STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 969 By: Herbert

AS INTRODUCED

An Act relating to workers' compensation; amending 68 O.S. 2001, Section 2357.44, which relates to credits for workers' compensation assessments; providing tax credit against certain charges paid by certain entity; amending 85 O.S. 2001, Sections 3, 14, 14.2, 14.3, and 17, which relate to definitions, medical attention, certified workplace medical plans and disability; adding definition; modifying definition; modifying certain choice of physician procedure; prohibiting Workers' Compensation Court from altering course of treatment under certain circumstances; prohibiting Court from issuing certain orders under certain circumstances; requiring employees to be bound by specific medical plan; deleting obsolete language; requiring certain notice from employers to employees; stating procedure for acknowledgement of notice; modifying contents of certain form; requiring certain annual notice; requiring certain documentation under certain circumstance; modifying criterion required for certain certification; modifying procedure for legal relief under certain circumstances; adding persons who may terminate certain disability payments under certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 68 O.S. 2001, Section 2357.44, is amended to read as follows:

Section 2357.44 A. As used in this section:

1. "Assessment" means an amount assessed by the Workers' Compensation Court Administrator pursuant to the provisions of subparagraph a of paragraph 1 of subsection B of Section 173 of Title 85 of the Oklahoma Statutes;

2. "Loss assessment amount" means an amount equal to four percent (4%) of the total compensation for permanent total disability awards, permanent partial disability awards and death

benefits paid out by an employer or a group self-insurance association, which would have been assessed by the Oklahoma Tax Commission pursuant to the provisions of paragraph 1 of subsection A of Section 173 of Title 85 of the Oklahoma Statutes had such assessments not ceased to be imposed as of December 31, 2001;

3. "Premium" means an amount paid by an employer to a provider of workers' compensation insurance to provide such insurance for a specified time period; ~~and~~

4. "Premium assessment amount" means an amount equal to two percent (2%) of the total gross direct premiums written for workers' compensation on risks located in this state, which would have been assessed by the Oklahoma Tax Commission pursuant to the provisions of paragraph 1 of subsection A of Section 173 of Title 85 of the Oklahoma Statutes had such assessments not ceased to be imposed as of December 31, 2001; and

5. "Provider of workers' compensation insurance" means a mutual or interinsurance association, stock company, CompSource Oklahoma, or other insurance carrier.

B. For tax years beginning after December 31, 2001, there shall be allowed a credit against the tax imposed by Section 2355 of ~~Title 68 of the Oklahoma Statutes~~ this title as follows:

1. For a person obtaining or purchasing workers' compensation insurance in this state from a provider of workers' compensation insurance, or an employer carrying its own risk with respect to workers' compensation insurance in this state through a group self-insurance association, the credit shall be in the amount of the assessment with respect to insurance obtained or purchased by such person less the premium assessment amount or loss assessment amount with respect to insurance obtained or purchased by such person, as appropriate; ~~and~~

2. For charges paid by an employer for participation in a certified workplace medical plan; and

3. For an employer carrying its own risk with respect to workers' compensation insurance in this state, the credit shall be in the amount of the assessment less the loss assessment amount.

C. 1. Each provider of workers' compensation insurance shall separately state on the bill or invoice for the premiums for such insurance the insured's pro rata share of the amount of the assessment less the insured's pro rata share of the loss assessment amount or premium assessment amount.

2. Each group self-insurance association providing workers' compensation insurance to its members shall separately state on the bill or invoice for the premiums for such insurance each member's pro rata share of the amount of the assessment less each member's pro rata share of the loss assessment amount.

3. Each bill or invoice reflecting an amount which may be claimed as a credit pursuant to the provisions of this section shall contain language as follows:

"This premium reflects an additional premium assessment, which is imposed in order to pay all claims against the Multiple Injury Trust Fund. The State Legislature has also provided that employers are entitled to a credit against state income tax in an amount equal to this additional premium tax. The amount you are entitled to receive as a credit against state income taxes pursuant to this invoice is $___.__. Keep this document for your tax records so that you will easily be able to document the tax credits to which you are entitled when preparing your Oklahoma state income tax return."

