

CS for SB 846

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**THE STATE SENATE**  
**Thursday, February 24, 2005**

**Committee Substitute for**  
**Senate Bill No. 846**

COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 846 - By: LASTER of the Senate and HASTINGS and ASKINS of the House.

An Act relating to workers' compensation; amending 21 O.S. 2001, Section 1663, which relates to workers' compensation fraud; modifying certain penalties; adding definition; amending 40 O.S. 2001, Section 417.1, which relates to certain fund; making certain fund a revolving fund; exempting certain fund from legislative appropriation; amending 85 O.S. 2001, Sections 3, as amended by Section 60, Chapter 329, O.S.L. 2003, 3.10, 5, 14, as amended by Section 1, Chapter 215, O.S.L. 2002, 14.2, 14.3, 16, 17, as amended by Section 2, Chapter 215, O.S.L. 2002, 22, 43, 45, 48, 171, 172, 173, as amended by Section 4 Chapter 31, O.S.L. 2002, and 201.1, as last amended by Section 9, Chapter 229, O.S.L. 2003 (85 O.S. Supp. 2004, Sections 3, 14, 17, 173 and 201.1), which relate to definitions, mediation, discharge of employees, medical attention, schedule of compensation, limitation of actions, and workplace medical plans and certification thereof, rehabilitation services, determination of disability, definition of physically impaired person and compensation for additional disability, the Multiple Injury Trust Fund and the Physicians Advisory Council; modifying definition; modifying circumstances under which mediation shall occur; authorizing court to order mediation under certain circumstances; modifying procedure for certification of mediators; prohibiting certain termination of employees; modifying conditions for selection and change of physician; modifying basis of medical fee schedule; setting forth formula for charges and requirements for prescribing and dispensing prescription drugs; eliminating condition for case management; modifying circumstances under which a case manager may be replaced; procedure for selection and change of physician within a certified workplace medical plan; eliminating certain enrollment procedures; providing notification requirements; defining responsibility for payment for certain evaluations; creating requirement for appointment of and deleting

1 prohibition on independent medical examiners; modifying  
2 certain benefits; requiring certain records be kept  
3 confidential; providing for disclosure to certain persons;  
4 prohibiting certain disclosure; providing penalty; providing  
5 definition; modifying time period to reopen certain claims;  
6 creating certain rebuttable presumption against eligibility  
7 for certain benefits; modifying certain benefit; modifying  
8 definition; modifying composition and duties of the  
9 Physicians Advisory Committee; making compliance with  
10 certain guidelines mandatory; providing exception to  
11 mandatory compliance; allowing rates to be used prior to  
12 filing rates with certain entity; requiring filing of rates  
13 within certain time period; providing for disapproval of  
14 filing; providing for certain income tax credits; defining  
15 terms; providing and limiting amounts of credits;  
16 authorizing Tax Commission to promulgate rules; repealing 36  
17 O.S. 2001, Section 902.1, as last amended by Section 5,  
18 Chapter 519, O.S.L. 2004 (36 O.S. Supp. 2004, Section  
19 902.1), which relates to increasing or decreasing base  
20 rates; repealing 40 O.S. 2001, Sections 415.1 and 415.2,  
21 which relate to certificates of non-coverage; providing for  
22 codification; and providing an effective date.

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

24 SECTION 1. AMENDATORY 21 O.S. 2001, Section 1663, is  
25 amended to read as follows:

26 Section 1663. A. Any person who commits workers' compensation  
27 fraud, upon conviction, shall be guilty of a felony punishable by  
28 imprisonment in the State Penitentiary for not exceeding ~~five (5)~~  
29 seven (7) years or by a fine not exceeding ~~Five Thousand Dollars~~  
30 ~~(\$5,000.00)~~ Ten Thousand Dollars (\$10,000.00) or by both such fine  
31 and imprisonment. Any person who commits workers' compensation  
32 fraud and who has a prior felony conviction of workers' compensation  
33 fraud shall receive a two-year penalty enhancement for each prior  
34 conviction in addition to the sentence provided above.

1           B. For the purposes of this section, workers' compensation  
2 fraud shall include, but not be limited to, any act or omission  
3 prohibited by subsection C of this section and committed by a person  
4 with the intent to injure, defraud or deceive another with respect  
5 to any of the following:

6           1. A claim for payment or other benefit pursuant to a contract  
7 of insurance;

8           2. An application for the issuance of a contract of insurance;

9           3. The rating of a contract of insurance or any risk associated  
10 with the contract;

11          4. Premiums paid on any contract of insurance whether or not  
12 the contract was actually issued;

13          5. Payments made in accordance with the terms of a contract of  
14 insurance;

15          6. An application for any license which is required by the  
16 Oklahoma Insurance Code, Title 36 of the Oklahoma Statutes;

17          7. An application for a license which is required for the  
18 organization, operation or maintenance of a health maintenance  
19 organization pursuant to Section 2501 et seq. of Title 63 of the  
20 Oklahoma Statutes;

21          8. A request for any approval, license, permit or permission  
22 required by the Workers' Compensation Act, by the rules of the  
23 Workers' Compensation Court or by the rules of the Workers'

1 Compensation Court Administrator necessary to secure compensation as  
2 required by Section 61 of Title 85 of the Oklahoma Statutes;

3 9. The financial condition of an insurer or purported insurer;

4 10. The acquisition of any insurer; or

5 11. A contract of insurance or a Certification of Non-Coverage  
6 Under the Workers' Compensation Act.

7 C. A person is guilty of workers' compensation fraud who:

8 1. Presents, causes to be presented or intends to present to  
9 another, any statement as part of or in support of any of the  
10 purposes described in subsection B of this section knowing that such  
11 statement contains any false, fraudulent, incomplete or misleading  
12 information concerning any fact or thing material to the purpose for  
13 the statement;

14 2. Assists, abets, solicits or conspires with another to  
15 prepare or make any statement that is intended to be presented to,  
16 used by or relied upon by another in connection with or in support  
17 of any of the purposes described in subsection B of this section  
18 knowing that such statement contains any false, fraudulent,  
19 incomplete or misleading information concerning any fact or thing  
20 material to the purpose of the statement;

21 3. Conceals, attempts to conceal or conspires to conceal any  
22 information concerning any fact material to any of the purposes  
23 described in subsection B of this section;

1       4. Solicits, accepts or conspires to solicit or accept new or  
2 renewal insurance risks by or for an insolvent insurer;

3       5. Removes, attempts to remove or conspires to remove the  
4 assets or records of the insurer or a material part thereof, from  
5 the place of business of the insurer or from a place of safekeeping  
6 of the insurer;

7       6. Conceals, attempts to conceal or conspires to conceal the  
8 assets or records of the insurer or a material part thereof;

9       7. Diverts, attempts to divert, or conspires to divert funds of  
10 an insurer or other person in connection with:

11           a. a contract of insurance,

12           b. the business of an insurer, or

13           c. the formation, acquisition or dissolution of an  
14 insurer;

15       8. Solicits, accepts or conspires to solicit or accept any  
16 benefit in exchange for violating any provision of this section;

17       9. Conceals, attempts to conceal, conspires to conceal or fails  
18 to disclose any change in any material fact, circumstance or thing  
19 for which there is a duty to disclose to another; or

20       10. Alters, falsifies, forges, distorts, counterfeits or  
21 otherwise changes any material statement, form, document, contract,  
22 application, certificate, or other writing with the intent to  
23 defraud, deceive, or mislead another.

1 D. It shall not be a defense to an allegation of a violation of  
2 this section that the person accused did not have a contractual  
3 relationship with the insurer.

4 E. For the purposes of this section:

5 1. "Contract of insurance" includes, but is not limited to,  
6 workers' compensation insurance or any other means of securing  
7 compensation permitted by the Workers' Compensation Act or  
8 reinsurance for such insurance or other means of securing  
9 compensation;

10 2. "Insurer" includes, but is not limited to, any person who is  
11 engaged in the business of making contracts of insurance; ~~and~~

12 3. "Person" means any individual or entity, whether  
13 incorporated or not, and in the case of an entity, includes those  
14 persons directly responsible for the fraudulent actions of the  
15 entity; and

16 4. "Statement" includes, but is not limited to, any oral,  
17 written, computer-generated or otherwise produced notice, proof of  
18 loss, bill of lading, receipt for payment, invoice, account,  
19 certificate, survey affidavit, book, paper, writing, estimate of  
20 property damage, bill for services, diagnosis, prescription, medical  
21 record, x-ray, test result or other evidence of loss, injury or  
22 expense.

1 SECTION 2. AMENDATORY 40 O.S. 2001, Section 417.1, is  
2 amended to read as follows:

3 Section 417.1 There is hereby created in the State Treasury a  
4 fund for the Department of Labor to be designated the "Special  
5 Occupational Health and Safety Fund". The fund shall be a revolving  
6 fund not subject to legislative appropriation and shall consist of  
7 monies collected pursuant to Section 418 of Title 40 of the Oklahoma  
8 Statutes.

