) days after receipt of the notice required by subsection C of this section.

E. Upon receipt of the response or request for hearing, the Administrator shall set a date, time and place for hearing which shall be not less than ten (10) nor more than thirty (30) days after receipt of the request for hearing. The Administrator shall notify all interested parties of the hearing by first-class mail. This notice shall include the following:

1. The date, time and place for such hearing;
2. A brief description of the procedures to be followed; and
3. A statement that the health care provider may appear, may be represented by counsel, and may present witnesses and testimony.

F. The Administrator shall, within thirty (30) days after completion of the proceedings, make written findings of fact and conclusions of law which shall be sent to the health care provider by first-class mail together with a notice which shall contain the following:

1. A statement that a health care provider aggrieved by the decision of the Administrator shall have ten (10) days after the decision is filed within which to request a hearing before a ~~judge~~ magistrate ~~of the Workers' Compensation Court~~ to determine the propriety of the Administrator's decision; and that the order of the ~~judge~~ magistrate shall be subject to the same appellate procedure set forth in Section 3.6 of this title for all other orders ~~of the Court~~; and

2. Directions for remitting the penalty, if any.

SECTION 47. AMENDATORY Section 18, Chapter 349, O.S.L. 1993, as last amended by Section 15, Chapter 361, O.S.L. 1997 (85 O.S. Supp. 2000, 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. 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~~ magistrates on the issues of injury causation and apportionment;

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

8. Assist the ~~judges of the Workers' Compensation Court~~ magistrates 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.

H. Any health care provider acting in good faith and within the scope of the provider's duties as a member of the Physician Advisory Committee shall be immune from civil liability for making any report or other information available to ~~the judges of the Workers' Compensation Court~~ or to the Administrator ~~of the Workers' Compensation Court~~ or for assisting in the origination, investigation, or preparation of the report or other information so provided.

SECTION 48. AMENDATORY Section 34, Chapter 349, O.S.L. 1993, as last amended by Section 12, Chapter 420, O.S.L. 1999 (85 O.S. Supp. 2000, Section 211), is amended to read as follows:

Section 211. A. Every employer and every employee subject to the provisions of the Workers' Compensation Act, Section 1 et seq. of this title, upon filing a notice of injury, accidental injury, death, occupational disease, or claim for benefits from the Multiple Injury Trust Fund, shall give written permission for the Administrator ~~of the Workers' Compensation Court~~ or a designee, the Insurance Commissioner or a designee, the Attorney General or a designee or a district attorney or a designee to examine all records

relating to the notice, any matter contained in the notice, and any matter relating to the notice.

B. Written permission given pursuant to this section shall constitute authorization for access to medical records pursuant to Section 19 of Title 76 of the Oklahoma Statutes.

C. In carrying out the responsibilities given to the Workers' Compensation Fraud Unit, the Attorney General or designee may use subpoenas or other process in aid of investigations and prosecutions and may take possession of records subject to examination pursuant to this section by subpoena. The Attorney General shall supply copies of the records obtained which are necessary to the continuation of normal business operations by the person maintaining the records or may require the person maintaining the records to provide copies as they are kept in the usual course of business.

D. Subpoenas ad testificandum or duces tecum requested by the Attorney General or designee pursuant to subsection C of this section shall be issued by the district court in the county of the residence of the person to whom the subpoena is directed, in the county where the records are located or in the county where a person is to produce records or appear and be sworn. Subpoenas issued pursuant to this section may be served by the Attorney General, any peace officer or any competent person over eighteen (18) years of age, and may require attendance or production at any place in this state. Service may be made by mail and may be accomplished by mailing a copy thereof by certified mail with return receipt requested and delivery restricted to the person named in the subpoena. Proof of service shall be made upon affidavit, and if made by mail, a copy of the return receipt shall be attached. A refusal to obey such subpoena, or willful failure to appear, be sworn, testify or produce records at the place and time specified shall constitute contempt and shall be enforced by the district court of the county where issued.

E. Nothing in this section shall be construed to waive, limit or impair any evidentiary privilege recognized by law.

F. The ~~Workers' Compensation Court~~ Administrator shall include a statement on forms for notices and instructions to employers and employees that the permission required by this section must be given at the time of filing a notice specified in subsection A of this section.

G. As used in this section, "records" include, but are not limited to, anything for which a request to produce may be served pursuant to Section 3234 of Title 12 of the Oklahoma Statutes.

SECTION 49. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3.3a of Title 85, unless there is created a duplication in numbering, reads as follows:

A. An employer may be represented in all proceedings before a magistrate by the following parties:

1. Counsel licensed to practice law in this state;
2. An employee of the employer, who need not be licensed to practice law, other than the claimant;
3. An insurance adjuster licensed by the Insurance Commissioner; or
4. Any person having written authorization from the employer to represent the employer.

B. All parties representing an employer, other than counsel, must provide the Administrator of the Workers' Compensation System with written authorization from the employer. The authorization shall be on a form prescribed by the Administrator.

C. The employer shall agree to be bound by all actions taken by and agreements made by the employer's authorized representative.

SECTION 50. REPEALER Section 8, Chapter 384, O.S.L. 1997, Section 4, Chapter 361, O.S.L. 1997, as amended by Section 4, Chapter 420, O.S.L. 1999, and 85 O.S. 1991, Sections 3.5, 26, as amended by Section 30, Chapter 1, 2nd Extraordinary Session, O.S.L.

1994, 80 and 151 (85 O.S. Supp. 2000, Sections 1.2A, 3.10 and 26),  
are hereby repealed.

SECTION 51. This act shall become effective March 1, 2002.

48-1-182

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