D. If the credit exceeds the tax imposed by Section 2355 of this title, the excess amount shall be refunded to the taxpayer.

SECTION 2. AMENDATORY 85 O.S. 2001, Section 3, is amended to read as follows:

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

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

2. "Case management" means the ongoing coordination, by a case manager, of health care services provided to an injured or disabled worker, including, but not limited to:

a. systematically monitoring the treatment rendered and the medical progress of the injured or disabled worker,

b. ensuring that any treatment plan follows all appropriate treatment protocols, utilization controls and practice parameters,

c. assessing whether alternative health care services are appropriate and delivered in a cost-effective manner based upon acceptable medical standards, and

d. ensuring that the injured or disabled worker is following the prescribed health care plan;

3. "Case manager" means a person who:

a. is a registered nurse with a current, active unencumbered license from the Oklahoma Board of Nursing, or

b. possesses one or more of the following certifications which indicate the individual has a minimum number of years of case management experience, has passed a national competency test and regularly obtains continuing education hours to maintain certification:

(1) Certified Disability Management Specialist (CDMS),

(2) Certified Case Manager (CCM),

(3) Certified Rehabilitation Registered Nurse (CRRN),

(4) Case Manager – Certified (CMC),

(5) Certified Occupational Health Nurse (COHN), or

(6) Certified Occupational Health Nurse Specialist (COHN-S);

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

5. "Court" means the Workers' Compensation Court;

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

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;

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~~ firefighter, 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;

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;

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~~ firefighter, peace officer or civil defense worker;

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

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;

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;

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;

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;

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 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 the President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such method or system to evaluate permanent impairment that shall be used in place of or in combination with the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be subject to disapproval in whole or in part by joint or concurrent resolution of the

Legislature during the legislative session in which submitted. Such method or system shall be operative one hundred twenty (120) days after the last day of the month in which the Administrator submits the adopted method or system to the Legislature if the Legislature takes no action or one hundred twenty (120) days after the last day of the month in which the Legislature disapproves it in part. If adopted, permanent impairment shall be evaluated only in accordance with the latest version of the alternative method or system in effect at the time of injury. Except as otherwise provided in Section 11 of this title, 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;

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;

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

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

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

21. a. "Certified workplace medical plan" means an organization of health care providers or any other entity, certified by the State 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 CompSource Oklahoma, 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 CompSource Oklahoma, fails to contract with or provide access to a certified workplace medical plan, an insured, after sixty (60) days' written notice to its insurance carrier, shall be authorized to contract independently with a plan of his or her choice for a period of one (1) year, to provide medical care under the Workers' Compensation Act. The insured shall be authorized to contract, <u>at the expense of the insurance carrier,</u> after sixty (60) days' written notice to its insurance carrier, for additional one-year periods if his or her insurer has not contracted with or provided access to a certified workplace medical plan.

c. If CompSource Oklahoma 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 CompSource Oklahoma,

shall be authorized to contract independently with a plan of his or her choice for a period of one (1) year to provide medical care under the Workers' Compensation Act. The insured shall be authorized to contract, after sixty (60) days' written notice to CompSource Oklahoma, for additional one-year periods if CompSource Oklahoma has not contracted with or fails to continue contracts with at least three certified workplace medical plans covering at least fifty counties.

d. Any state agency that experiences losses greater than premiums paid in any one policy year or has had two (2) consecutive policy years of increased losses must, before the end of the subsequent policy year and continuing for a period no less than five (5) years, adopt and implement a certified workplace medical plan of their insurer's choice; and

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

SECTION 3. AMENDATORY 85 O.S. 2001, 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 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 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 and, except as otherwise provided in this section, shall have the right and responsibility to treat the injured employee. A report of such examination shall be furnished the injured employee within seven (7) days after such examination.

C. If the employer fails or neglects to provide medical treatment within three (3) days after actual knowledge of the injury is received by the employer, the injured employee, during the period of such neglect or failure, may select a physician to provide medical treatment 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. 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.