9 SECTION 3. AMENDATORY 85 O.S. 2001, Section 3, as  
10 amended by Section 60, Chapter 329, O.S.L. 2003 (85 O.S. Supp. 2004,  
11 Section 3), is amended to read as follows:

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

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

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

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

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

- 1           c.    assessing whether alternative health care services are  
2                    appropriate and delivered in a cost-effective manner  
3                    based upon acceptable medical standards, and  
4           d.    ensuring that the injured or disabled worker is  
5                    following the prescribed health care plan;
- 6        3.    "Case manager" means a person who:
- 7           a.    is a registered nurse with a current, active  
8                    unencumbered license from the Oklahoma Board of  
9                    Nursing, or
- 10          b.    possesses one or more of the following certifications  
11                    which indicate the individual has a minimum number of  
12                    years of case management experience, has passed a  
13                    national competency test and regularly obtains  
14                    continuing education hours to maintain certification:
- 15                    (1)   Certified Disability Management Specialist  
16                            (CDMS),
- 17                    (2)   Certified Case Manager (CCM),
- 18                    (3)   Certified Rehabilitation Registered Nurse (CRRN),
- 19                    (4)   Case Manager - Certified (CMC),
- 20                    (5)   Certified Occupational Health Nurse (COHN), or
- 21                    (6)   Certified Occupational Health Nurse Specialist  
22                            (COHN-S);

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

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

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

7       7. "Employer", except when otherwise expressly stated, means a  
8 person, partnership, association, limited liability company,  
9 corporation, and the legal representatives of a deceased employer,  
10 or the receiver or trustee of a person, partnership, association,  
11 corporation, or limited liability company, departments,  
12 instrumentalities and institutions of this state and divisions  
13 thereof, counties and divisions thereof, public trusts, boards of  
14 education and incorporated cities or towns and divisions thereof,  
15 employing a person included within the term "employee" as herein  
16 defined;

17       8. "Employee" means any person engaged in the employment of any  
18 person, firm, limited liability company or corporation covered by  
19 the terms of the Workers' Compensation Act, and shall include  
20 workers associating themselves together under an agreement for the  
21 performance of a particular piece of work, in which event such  
22 persons so associating themselves together shall be deemed employees  
23 of the person having the work executed; provided, that if such

1 associated workers shall employ a worker in the execution of such  
2 contract, then as to such employed worker, both the associated  
3 employees and the principal employer shall at once become subject to  
4 the provisions of the Workers' Compensation Act relating to  
5 independent contractors. Sole proprietors, members of a  
6 partnership, members of a limited liability company who own at least  
7 ten percent (10%) of the capital of the limited liability company or  
8 any stockholder-employees of a corporation who own ten percent (10%)  
9 or more stock in the corporation are specifically excluded from the  
10 foregoing definition of "employee", and shall not be deemed to be  
11 employees as respects the benefits of the Workers' Compensation Act.  
12 Provided, a sole proprietor, member of a partnership, member of a  
13 limited liability company who owns at least ten percent (10%) of the  
14 capital of the limited liability company or any stockholder-employee  
15 of a corporation who owns ten percent (10%) or more stock in the  
16 corporation who does not so elect to be covered by a policy of  
17 insurance covering benefits under the Workers' Compensation Act,  
18 when acting as a subcontractor, shall not be eligible to be covered  
19 under the prime contractor's policy of workers' compensation  
20 insurance; however, nothing herein shall relieve the entities  
21 enumerated from providing workers' compensation insurance coverage  
22 for their employees. Sole proprietors, members of a partnership,  
23 members of a limited liability company who own at least ten percent

1 (10%) of the capital of the limited liability company or any  
2 stockholder-employees of a corporation who own ten percent (10%) or  
3 more stock in the corporation may elect to include the sole  
4 proprietors, any or all of the partnership members, any or all of  
5 the limited liability company members or any or all stockholder-  
6 employees as employees, if otherwise qualified, by endorsement to  
7 the policy specifically including them under any policy of insurance  
8 covering benefits under the Workers' Compensation Act. When so  
9 included, the sole proprietors, members of a partnership, members of  
10 a limited liability company or any or all stockholder-employees  
11 shall be deemed to be employees as respects the benefits of the  
12 Workers' Compensation Act. "Employee" shall also include any person  
13 who is employed by the departments, instrumentalities and  
14 institutions of this state and divisions thereof, counties and  
15 divisions thereof, public trusts, boards of education and  
16 incorporated cities or towns and divisions thereof. "Employee"  
17 shall also include a member of the Oklahoma National Guard while in  
18 the performance of duties only while in response to state orders and  
19 any authorized voluntary or uncompensated worker, rendering services  
20 as a firefighter, peace officer or emergency management worker.  
21 Provided, "employee" shall not include any other person providing or  
22 performing voluntary service who receives no wages for the services  
23 other than meals, drug or alcohol rehabilitative therapy,

1 transportation, lodging or reimbursement for incidental expenses.  
2 "Employee" shall also include a participant in a sheltered workshop  
3 program which is certified by the United States Department of Labor.  
4 "Employee" shall not include a person, commonly referred to as an  
5 owner-operator, who owns or leases a truck-tractor or truck for  
6 hire, if the owner-operator actually operates the truck-tractor or  
7 truck and if the person contracting with the owner-operator is not  
8 the lessor of the truck-tractor or truck. Provided, however, an  
9 owner-operator shall not be precluded from workers' compensation  
10 coverage under the Workers' Compensation Act if the owner-operator  
11 elects to participate as a sole proprietor. "Employee" shall not  
12 include a person referred to as a drive-away owner-operator who  
13 privately owns and utilizes a tow vehicle in drive-away operations  
14 and operates independently for hire, if the drive-away owner-  
15 operator actually utilizes the tow vehicle and if the person  
16 contracting with the drive-away owner-operator is not the lessor of  
17 the tow vehicle. Provided, however, a drive-away owner-operator  
18 shall not be precluded from workers' compensation coverage under the  
19 Workers' Compensation Act if the drive-away owner-operator elects to  
20 participate as a sole proprietor;

21 9. "Drive-away operations" include every person engaged in the  
22 business of transporting and delivering new or used vehicles by  
23 driving, either singly or by towbar, saddle mount or full mount

1 method, or any combination thereof, with or without towing a  
2 privately owned vehicle;

3 10. "Employment" includes work or labor in a trade, business,  
4 occupation or activity carried on by an employer or any authorized  
5 voluntary or uncompensated worker rendering services as a  
6 firefighter, peace officer or emergency management worker;

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

9 12. a. "Injury" or "personal injury" means only accidental  
10 injuries arising out of and in the course of  
11 employment and such disease or infection as may  
12 naturally result therefrom and occupational disease  
13 arising out of and in the course of employment as  
14 herein defined. Only injuries having as their source  
15 a risk not purely personal but one that is causally  
16 connected with the conditions of employment shall be  
17 deemed to arise out of the employment.

18 b. "Injury" or "personal injury" includes heart-related  
19 or vascular injury, illness or death only if resultant  
20 from stress in excess of that experienced by a person  
21 in the conduct of everyday living. Such stress must  
22 arise out of and in the course of a claimant's  
23 employment.

1           c. "Injury" or "personal injury" shall not include mental  
2           injury that is unaccompanied by physical injury,  
3           except in the case of rape which arises out of and in  
4           the course of employment;

5           13. "Wages" means the money rate at which the service rendered  
6           is recompensed under the contract of hiring in force at the time of  
7           the injury, including the reasonable value of board, rent, housing,  
8           lodging, or similar advantage received from the employer;

9           14. "Insurance carrier" shall include stock corporations,  
10          reciprocal or interinsurance associations, or mutual associations  
11          with which employers have insured, and employers permitted to pay  
12          compensation, directly under the provisions of paragraph 4 of  
13          subsection A of Section 61 of this title;

14          15. "Occupational disease" means only that disease or illness  
15          which is due to causes and conditions characteristic of or peculiar  
16          to the particular trade, occupation, process or employment in which  
17          the employee is exposed to such disease. An occupational disease  
18          arises out of the employment only if there is a direct causal  
19          connection between the occupational disease and the conditions under  
20          which the work is performed;

21          16. "Permanent impairment" means any anatomical or functional  
22          abnormality or loss after maximum medical improvement has been  
23          achieved, which abnormality or loss the physician considers to be

1 capable of being evaluated at the time the rating is made. Except  
2 as otherwise provided herein, any examining physician shall only  
3 evaluate impairment in accordance with the latest publication of the  
4 American Medical Association's "Guides to the Evaluation of  
5 Permanent Impairment" in effect at the time of the injury. The  
6 Physician Advisory Committee may, pursuant to Section 201.1 of this  
7 title, recommend the adoption of a method or system to evaluate  
8 permanent impairment that shall be used in place of or in  
9 combination with the American Medical Association's "Guides to the  
10 Evaluation of Permanent Impairment". Such recommendation shall be  
11 made to the Administrator of the Workers' Compensation Court who may  
12 adopt the recommendation in part or in whole. The adopted method or  
13 system shall be submitted by the Administrator to the Governor, the  
14 Speaker of the House of Representatives and the President Pro  
15 Tempore of the Senate within the first ten (10) legislative days of  
16 a regular session of the Legislature. Such method or system to  
17 evaluate permanent impairment that shall be used in place of or in  
18 combination with the American Medical Association's "Guides to the  
19 Evaluation of Permanent Impairment" shall be subject to disapproval  
20 in whole or in part by joint or concurrent resolution of the  
21 Legislature during the legislative session in which submitted. Such  
22 method or system shall be operative one hundred twenty (120) days  
23 after the last day of the month in which the Administrator submits

1 the adopted method or system to the Legislature if the Legislature  
2 takes no action or one hundred twenty (120) days after the last day  
3 of the month in which the Legislature disapproves it in part. If  
4 adopted, permanent impairment shall be evaluated only in accordance  
5 with the latest version of the alternative method or system in  
6 effect at the time of injury. Except as otherwise provided in  
7 Section 11 of this title, all evaluations shall include an  
8 apportionment of injury causation. However, revisions to the guides  
9 made by the American Medical Association which are published after  
10 January 1, 1989, and before January 1, 1995, shall be operative one  
11 hundred twenty (120) days after the last day of the month of  
12 publication. Revisions to the guides made by the American Medical  
13 Association which are published after December 31, 1994, may be  
14 adopted in whole or in part by the Administrator following  
15 recommendation by the Physician Advisory Committee. Revisions  
16 adopted by the Administrator shall be submitted by the Administrator  
17 to the Governor, the Speaker of the House of Representatives and the  
18 President Pro Tempore of the Senate within the first ten (10)  
19 legislative days of a regular session of the Legislature. Such  
20 revisions shall be subject to disapproval in whole or in part by  
21 joint or concurrent resolution of the Legislature during the  
22 legislative session in which submitted. Revisions shall be  
23 operative one hundred twenty (120) days after the last day of the

1 month in which the Administrator submits the revisions to the  
2 Governor and the Legislature if the Legislature takes no action or  
3 one hundred twenty (120) days after the last day of the month in  
4 which the Legislature disapproves them in part. The examining  
5 physician shall not follow the guides based on race or ethnic  
6 origin. The examining physician shall not deviate from said guides  
7 or any alternative thereto except as may be specifically provided  
8 for in the guides or modifications to the guides or except as may be  
9 specifically provided for in any alternative or modifications  
10 thereto, adopted by the Administrator of the Workers' Compensation  
11 Court as provided for in Section 201.1 of this title. These  
12 officially adopted guides or modifications thereto or alternative  
13 system or method of evaluating permanent impairment or modifications  
14 thereto shall be the exclusive basis for testimony and conclusions  
15 with regard to permanent impairment with the exception of paragraph  
16 3 of Section 22 of this title, relating to scheduled member injury  
17 or loss; and impairment, including pain or loss of strength, may be  
18 awarded with respect to those injuries or areas of the body not  
19 specifically covered by said guides or alternative to said guides;

20 17. "Permanent total disability" means incapacity because of  
21 accidental injury or occupational disease to earn any wages in any  
22 employment for which the employee may become physically suited and  
23 reasonably fitted by education, training or experience, including

1 vocational rehabilitation; loss of both hands, or both feet, or both  
2 legs, or both eyes, or any two thereof, shall constitute permanent  
3 total disability;

4 18. "Permanent partial disability" means permanent disability  
5 which is less than total and shall be equal to or the same as  
6 permanent impairment. Except in cases involving corrective surgery  
7 or closed-head injury, no permanent partial disability shall be  
8 awarded unless there is objective evidence of a permanent anatomical  
9 abnormality or there is evidence that the ability of the employee to  
10 earn wages at the same level as on the date of the injury is  
11 permanently adversely impaired;

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

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

18 21. a. "Certified workplace medical plan" means an  
19 organization of health care providers or any other  
20 entity, certified by the State Commissioner of Health  
21 pursuant to Section 14.3 of this title, that is  
22 authorized to enter into a contractual agreement with  
23 a self-insured employer, group self-insurance

1 association plan, an employer's workers' compensation  
2 insurance carrier or an insured, which shall include  
3 any member of an approved group self-insured  
4 association, policyholder or public entity, regardless  
5 of whether such entity is insured by CompSource  
6 Oklahoma, to provide medical care under the Workers'  
7 Compensation Act. Certified plans shall only include  
8 such plans which provide medical services and payment  
9 for services on a fee-for-service basis to medical  
10 providers and shall not include other plans which  
11 contract in some other manner, such as capitated or  
12 pre-paid plans.

13 b. If any insurer, except CompSource Oklahoma, fails to  
14 contract with or provide access to a certified  
15 workplace medical plan, an insured, after sixty (60)  
16 days' written notice to its insurance carrier, shall  
17 be authorized to contract independently with a plan of  
18 his or her choice for a period of one (1) year, to  
19 provide medical care under the Workers' Compensation  
20 Act. The insured shall be authorized to contract,  
21 after sixty (60) days' written notice to its insurance  
22 carrier, for additional one-year periods if his or her

1 insurer has not contracted with or provided access to  
2 a certified workplace medical plan.

3 c. If CompSource Oklahoma fails to contract with at least  
4 three certified workplace medical plans, each covering  
5 at least fifty counties, then the insured, after sixty  
6 (60) days' written notice to CompSource Oklahoma,  
7 shall be authorized to contract independently with a  
8 plan of his or her choice for a period of one (1) year  
9 to provide medical care under the Workers'  
10 Compensation Act. The insured shall be authorized to  
11 contract, after sixty (60) days' written notice to  
12 CompSource Oklahoma, for additional one-year periods  
13 if CompSource Oklahoma has not contracted with or  
14 fails to continue contracts with at least three  
15 certified workplace medical plans covering at least  
16 fifty counties; and

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

20 SECTION 4. AMENDATORY 85 O.S. 2001, Section 3.10, is  
21 amended to read as follows:

22 Section 3.10 A. Mediation shall be available to any party to a  
23 claim arising pursuant to the provisions of the Workers'

1 Compensation Act, subject to the limitation provisions of Section  
2 14.3 of this title and except for claims against the Multiple Injury  
3 Trust Fund.

4 B. ~~Mediation~~ Unless ordered by the Workers' Compensation Court,  
5 mediation shall be voluntary, and shall not be conducted without the  
6 consent of both parties.

7 1. Mediation is not a prerequisite to the commencement of a  
8 claim for benefits, pursuant to the provisions of the Workers'  
9 Compensation Act.

10 2. A request for mediation or consent to mediate does not  
11 invoke the jurisdiction of the ~~Workers' Compensation~~ Court.

12 C. ~~No sanction or penalty may be imposed by the Administrator~~  
13 ~~of the Workers' Compensation Court or any judge of the Court if a~~  
14 ~~party refuses to mediate~~ The Court may order mediation upon request  
15 of either party or in any case in which the Court believes that  
16 mediation may be beneficial to a prompt and efficient resolution of  
17 the claim.

18 D. 1. A request for mediation shall be made in writing to the  
19 Administrator.

20 2. The party requesting mediation shall inform the  
21 Administrator of the issues in dispute, and the name, address, and  
22 telephone number of the opposing party or insurance company, if  
23 known. If the claim involves a certified workplace medical plan,

1 the requesting party shall provide the name and phone number of the  
2 contact person for the plan.

3 E. Once a request has been made, the Administrator shall  
4 contact the opposing party. If the opposing party does not wish to  
5 participate in mediation, the requesting party shall be notified of  
6 the refusal.

7 F. If both parties agree to mediation, they shall enter into a  
8 written consent to mediate on a form provided by the Administrator.  
9 The form shall contain a statement informing the parties of their  
10 rights and obligations and of the confidentiality of the  
11 proceedings. This written consent shall be signed by both parties  
12 to the claim and shall be submitted to the Administrator before the  
13 selection of a mediator is made.

14 G. Mediation is confidential and no part of the proceeding  
15 shall be considered a matter of public record. Recommendations of  
16 the mediator are not binding unless the parties enter into a  
17 settlement agreement. If an agreement is not reached, the results  
18 and statements made during the mediation are not admissible in any  
19 following proceeding.

20 H. Upon receipt of the consent form, the Administrator shall  
21 provide the parties with a list of certified mediators. Both  
22 parties shall agree to a mediator. If the parties are unable to  
23 agree, mediation shall not occur.

1 I. ~~The Supreme Court of the State of Oklahoma~~ Workers'  
2 Compensation Court shall be responsible for certifying those persons  
3 who are eligible and qualified to serve as mediators. An individual  
4 may be certified as a mediator if:

5 ~~1. The applicant is certified pursuant to the Dispute~~  
6 ~~Resolution Act, Section 1801 et seq. of Title 12 of the Oklahoma~~  
7 ~~Statutes;~~

8 ~~2. The applicant has such additional qualifications as required~~  
9 ~~by the Court; and~~

10 ~~3. The applicant has signed an agreement to be bound by the~~  
11 ~~ethical standards set forth in Chapter 37, Appendix A of Title 12 of~~  
12 ~~the Oklahoma Statutes, "Code of Professional Conduct for Mediators"~~  
13 the applicant meets the qualifications as required by the Court.