D. 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 CompSource Oklahoma, 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. The employee may apply for a change of

physician by utilizing the dispute resolution process set out in the certified workplace medical plan on file at the State Department of Health.

E. 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 Workers' Compensation Court may accept testimony from a psychologist if the testimony is made under the direction of a medical doctor. If an injured employee should die, whether or not the employee has filed a claim, that fact shall not affect liability for medical attention previously rendered, and any person entitled to such benefits may enforce charges therefor as though the employee had survived.

F. 1. Whoever renders medical, surgical, or other attendance or treatment, nurse and hospital service, medicine, crutches and apparatus, or emergency treatment, may submit such charges and duration of treatment to the Administrator of the Court for review in accordance with the rules of the Administrator.

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

amended or altered until January 1, 2003, except to require the utilization of the latest Current Procedural Terminology (CPT) codes as published by the American Medical Association or the Centers for Medicare and Medicaid Services' codes and coding of supplies and materials. Until January 1, 2003, the fee and treatment schedule adopted by the Administrator effective October 1, 2000, shall govern and apply to all health care services rendered and supplies provided after September 30, 2000, to employees with compensable injuries, regardless of the employee's date of injury. The Administrator shall not increase the overall maximum reimbursement levels for health care providers, including hospitals and ambulatory surgical centers, 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 approving medical and treatment charges pursuant to this section shall be enforceable by the Court in the same manner as provided in the Workers' Compensation Act for the enforcement of other compensation payments. Any party feeling aggrieved by the order, decision or award of the Administrator shall, within ten (10) days, have the right to request a hearing on such medical and treatment charges by a judge of the Workers' Compensation Court. The judge of the Court may affirm the decision of the Administrator, or reverse or modify said decision

only if it is found to be contrary to the fee and treatment schedule existing at the time the said medical care or treatment was provided. The order of the judge shall be subject to the same appellate procedure set forth in Section 3.6 of this title for all other orders of the Court. The right to recover charges for every type of medical care for personal injuries arising out of and in the course of covered employment as herein defined, shall lie solely with the Workers' Compensation Court, and all jurisdiction of the other trial courts of this state over such action is hereby abolished. The foregoing provision, relating to approval and enforcement of such charges and duration of treatment, shall not apply where a written contract exists between the employer or insurance carrier and the person who renders such medical, surgical or other attendance or treatment, nurse and hospital service, or furnishes medicine, crutches or apparatus. When a medical care provider has brought a claim in the Workers' Compensation Court to obtain payment for services, a party who prevails in full on the claim shall be entitled to a reasonable attorney fee.

G. Where the employee is not covered by a certified workplace medical plan, and upon written notice to the Court ~~on application of~~ the employee shall ~~order~~ be allowed one change of physician; provided, such change of physician shall be allowed for each individual body part injured if the treating physician determines that the employee’s injured body parts cannot be treated by the same physician. Any change of physician pursuant to this subsection shall be at the expense of the employer; provided, the employer shall not be liable to make any of the payments provided for in this section, in case of contest of liability, where the Court shall decide that the injury does not come within the provisions of the Workers' Compensation Act. On ~~application of~~ notice by the employee ~~for~~ requesting a change of physician, the Court ~~shall set the matter for hearing within seven (7) days of filing the application. At or~~

~~before the hearing, the employee~~ shall present to the employer a list of three physicians chosen by the employee and qualified to treat the employee's injury~~, and the~~. The employer shall choose one of the physicians. The Court shall order that the selected physician be allowed to treat the employee at the expense of the employer. Except in cases covered by a certified workplace medical plan, in any case where the claimant and the treating physician disagree as to the necessity of surgery, the claimant may petition the Court for the appointment of an independent medical examiner to determine the appropriateness of the surgery. In no event may the independent medical examiner, or a facility owned or partly owned by the independent medical examiner, be allowed to perform such surgery unless both parties agree.