14 J. Each certified mediator shall remain on the list for five  
15 (5) years, unless removed. Mediators shall be required to complete  
16 at least six (6) hours of continuing education per two-year period  
17 in the areas of mediation and workers' compensation. Proof of  
18 compliance with this requirement shall be submitted to the  
19 Administrator. This continuing education requirement shall be in  
20 addition to any other such general requirement which may be required  
21 by the Oklahoma State Bar Association. Cost of continuing education  
22 is to be borne by the applicant.

1           K. ~~Notwithstanding the Rules and Procedures for the Dispute~~  
2 ~~Resolution Act, mediators~~ Mediators shall be compensated at the rate  
3 or fee as determined by the mediator; provided, however, the rate or  
4 fee shall not exceed a maximum rate to be established by the  
5 Administrator by rule. The cost of mediation shall be paid by the  
6 respondent or its insurance carrier.

7           L. If the mediated claim is voluntarily agreed to by both  
8 parties and resolved, any final settlement of the action shall  
9 include a consent to mediation form and shall be completed upon the  
10 filing of a Joint Petition or an Agreement Between Employer and  
11 Employee as to Fact with Relation to an Injury and Payment of  
12 Compensation.

13           SECTION 5.           AMENDATORY           85 O.S. 2001, Section 5, is  
14 amended to read as follows:

15           Section 5. A. No person, firm, partnership, corporation, or  
16 other entity may discharge, or, except for ~~non-payment~~ nonpayment of  
17 premium, terminate any group health insurance of any employee  
18 because the employee has in good faith:

- 19           1. Filed a claim;
- 20           2. Retained a lawyer for representation regarding a claim;
- 21           3. Instituted or caused to be instituted any proceeding under  
22 the provisions of this title;

1 4. Testified or is about to testify in any proceeding under the  
2 provisions of this title; or

3 5. Elected to participate or not to participate in a certified  
4 workplace medical plan as provided in Section 14 of this title.

5 B. No person, firm, partnership, corporation, or other entity  
6 may discharge any employee during a period of temporary total  
7 disability solely on the basis of absence from work.

8 C. After an employee's period of temporary total disability has  
9 ended, no person, firm, partnership, corporation, or other entity  
10 shall be required to rehire or retain any employee who is determined  
11 to be physically unable to perform assigned duties. The failure of  
12 an employer to rehire or retain any such employee shall in no manner  
13 be deemed a violation of this section.

14 D. No person, firm, partnership, corporation or other entity  
15 may discharge an employee for the purpose of avoiding payment of  
16 temporary total disability benefits to the injured employee.

17 SECTION 6. AMENDATORY 85 O.S. 2001, Section 14, as  
18 amended by Section 1, Chapter 215, O.S.L. 2002 (85 O.S. Supp. 2004,  
19 Section 14), is amended to read as follows:

20 Section 14. A. 1. The employer shall promptly provide for an  
21 injured employee such medical, surgical or other attendance or  
22 treatment, nurse and hospital service, medicine, crutches, and  
23 apparatus as may be necessary after the injury. The attending

1 physician shall supply the injured employee and the employer with a  
2 full examining report of injuries found at the time of examination  
3 and proposed treatment, this report to be supplied within seven (7)  
4 days after the examination; also, at the conclusion of the treatment  
5 the attending physician shall supply a full report of the treatment  
6 to the employer of the injured employee.

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

19 B. The employer's selected physician shall have the right to  
20 examine the injured employee and, except as otherwise provided in  
21 this section, shall have the right and responsibility to treat the  
22 injured employee. A report of such examination shall be furnished  
23 the injured employee within seven (7) days after such examination.

1 C. If the employer fails or neglects to provide medical  
2 treatment within three (3) days after actual knowledge of the injury  
3 is received by the employer, the injured employee, during the period  
4 of such neglect or failure, may select a physician to provide  
5 medical treatment at the expense of the employer; provided, however,  
6 that the injured employee, or another in the employee's behalf, may  
7 obtain emergency treatment at the expense of the employer where such  
8 emergency treatment is not provided by the employer. The attending  
9 physician so selected by the employee shall notify the employer and  
10 the insurance carrier within seven (7) days after examination or  
11 treatment was first rendered.

12 D. If a self-insured employer, group self-insurance association  
13 plan, an employer's workers' compensation insurance carrier or an  
14 insured, which shall include any member of an approved group self-  
15 insured association, policyholder or public entity, regardless of  
16 whether such entity is insured by CompSource Oklahoma, has  
17 previously contracted with a certified workplace medical plan, the  
18 ~~employee shall have two choices:~~

19 ~~1. a. The employee employer shall have the right, for each~~  
20 ~~work-related injury, to select any physician from a~~  
21 ~~list of physicians provided by the employee at the~~  
22 ~~time of making an election not to participate in the~~

1 ~~certified workplace medical plan. The list shall~~  
2 ~~consist only of physicians who have:~~

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

7 ~~(2) maintained the medical records of an immediate~~  
8 ~~family member of the employee prior to an injury~~  
9 ~~and have a documented history of treatment with~~  
10 ~~an immediate family member of the employee prior~~  
11 ~~to an injury. For purposes of this division,~~  
12 ~~immediate family member means the employee's~~  
13 ~~spouse, children, parents, stepchildren, and~~  
14 ~~stepparents.~~

15 ~~b. An attending physician selected under this paragraph~~  
16 ~~must agree to comply with all the rules, terms, and~~  
17 ~~conditions of the certified workplace medical plan.~~  
18 ~~An attending physician selected under this paragraph~~  
19 ~~may refer the employee to a physician outside the~~  
20 ~~certified workplace medical plan only if the physician~~  
21 ~~to whom the employee is referred agrees to comply with~~  
22 ~~all the rules, terms, and conditions of the certified~~  
23 ~~workplace medical plan; or~~

1       2. ~~The employee shall elect to participate in the certified~~  
2 ~~workplace medical plan~~ physicians listed within the network of the  
3 certified workplace medical plan. The employee may apply for a  
4 change of physician by utilizing the dispute resolution process set  
5 out in the certified workplace medical plan on file at the State  
6 Department of Health.

7       E. The term "physician" as used in this section shall mean any  
8 person licensed in this state as a medical doctor, chiropractor,  
9 podiatrist, dentist, osteopathic physician or optometrist. The  
10 Court may accept testimony from a psychologist if the testimony is  
11 made under the direction of a medical doctor. If an injured  
12 employee should die, whether or not the employee has filed a claim,  
13 that fact shall not affect liability for medical attention  
14 previously rendered, and any person entitled to such benefits may  
15 enforce charges therefor as though the employee had survived.

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

21       2. Such charges and duration of treatment shall be limited to  
22 the usual, customary and reasonable ~~charges~~ payments and duration of  
23 treatment as prescribed and limited by a schedule of fees and

1 treatment for all medical providers to be adopted, after notice and  
2 public hearing, by the Administrator. ~~Said Beginning January 1,~~  
3 ~~2006, said fee and treatment schedule for physician and other~~  
4 ~~provider services shall be based on the most current relative values~~  
5 ~~produced by the Centers for Medicare and Medicaid Services (CMS) for~~  
6 ~~the Medicare Physician Fee Schedule as of January 1 of each year.~~  
7 ~~These relative values shall be multiplied by a conversion factor of~~  
8 ~~one hundred seventy-five percent (175%) of the current Medicare~~  
9 ~~reimbursement for surgical procedures and one hundred thirty percent~~  
10 ~~(130%) of the current Medicare reimbursement for all other~~  
11 ~~procedures. For services not valued by CMS, the Administrator shall~~  
12 ~~establish values based on the usual, customary and reasonable~~  
13 ~~medical charges of payments to health care providers in the same~~  
14 ~~trade area for comparable treatment of a person with similar~~  
15 ~~injuries and the duration of treatment prevailing in this state for~~  
16 ~~persons with similar injuries. The fee and treatment schedule shall~~  
17 ~~be reviewed biennially by the Administrator and, after such review,~~  
18 ~~and notice and public hearing, the Administrator shall be empowered~~  
19 ~~to amend or alter said fee and treatment schedule to ensure its~~  
20 ~~adequacy; provided, however, the fee and treatment schedule shall~~  
21 ~~not be amended or altered until January 1, 2003, except to require~~  
22 ~~the utilization of the latest Current Procedural Terminology (CPT)~~  
23 ~~codes as published by the American Medical Association or the~~

1 ~~Centers for Medicare and Medicaid Services' codes and coding of~~  
2 ~~supplies and materials. Until January 1, 2003, the fee and~~  
3 ~~treatment schedule adopted by the Administrator effective October 1,~~  
4 ~~2000, shall govern and apply to all health care services rendered~~  
5 ~~and supplies provided after September 30, 2000, to employees with~~  
6 ~~compensable injuries, regardless of the employee's date of injury.~~  
7 ~~The Administrator shall not increase the overall maximum~~  
8 ~~reimbursement levels for health care providers, including hospitals~~  
9 ~~and ambulatory surgical centers, in an amount exceeding the~~  
10 ~~cumulative percentage of change of the Consumer Price Index - Urban~~  
11 ~~(CPI-U) for medical costs since the last biennial review.~~

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

18 4. The Administrator's review of medical and treatment charges  
19 pursuant to this section shall be conducted pursuant to the fee and  
20 treatment schedule in existence at the time the medical care or  
21 treatment was provided. The order of the approving medical and  
22 treatment charges pursuant to this section shall be enforceable by  
23 the Court in the same manner as provided in the Workers'

1 Compensation Act for the enforcement of other compensation payments.  
2 Any party feeling aggrieved by the order, decision or award of the  
3 Administrator shall, within ten (10) days, have the right to request  
4 a hearing on such medical and treatment charges by a judge of the  
5 Workers' Compensation Court. The judge of the Court may affirm the  
6 decision of the Administrator, or reverse or modify said decision  
7 only if it is found to be contrary to the fee and treatment schedule  
8 existing at the time the said medical care or treatment was  
9 provided. The order of the judge shall be subject to the same  
10 appellate procedure set forth in Section 3.6 of this title for all  
11 other orders of the Court. The right to recover charges for every  
12 type of medical care for personal injuries arising out of and in the  
13 course of covered employment as herein defined, shall lie solely  
14 with the Workers' Compensation Court, and all jurisdiction of the  
15 other trial courts of this state over such action is hereby  
16 abolished. The foregoing provision, relating to approval and  
17 enforcement of such charges and duration of treatment, shall not  
18 apply where a written contract exists between the employer or  
19 insurance carrier and the person who renders such medical, surgical  
20 or other attendance or treatment, nurse and hospital service, or  
21 furnishes medicine, crutches or apparatus. When a medical care  
22 provider has brought a claim in the Workers' Compensation Court to

1 obtain payment for services, a party who prevails in full on the  
2 claim shall be entitled to a reasonable attorney fee.

3 5. Charges for prescription drugs shall be limited to ninety  
4 percent (90%) of the average wholesale price of the prescription,  
5 plus a dispensing fee of Five Dollars (\$5.00) per prescription.  
6 Physicians shall prescribe and pharmacies shall dispense generic  
7 equivalent drugs when available.

8 G. Where the employee is not covered by a certified workplace  
9 medical plan and the employer selected the physician, the Court on  
10 application of the employee shall order one change of physician;  
11 provided, such change of physician shall be allowed for each  
12 individual body part injured if the treating physician determines  
13 that the employee's injured body parts cannot be treated by the same  
14 physician. Any change of physician pursuant to this subsection  
15 shall be at the expense of the employer; provided, the employer  
16 shall not be liable to make any of the payments provided for in this  
17 section, in case of contest of liability, where the Court shall  
18 decide that the injury does not come within the provisions of the  
19 Workers' Compensation Act. On application of the employee for a  
20 change of physician, the Court shall set the matter for hearing  
21 within seven (7) days of filing the application. At or before the  
22 hearing, the employee shall present to the employer a list of three  
23 physicians qualified to treat the employee's injury, and the

1 employer shall choose one of the physicians. The Court shall order  
2 that the selected physician be allowed to treat the employee at the  
3 expense of the employer. Except in cases covered by a certified  
4 workplace medical plan, in any case where the claimant and the  
5 treating physician disagree as to the necessity of surgery, the  
6 claimant may petition the Court for the appointment of an  
7 independent medical examiner to determine the appropriateness of the  
8 surgery. In no event may the independent medical examiner, whether  
9 directly, or indirectly by virtue of a pecuniary interest,  
10 economically benefit from the performance of said surgery or be  
11 allowed to perform such surgery unless both employee and employer  
12 agree through written stipulation and said stipulation occurs prior  
13 to appointment, referral and notice to said independent medical  
14 examiner.

15 H. 1. ~~Whenever a workers' compensation case is not covered~~  
16 ~~under a certified workplace medical plan, case management may be~~  
17 ~~utilized whenever the employee has more than three (3) lost workdays~~  
18 ~~in succession.~~ For cases not covered by a certified workplace  
19 medical plan, and where the insurance company does not provide case  
20 management, case management may be granted by the Workers'  
21 Compensation Court on the request of any party, or when the Court  
22 determines that case management is appropriate. The Court shall

1 appoint a case manager from a list of qualified case managers  
2 developed, maintained and periodically reviewed by the Court.

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

5 3. Except in cases covered by a certified workplace medical  
6 plan, ~~a case manager may be replaced if requested by the employee~~  
7 upon application of the employee, the court may order one change of  
8 a case manager, if the employee did not make the initial selection  
9 of the case manager.

10 SECTION 7. AMENDATORY 85 O.S. 2001, Section 14.2, is  
11 amended to read as follows:

12 Section 14.2 A. If a self-insured employer, group self-  
13 insurance association plan, an employer's workers' compensation  
14 insurance carrier or an insured, which shall include any member of  
15 an approved group self-insured association, policyholder or public  
16 entity, regardless of whether such entity is insured by CompSource,  
17 has contracted with a workplace medical plan that is certified by  
18 the State Commissioner of Health as provided in Section 14.3 of this  
19 title, ~~an employee~~ the employer shall ~~exercise the election for~~  
20 ~~which provision is made in subsection D of Section 14 of this title~~  
21 select for the injured employee a treating physician from the  
22 physicians listed within the network of the certified workplace  
23 medical plan. The claimant may apply to the certified workplace

1 medical plan for a one-time change of physician to another  
2 appropriate physician within the network of the certified workplace  
3 medical plan by utilizing the dispute resolution process set out in  
4 the certified workplace medical plan on file with the State  
5 Department of Health. If a self-insured employer approved by the  
6 Workers' Compensation Court has in force a collective bargaining  
7 agreement with its employees, the certified workplace medical plan  
8 shall be selected with the approval of both parties signatory to the  
9 collective bargaining agreement

10 Notwithstanding any other provision of law, those employees who  
11 are subject to such certified workplace medical plan shall receive  
12 medical treatment in the manner prescribed by the plan.

13 B. Qualified employers shall, ~~when a contract of employment is~~  
14 ~~made and prior to the annual open enrollment date for the insurer's~~  
15 ~~certified workplace medical plan,~~ provide the employee with written  
16 notice of ~~and the opportunity to make the election for which~~  
17 ~~provision is made in subsection D of Section 14 of this title. The~~  
18 ~~written notice must be given by the employer in the form and manner~~  
19 ~~prescribed by the State Commissioner of Health. The election must~~  
20 ~~be made on the form specified in subsection D of this section and~~  
21 ~~must be signed by the employee~~ the employer's participation in a  
22 certified workplace medical plan, and provide the employee with the  
23 name, address, telephone number, the names of all physicians listed

1 within the network and dispute resolution provisions of the  
2 certified workplace medical plan:

3 1. Within thirty (30) days of employment; or

4 2. Within thirty (30) days after ~~an employee receives notice~~  
5 ~~that a self-insured employer,~~ implements a certified workplace  
6 medical plan or an employer receives notice that its group self-  
7 insurance association plan, ~~or an employer's~~ workers' compensation  
8 insurance carrier has implemented a certified workplace medical  
9 plan; ~~or~~ and

10 3. On or before the annual ~~open enrollment date of the~~  
11 ~~certified workplace medical plan anniversary of the implementation~~  
12 ~~of the certified workplace medical plan by the employer, the~~  
13 employer's group self-insurance association plan or the employer's  
14 workers' compensation insurance carrier.

15 C. 1. ~~If an employee elects not to enroll in the certified~~  
16 ~~workplace medical plan, the employee shall, on the election form,~~  
17 ~~provide a list of physicians who meet the requirements set forth in~~  
18 ~~paragraph 1 of subsection D of Section 14 of this title. The~~  
19 ~~employee's list of physicians may be updated on the election form~~  
20 ~~made available to the employee prior to the annual open enrollment~~  
21 ~~date of the certified workplace medical plan.~~

22 2. ~~Procedures and the form for making the election for which~~  
23 ~~provision is made in subsection D of Section 14 of this title shall~~

1 ~~be prescribed by the State Commissioner of Health; however, the~~  
2 ~~election form shall:~~

3 a. ~~be provided to the employee at least fifteen (15) days~~  
4 ~~prior to the date when the employee must make the~~  
5 ~~election,~~

6 b. ~~fully inform the employee of the employee's right to~~  
7 ~~select the certified workplace medical plan provider~~  
8 ~~network or to select the employee's personal physician~~  
9 ~~or physicians who meet the requirements set forth in~~  
10 ~~paragraph 1 of subsection D of Section 14 of this~~  
11 ~~title,~~

12 c. ~~fully inform the employee of the consequences of the~~  
13 ~~election insofar as medical care is concerned,~~