H. Where the employee is covered by a certified workplace medical plan, a judge of the Workers' Compensation Court shall not:

1. Alter a course of treatment determined appropriate by the medical director of the certified workplace medical plan without medical evidence that establishes the current care as negligent or harmful to the employee;

2. Order payment of medical treatment, supplies, or equipment not authorized by the plan without medical evidence that establishes nonpayment as negligent or harmful to the employee; and

3. Order a change of treating physician outside the certified workplace medical plan if the appropriate specialty as determined by medical evidence is available with the plan.

I. 1. Whenever a workers' compensation case is not covered under a certified workplace medical plan, case management may be utilized whenever the employee has more than three (3) lost workdays in succession. For cases not covered by a certified workplace medical plan, and where the insurance company does not provide case management, case management may be granted by the Workers' Compensation Court on the request of any party, or when the Court

determines that case management is appropriate. The Court shall appoint a case manager from a list of qualified case managers developed, maintained and periodically reviewed by the Court.

2. The reasonable and customary charges of a medical case manager appointed by the Court shall be borne by the employer.

3. Except in cases covered by a certified workplace medical plan, a case manager may be replaced if requested by the employee.

SECTION 4. AMENDATORY 85 O.S. 2001, 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 CompSource Oklahoma, 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 D of Section 14 of this title. If a self-insured employer approved by the Workers' Compensation Court has in force a collective bargaining agreement with its employees, the certified workplace medical plan shall be selected with the approval of both parties signatory to the collective bargaining agreement. Notwithstanding any other provision of law, those employees who are subject to such certified workplace medical plan shall receive medical treatment in the manner prescribed by the plan~~ the employees of such entity shall be bound to the rules, terms, and conditions of the certified workplace medical 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 D of Section 14 of this title~~ the

employer’s participation in the certified workplace medical plan. The written notice must be given by the employer in the form and manner prescribed by the State Commissioner of Health. The ~~election must~~ employee’s acknowledgement of the notice of participation shall be made on the enrollment form ~~specified in subsection D of this section~~ prescribed by the State Commissioner of Health 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 D 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 D of Section 14 of this title~~ acknowledgement of participation shall be prescribed by the State Commissioner of Health; however, the ~~election~~ form shall:

~~a. be provided to~~ 1. Fully inform the employee ~~at least fifteen (15) days prior to the date when the employee must make the election,~~ of the employee’s rights and responsibilities under the plan;

~~b. fully~~ 2. 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 D of Section 14 of this title,~~

~~c. fully inform the employee of the consequences of the election insofar as medical care is concerned,~~ consequences of noncompliance with the rules, terms, and conditions of the plan; and

~~d. fully~~ 3. 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 D of Section 14 of this title, and~~

~~e. provide adequate space for the employee to list his or her personal physician or physicians, by category of physician as specified in subsection E of Section 14~~ ~~of this title, who meet the requirements set forth in paragraph 1 of subsection D of Section 14 of this title~~ filed a dispute or grievance in accordance with the rules, terms, and conditions of the plan.

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 D of Section 14 of this title; however, if~~ The employer shall provide annual, written notice of participation in the plan. 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, who has ~~exhausted~~ written documentation from the plan that the dispute resolution process of the certified

workplace medical plan has been exhausted, from petitioning the Workers' Compensation Court or the Administrator of the Workers' Compensation Court for a change of treating physician within the certified workplace medical plan or, if a physician who is qualified to treat the employee's injuries is not available within the plan, 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; 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 5. AMENDATORY 85 O.S. 2001, 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 <u>that are either commercially developed by an accredited organization or are</u> substantially similar to those established for use by medical service providers, which have been recommended by the Physician Advisory Committee and adopted by the Administrator pursuant to subsection B of Section 201.1 of this title. If the Administrator has not adopted medical treatment guidelines and protocols, the Commissioner may certify a plan that utilizes medical guidelines and protocols established by the plan if, in the discretion of the Commissioner, the guidelines and protocols are reasonable and will carry out the intent of the Workers' Compensation Act. Certified plans must utilize medical treatment guidelines and protocols substantially similar to those adopted by the Administrator pursuant to Section 201.1 of this title, as such guidelines and protocols become adopted,