14 d. ~~fully inform the employee that the employee cannot be~~  
15 ~~discharged by the employer because the employee has in~~  
16 ~~good faith elected to select the certified workplace~~  
17 ~~medical plan provider network or to select the~~  
18 ~~employee's personal physician or physicians who meet~~  
19 ~~the requirements set forth in paragraph 1 of~~  
20 ~~subsection D of Section 14 of this title, and~~

21 e. ~~provide adequate space for the employee to list his or~~  
22 ~~her personal physician or physicians, by category of~~  
23 ~~physician as specified in subsection E of Section 14~~

1 ~~of this title, who meet the requirements set forth in~~  
2 ~~paragraph 1 of subsection D of Section 14 of this~~  
3 ~~title.~~

4 ~~D.~~ The burden for notification of an employee's enrollment  
5 mandatory participation in a certified workplace medical plan shall  
6 be the employer's. After ~~enrollment~~ notification, an employee shall  
7 seek treatment under the certified workplace medical plan ~~for one~~  
8 ~~(1) calendar year. The employee may opt out of the plan, effective~~  
9 ~~on the next annual open enrollment date, only if the employee is~~  
10 ~~changing to a physician selected pursuant to the requirements of~~  
11 ~~paragraph 1 of subsection D of Section 14 of this title; however, if~~  
12 ~~the date of the injury falls under a period of enrollment in a~~  
13 ~~certified workplace medical plan, treatment must be rendered under~~  
14 ~~the certified workplace medical plan treatment contract.~~

15 ~~E.~~ D. The provisions of this section shall not preclude:

16 1. An employee, who has exhausted the dispute resolution  
17 process of the certified workplace medical plan, from petitioning  
18 the Workers' Compensation Court or the Administrator of the Workers'  
19 Compensation Court for a change of treating physician within the  
20 certified workplace medical plan or, if a physician who is qualified  
21 to treat the employee's injuries is not available within the plan,  
22 for a change of physician outside the plan, if the physician agrees

1 to comply with all the rules, terms and conditions of the certified  
2 workplace medical plan; or

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

5 ~~F.~~ E. The provisions of this section shall not apply to  
6 treatment received by an employee for an accepted accidental injury  
7 or occupational disease for which treatment began prior to November  
8 4, 1994.

9 SECTION 8. AMENDATORY 85 O.S. 2001, Section 14.3, is  
10 amended to read as follows:

11 Section 14.3 A. Any person or entity may make written  
12 application to the Commissioner of Health of the State of Oklahoma  
13 to have a workplace medical plan certified that provides management  
14 of quality treatment to injured employees for injuries and diseases  
15 compensable under the Workers' Compensation Act, ~~Section 1 et seq.~~  
16 ~~of this title.~~ Each application for certification shall be  
17 accompanied by a fee of One Thousand Five Hundred Dollars  
18 (\$1,500.00). A workplace medical plan may be certified to provide  
19 services to a limited geographic area. A certificate is valid for a  
20 ~~five-year~~ three-year period, unless revoked or suspended.  
21 Application for certification shall be made in the form and manner  
22 and shall set forth information regarding the proposed program for

1 providing services as the Commissioner may prescribe. The  
2 information shall include, but not be limited to:

3 1. A list of the names of all medical providers who will  
4 provide services under the plan, together with appropriate evidence  
5 of compliance with any licensing or certification requirements for  
6 those providers to practice in this state; and

7 2. A description of the places and manner of providing services  
8 under the plan.

9 B. 1. The Commissioner shall not certify a plan unless the  
10 Commissioner finds that the plan:

11 a. proposes to provide quality services for all medical  
12 services which:

13 (1) may be required by the Workers' Compensation Act  
14 in a manner that is timely, effective and  
15 convenient for the employee, and

16 (2) utilizes medical treatment guidelines and  
17 protocols substantially similar to those  
18 established for use by medical service providers,  
19 which have been recommended by the Physician  
20 Advisory Committee and adopted by the  
21 Administrator pursuant to subsection B of Section  
22 201.1 of this title. If the Administrator has  
23 not adopted medical treatment guidelines and

1 protocols, the Commissioner may certify a plan  
2 that utilizes medical guidelines and protocols  
3 established by the plan if, in the discretion of  
4 the Commissioner, the guidelines and protocols  
5 are reasonable and will carry out the intent of  
6 the Workers' Compensation Act. Certified plans  
7 must utilize medical treatment guidelines and  
8 protocols substantially similar to those adopted  
9 by the Administrator pursuant to Section 201.1 of  
10 this title, as such guidelines and protocols  
11 become adopted,

- 12 b. is reasonably geographically convenient to residents  
13 of the area for which it seeks certification,
- 14 c. provides appropriate financial incentives to reduce  
15 service costs and utilization without sacrificing the  
16 quality of service,
- 17 d. provides adequate methods of peer review, utilization  
18 review and dispute resolution to prevent  
19 inappropriate, excessive or medically unnecessary  
20 treatment, and excludes participation in the plan by  
21 those providers who violate these treatment standards,
- 22 e. requires the dispute resolution procedure of the plan  
23 to include a requirement that disputes on an issue,

1                   including a subsequent change of physician as  
2                   described in the provisions of Section 14 of this  
3                   title and this section, related to medical care under  
4                   the plan be attempted to be resolved within ten (10)  
5                   days of the time the dispute arises and if not  
6                   resolved within ten (10) days, the employee may pursue  
7                   remedies in the Workers' Compensation Court,  
8                   f.    provides aggressive case management for injured  
9                   employees and a program for early return to work,  
10                  g.    provides workplace health and safety consultative  
11                  services,  
12                  h.    provides a timely and accurate method of reporting to  
13                  the Commissioner necessary information regarding  
14                  medical service costs and utilization to enable the  
15                  Commissioner to determine the effectiveness of the  
16                  plan,  
17                  i.    authorizes necessary emergency medical treatment for  
18                  an injury provided by a provider of medical, surgical,  
19                  and hospital services who is not a part of the plan~~+~~  
20                  ~~allows employees to receive medical, surgical, and~~  
21                  ~~hospital services from a physician who is not a member~~  
22                  ~~of the plan if such attending physician has been~~  
23                  ~~selected by the employee pursuant to paragraph 1 of~~

1 ~~subsection D of Section 14 of this title; and allows a~~  
2 ~~physician selected by the employee pursuant to~~  
3 ~~paragraph 1 of subsection D of Section 14 of this~~  
4 ~~title to refer the employee to a physician outside the~~  
5 ~~plan only if the physician to whom the employee is~~  
6 ~~referred agrees to comply with all the rules, terms,~~  
7 ~~and conditions of the plan,~~

8 j. does not discriminate against or exclude from  
9 participation in the plan any category of providers of  
10 medical, surgical, or hospital services and includes  
11 an adequate number of each category of providers of  
12 medical, surgical, and hospital services to give  
13 participants access to all categories of providers and  
14 does not discriminate against ethnic minority  
15 providers of medical services, and

16 k. complies with any other requirement the Commissioner  
17 determines is necessary to provide quality medical  
18 services and health care to injured employees.

19 2. The Commissioner may accept findings, licenses or  
20 certifications of other state agencies as satisfactory evidence of  
21 compliance with a particular requirement of this section.

22 C. An employee shall exhaust the dispute resolution procedure  
23 of the certified workplace medical plan before seeking legal relief

1 on an issue related to medical care under the plan, including a  
2 subsequent change of physician as described in the provisions of  
3 Section 14 of this title and this section, provided the dispute  
4 resolution procedure shall create a process which shall attempt to  
5 resolve the dispute within ten (10) days of the time the dispute  
6 arises and if not resolved within ten (10) days, the employee may  
7 pursue remedies in the Workers' Compensation Court.

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

13 E. On or before November 1, 2005, the Commissioner of Health  
14 shall implement a site visit protocol for employees of the State  
15 Department of Health to perform an inspection of a certified  
16 workplace medical plan to ensure that medical services to a claimant  
17 and the medical management of the claimant's needs are adequately  
18 met in a timely manner and that the certified workplace medical plan  
19 is complying with all other applicable provisions of this act and  
20 the rules of the State Department of Health. Such protocol shall  
21 include, but not be limited to:

22 1. A site visit shall be made to each certified workplace  
23 medical plan not less often than once every year, but not later than

1 thirty (30) days following the anniversary date of issuance of the  
2 initial or latest renewal certificate;

3 2. A site visit shall conclude with a determination that a  
4 certified workplace medical plan is or is not operating in  
5 accordance with its latest application to the State Department of  
6 Health;

7 3. Compliant operations shall include, but not be limited to:

8 a. timely and effective medical services are available  
9 with reasonable geographic convenience,

10 b. use of appropriate treatment guidelines and protocols,  
11 and

12 c. effective programs for utilization review, case  
13 management, grievances, and dispute resolution;

14 4. Performance of a site visit shall include:

15 a. inspection of organizational documentation,

16 b. inspection of systems documentation and processes,

17 c. inspection of closed and open case management cases ,

18 d. inspection of dispute resolution, grievance, and/or

19 Department of Health request-for-assistance files, and

20 e. workplace medical plan employee and management  
21 interviews, as appropriate;

22 5. An initial site visit may occur with an interval of less  
23 than twelve (12) months to a recently certified plan, or a site

1 visit may occur more often than once in every twelve (12) months if  
2 the Commissioner of Health has reason to suspect that a plan is not  
3 operating in accordance with its certification;

4 6. If a deficient practice is identified during a site visit,  
5 the State Department of Health shall require a certified workplace  
6 medical plan to submit a timely and acceptable written plan of  
7 correction, and then may perform a follow-up visit(s) to ensure that  
8 the deficient practice has been eliminated;

9 7. A deficient practice that is not remedied by a certified  
10 workplace medical plan on a timely basis shall require the  
11 Commissioner of Health to revoke or to suspend the certification of  
12 a plan;

13 8. The fees payable to the State Department of Health shall be:

14 a. One Thousand Five Hundred Dollars (\$1,500.00) for an  
15 initial, annual site visit,

16 b. One Thousand Dollars (\$1,000.00) if a follow-up visit  
17 is performed,

18 c. these fees are separate from the once-in-five-years'  
19 certification application fee, and

20 d. if more than two site visits occur in a twelve-month  
21 period, no fee may be charged for the third or  
22 subsequent visits; and

1        9. In addition to the site visit fee, employees of the State  
2 Department of Health may charge to the certified workplace medical  
3 plan reasonable travel and travel-related expenses for the site  
4 visit such as overnight lodging and meals. A certified workplace  
5 medical plan shall reimburse travel expenses to the State Department  
6 of Health at rates equal to the amounts then currently allowed under  
7 the State Travel Reimbursement Act.

8        F. The ~~Commissioner~~ State Board of Health shall adopt such  
9 rules as may be necessary to implement the provisions of ~~Section~~  
10 ~~14.2~~ of this title and this section. Such rules shall authorize any  
11 person to petition the Commissioner of Health for decertification of  
12 a certified workplace medical plan for material violation of any  
13 rules promulgated pursuant to this section.

14        SECTION 9.        AMENDATORY        85 O.S. 2001, Section 16, is  
15 amended to read as follows:

16        Section 16. A. An employee who has suffered an accidental  
17 injury or occupational disease covered by the Workers' Compensation  
18 Act shall be entitled to prompt and reasonable physical  
19 rehabilitation services. When, as a result of the injury, the  
20 employee is unable to perform the same occupational duties he or she  
21 was performing prior to the injury, ~~he~~ the employee shall be  
22 entitled to such vocational rehabilitation services provided by a  
23 technology center school, a public vocational skills center or

1 public secondary school offering vocational-technical education  
2 courses, or a member institution of The Oklahoma State System of  
3 Higher Education, which shall include retraining and job placement  
4 so as to restore ~~him~~ the employee to gainful employment. No ~~person~~  
5 employee shall be adjudicated to be permanently and totally disabled  
6 unless first having ~~been evaluated~~ obtained an evaluation as to the  
7 practicability of restoration to gainful employment through  
8 vocational rehabilitation services or training. The employee shall  
9 pay the cost of the evaluation. If an employee claiming permanent  
10 total disability status unreasonably refuses to be evaluated or to  
11 accept vocational rehabilitation services or training, permanent  
12 total disability benefits shall not be awarded during the period of  
13 such refusal, and the employee shall be limited to permanent partial  
14 disability benefits only. The Administrator shall promulgate rules  
15 governing notice to an injured employee of the right to receive  
16 vocational rehabilitation. If rehabilitation services are not  
17 voluntarily offered by the employer and accepted by the employee,  
18 the judge of the Court may on his or her own motion, or if requested  
19 by a party may, after affording all parties an opportunity to be  
20 heard, refer the employee to a qualified physician or facility for  
21 evaluation of the practicability of, need for and kind of  
22 rehabilitation services or training necessary and appropriate in  
23 order to restore the employee to gainful employment. The cost of

1 the evaluation shall be paid by the employer. Following the  
2 evaluation, if the employee refuses the services or training ordered  
3 by the court, or fails to complete in good faith the vocational  
4 rehabilitation training ordered by the court, then the cost of the  
5 evaluation and services or training rendered may, in the discretion  
6 of the court, be deducted from any award of benefits to the employee  
7 which remains unpaid by the employer. Upon receipt of such report,  
8 and after affording all parties an opportunity to be heard, the  
9 Court shall order that any rehabilitation services or training,  
10 recommended in the report, or such other rehabilitation services or  
11 training as the Court may deem necessary, provided the employee  
12 elects to receive such services, shall be provided at the expense of  
13 the employer. Except as otherwise provided in this subsection,  
14 refusal to accept rehabilitation services by the employee shall in  
15 no way diminish any benefits allowable to an employee.

16 B. Vocational rehabilitation services or training shall not  
17 extend for a period of more than fifty-two (52) weeks. This period  
18 may be extended for an additional fifty-two (52) weeks or portion  
19 thereof by special order of the Court, after affording the  
20 interested parties an opportunity to be heard. A request for  
21 vocational rehabilitation services or training may be filed with the  
22 Administrator by an interested party at any time after the date of  
23 injury but not later than sixty (60) days from the date of the final

1 determination that permanent partial disability benefits are payable  
2 to the employee.

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

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

21 SECTION 10. AMENDATORY 85 O.S. 2001, Section 17, as  
22 amended by Section 2, Chapter 215, O.S.L. 2002 (85 O.S. Supp. 2004,  
23 Section 17), is amended to read as follows:

1 Section 17. A. 1. The determination of disability shall be  
2 the responsibility of the Workers' Compensation Court. Any claim  
3 submitted by an employee for compensation for permanent disability  
4 must be supported by competent medical testimony which shall include  
5 an evaluation by a physician, including, but not limited to, the  
6 treating physician or an independent medical examiner stating his or  
7 her opinion of the employee's percentage of permanent impairment and  
8 whether or not the impairment is job-related and caused by the  
9 accidental injury or occupational disease. Medical opinions  
10 addressing compensability and permanent impairment must be stated  
11 within a reasonable degree of medical certainty. For purposes of  
12 this section, a physician shall have the same meaning as defined in  
13 Section 14 of this title and shall include a person licensed by  
14 another state who would be qualified to be a licensed physician  
15 under the laws of this state.

16 2. When the medical testimony to be introduced on behalf of the  
17 employee and employer is divergent by more than twenty-five percent  
18 (25%) as to the extent of permanent impairment of the employee or  
19 when there is any disagreement in the evidence as to the medical  
20 cause of the medical permanent impairment, or if the employee has no  
21 lost time from employment, any party may challenge such testimony by  
22 giving written notice to all other parties and to the Administrator.  
23 The written notice shall be given prior to or during any prehearing

1 conference. Upon receipt of such notice, the challenging party and  
2 the party challenged shall select a third physician who shall be  
3 afforded a reasonable opportunity to examine the employee together  
4 with all medical records involved and any other medical data or  
5 evidence that the physician may consider to be relevant. The third  
6 physician shall issue a verified written report on a form provided  
7 by the Administrator to the Court stating his or her finding of the  
8 percentage of permanent impairment of the employee and whether or  
9 not the impairment is job-related and caused by the accidental  
10 injury or occupational disease.

11 3. Any party may request the deposition testimony of any  
12 physician providing a written medical report on the issue of  
13 temporary disability, permanent disability, causation, apportionment  
14 or rehabilitation. Except in the case of Independent Medical  
15 Examiners appointed by order of the Court, the party requesting the  
16 deposition testimony of any such physician shall be responsible for  
17 the reasonable charges of the physician for such testimony,  
18 preparation time, and the expense of the deposition.

19 B. When the challenging party and the challenged party are for  
20 any reason unable or unwilling to agree upon the appointment of a  
21 third physician within ten (10) days, the Court shall appoint the  
22 third physician. Upon receipt of the third physician's report, the  
23 party shall have the right to object to the introduction into

1 evidence of the report. The objection must be made by giving  
2 written notification to all parties and to the Court within five (5)  
3 days after receipt of the report. The physicians must then testify  
4 in person or by deposition.

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

9 D. 1. The Court shall develop and implement an independent  
10 medical examiner system by no later than July 1, 1995. The Court  
11 shall create, maintain and review a list of licensed physicians who  
12 shall serve as independent medical examiners from a list of licensed  
13 physicians who have completed such course study as the Administrator  
14 of the Workers' Compensation Court may require. Such courses shall  
15 provide training to establish familiarity with the American Medical  
16 Association's "Guides to the Evaluation of Permanent Impairment", or  
17 alternative method or system of evaluating permanent impairment, for  
18 the category of injury established by the Administrator for which  
19 such physician desires to be an independent medical examiner. To be  
20 eligible for appointment to the list of qualified independent  
21 medical examiners and for retention on the list, the physician must  
22 verify that if appointed, the physician will provide one or more  
23 medical-legal evaluations as determined by the Court, without

1 undertaking treatment of the worker. The Court shall, to the best  
2 of its ability, include the most experienced and competent  
3 physicians in the specific fields of expertise utilized most often  
4 in the treatment of injured employees. Physicians serving as third  
5 physicians before November 4, 1994, shall be considered to have met  
6 the requirements of this paragraph.