b. is reasonably geographically convenient to residents of the area for which it seeks certification,

c. provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of service,

d. provides adequate methods of peer review, utilization review and dispute resolution to prevent inappropriate, excessive or medically unnecessary treatment, and excludes participation in the plan by those providers who violate these treatment standards,

e. requires the dispute resolution procedure of the plan to include a requirement that disputes on an issue related to medical care under the plan be attempted to be resolved within ten (10) days of the time the dispute arises and if not resolved within ten (10) days, the employee may pursue remedies in the Workers' Compensation Court,

f. provides aggressive case management for injured employees and a program for early return to work,

g. provides workplace health and safety consultative services,

h. provides a timely and accurate method of reporting to the Commissioner necessary information regarding medical service costs and utilization to enable the Commissioner to determine the effectiveness of the plan,

i. authorizes necessary emergency medical treatment for an injury provided by a provider of medical, surgical, and hospital services who is not a part of the plan; allows employees to receive medical, surgical, and hospital services from a physician who is not a member of the plan if ~~such~~ the same attending physician ~~has~~

~~been selected by the employee pursuant to paragraph 1 of subsection D of Section 14 of this title; and allows a physician selected by the employee pursuant to paragraph 1 of subsection D of Section 14 of this title to refer the employee to a physician outside the plan~~ specialty is not available within 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, and

l. is not owned or operated by CompSource Oklahoma or other similar entity.

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~~ possess documentation that exhaustion of the dispute resolution procedure of the certified workplace medical plan has occurred before seeking legal relief on an issue related to medical care under the plan, provided the dispute resolution procedure shall create a process which shall attempt to resolve the dispute within ten (10) days of the time the

dispute arises and if not resolved within ten (10) days, the employee may pursue remedies in the Workers' Compensation Court.

D. The Commissioner shall refuse to certify or shall revoke or suspend the certification of a plan if the Commissioner finds that the program for providing medical or health care services fails to meet the requirements of this section, or service under the plan is not being provided in accordance with the terms of a plan.

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

SECTION 6. AMENDATORY 85 O.S. 2001, Section 17, is amended to read as follows:

Section 17. A. 1. The determination of disability shall be the responsibility of the Workers' Compensation Court. Any claim submitted by an employee for compensation for permanent disability must be supported by competent medical testimony which shall include an evaluation by a physician, including, but not limited to, the treating physician or an independent medical examiner stating his or her 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 as to the medical cause of the medical permanent impairment, or if the employee has no lost time from employment, any party 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 notice, the challenging party and the party challenged shall select a third physician 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 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 or her 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.

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, and these costs shall be borne by the employer.

D. 1. The Court shall develop and implement an independent medical examiner system by no later than July 1, 1995. The Court 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 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 shall, to the best of its 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 shall, to the best of its ability, maintain a geographic balance of independent medical examiners.

5. 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. The independent medical examiner shall submit a verified written report to the Court as provided in subsection A of this section and shall provide a copy of the report to the parties. If 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. 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.

7. If the independent medical examiner <u>or under a certified workplace medical plan the treating physician who is in agreement with the plan’s medical director</u> 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. In any case where the claimant contests the cessation of such benefits, the Court shall hear the dispute within thirty (30) days after the filing of the employee's Motion to Set for Trial. The trial shall not be delayed unless both parties agree.

8. 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, and these costs shall be borne by the employer.

9. The Court, 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. The Court 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. The impairment rating determined by the third physician or, upon implementation of the independent medical examiner system, the independent medical examiner, may be followed 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.

H. In no event may an independent medical examiner, or facility owned or operated, or partially owned or operated, by the independent medical examiner, treat an employee whose claim the independent medical examiner has reviewed for permanent impairment, return to work, or the necessity of further medical treatment, unless both parties agree.

SECTION 7. This act shall become effective November 1, 2002.

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