7 2. ~~The independent medical examiner in a case involving~~  
8 ~~permanent disability may not be a treating physician of the employee~~  
9 ~~and may not have treated the employee with respect to the injury for~~  
10 ~~which the claim is being made or the benefits are being paid.~~

11 Nothing in this subsection precludes the selection of a health care  
12 provider authorized to receive reimbursement under Section 14 of  
13 this title to serve in the capacity of an independent medical  
14 examiner.

15 3. At any time during the pendency of the action but not less  
16 than thirty (30) days before a hearing, any party to the action may  
17 request the appointment of an independent medical examiner from the  
18 list of independent medical examiners. An independent medical  
19 examiner may be appointed less than thirty (30) days before a  
20 hearing if mutually acceptable to the parties. If the parties are  
21 unable to agree on the independent medical examiner, the Court may  
22 make the appointment. An independent medical examiner also may be  
23 appointed by the Court on its own motion. The appointment or

1 selection of the independent medical examiner may be made when  
2 requested by the parties even in the absence of any medical  
3 testimony supporting or contesting an issue.

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

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

11 6. The independent medical examiner shall submit a verified  
12 written report to the Court as provided in subsection A of this  
13 section and shall provide a copy of the report to the parties. If  
14 the independent medical examiner undertakes active treatment of the  
15 employee, the independent medical examiner shall provide the Court  
16 and parties with progress reports, not less often than every thirty  
17 (30) days. The independent medical examiner's report shall include  
18 a determination of whether or not the employee is capable of  
19 returning to light duty work, and what restrictions, if any, shall  
20 be followed by the employer in order to permit the employee to  
21 return to work.

22 7. If the independent medical examiner determines that the  
23 employee is capable of returning to work and the claimant elects not

1 to do so, temporary total disability and medical benefits shall  
2 cease, unless otherwise ordered by the Court. In any case where the  
3 claimant contests the cessation of such benefits, the Court shall  
4 hear the dispute within thirty (30) days after the filing of the  
5 employee's Motion to Set for Trial. The trial shall not be delayed  
6 unless both parties agree.

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

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

16 10. The Court shall promulgate rules necessary to effectuate  
17 the purposes of this subsection.

18 E. Until the implementation of the independent medical examiner  
19 system in subsection D of this section, third physicians shall be  
20 selected or appointed as provided in subsections A and B of this  
21 section. Upon implementation of the independent medical examiner  
22 system, independent medical examiners shall be selected or appointed  
23 as provided in subsection D of this section.

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

6 G. The impairment rating determined by the third physician or,  
7 upon implementation of the independent medical examiner system, the  
8 independent medical examiner, may be followed by the Court. If the  
9 Court deviates from the impairment rating, the Court shall  
10 specifically identify by written findings of fact the basis for such  
11 deviation in its order.

12 H. In no event may an independent medical examiner, whether  
13 directly, or indirectly by virtue of a pecuniary interest,  
14 economically benefit from the performance of treatment of an  
15 employee whose claim the independent medical examiner has reviewed  
16 for permanent impairment, return to work, or the necessity of  
17 further medical treatment, unless both employee and employer agree  
18 through written stipulation and said stipulation occurs prior to  
19 appointment, referral and notice to said independent medical  
20 examiner.

21 SECTION 11. AMENDATORY 85 O.S. 2001, Section 22, is  
22 amended to read as follows:

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

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

7 2. Temporary Total Disability. (a) With respect to injuries  
8 occurring before November 4, 1994, in cases of temporary total  
9 disability, seventy percent (70%) of the employee's average weekly  
10 wages shall be paid to the employee during the continuance thereof,  
11 but not in excess of one hundred fifty (150) weeks, except as  
12 otherwise provided in the Workers' Compensation Act. Provided,  
13 after compensation has been paid for a period of one hundred forty  
14 (140) weeks, the employee may request a review of the case by a  
15 judge of the Workers' Compensation Court for continued temporary  
16 total disability benefits provided by the Workers' Compensation Act.  
17 Upon a finding that benefits should be extended beyond the initial  
18 one-hundred-fifty-week period, compensation may be continued for an  
19 additional one hundred fifty (150) weeks.

20 (b) With respect to injuries occurring on or after November 4,  
21 1994, in cases of temporary total disability, seventy percent (70%)  
22 of the employee's average weekly wages shall be paid to the employee  
23 during the continuance thereof, but not in excess of fifty-two (52)

1 weeks, except as otherwise provided in the Workers' Compensation  
2 Act. Provided, after compensation has been paid for a period of  
3 forty-two (42) weeks, the employee may request a review of the case  
4 by a judge of the Court for continued temporary total disability  
5 benefits provided by the Workers' Compensation Act. Upon a finding  
6 that benefits should be extended beyond the initial fifty-two-week  
7 period, compensation may be continued for additional successive  
8 fifty-two-week periods, provided the employee has requested review  
9 of the case at forty-two (42) weeks during each period involved, and  
10 upon a finding by the Court that benefits should be extended. Total  
11 payments of compensation for temporary total disability may not  
12 exceed a maximum of three hundred (300) weeks in the aggregate.

13 (c) With respect to injuries occurring on or after November 1,  
14 1997, total payments of compensation for temporary total disability  
15 may not exceed a maximum of one hundred fifty-six (156) weeks in the  
16 aggregate except for good cause shown, as determined by the Court.

17 3. Permanent Partial Disability. (a) With respect to injuries  
18 occurring prior to November 4, 1994, in case of disability, partial  
19 in character but permanent in quality, the compensation shall be  
20 seventy percent (70%) of the employee's average weekly wages, and  
21 shall be paid to the employee for the period named in the schedule,  
22 as follows:

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

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

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

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

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

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

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

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

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

1 Hand: For the loss of a hand, two hundred (200) weeks.  
2 Arm: For the loss of an arm, two hundred fifty (250) weeks.  
3 Foot: For the loss of a foot, two hundred (200) weeks.  
4 Leg: For the loss of a leg, two hundred fifty (250) weeks.  
5 Eye: For the loss of an eye, two hundred fifty (250) weeks.  
6 Deafness: Deafness from industrial cause, including occupations  
7 which are hazardous to hearing, accident or sudden trauma, three  
8 hundred (300) weeks, and total deafness of one ear from industrial  
9 cause, including occupations which are hazardous to hearing,  
10 accident or sudden trauma, one hundred (100) weeks. Except as  
11 otherwise provided herein, any examining physician shall only  
12 evaluate deafness or hearing impairment in accordance with the  
13 latest publication of the American Medical Association's "Guides to  
14 the Evaluation of Permanent Impairment" in effect at the time of the  
15 injury. The Physician Advisory Committee may, pursuant to Section  
16 201.1 of this title, recommend the adoption of a method or system to  
17 evaluate permanent impairment that shall be used in place of or in  
18 combination with the American Medical Association's "Guides to the  
19 Evaluation of Permanent Impairment". Such recommendation shall be  
20 made to the Administrator of the Workers' Compensation Court who may  
21 adopt the recommendation in part or in whole. The adopted method or  
22 system shall be submitted by the Administrator to the Governor, the  
23 Speaker of the House of Representatives and President Pro Tempore of

1 the Senate within the first ten (10) legislative days of a regular  
2 session of the Legislature. Such method or system to evaluate  
3 permanent impairment that shall be used in place of or in  
4 combination with the American Medical Association's "Guides to the  
5 Evaluation of Permanent Impairment" shall be subject to disapproval  
6 in whole or in part by joint or concurrent resolution of the  
7 Legislature during the legislative session in which submitted. Such  
8 method or system shall be operative one hundred twenty (120) days  
9 after the last day of the month in which the Administrator submits  
10 the adopted method or system to the Legislature if the Legislature  
11 takes no action or one hundred twenty (120) days after the last day  
12 of the month in which the Legislature disapproves it in part. If  
13 adopted, permanent impairment shall be evaluated only in accordance  
14 with the latest version of the alternative method or system in  
15 effect at the time of injury. Except as otherwise provided in  
16 Section 11 of this title, all evaluations shall include an  
17 apportionment of injury causation. However, revisions to the guides  
18 made by the American Medical Association which are published after  
19 January 1, 1989, and before January 1, 1995, shall be operative one  
20 hundred twenty (120) days after the last day of the month of  
21 publication. Revisions to the guides made by the American Medical  
22 Association which are published after December 31, 1994, may be  
23 adopted in whole or in part by the Administrator following

1 recommendation by the Physician Advisory Committee. Revisions  
2 adopted by the Administrator shall be submitted by the Administrator  
3 to the Governor, the Speaker of the House of Representatives and  
4 President Pro Tempore of the Senate within the first ten (10)  
5 legislative days of a regular session of the Legislature. Such  
6 revisions shall be subject to disapproval in whole or in part by  
7 joint or concurrent resolution of the Legislature during the  
8 legislative session in which submitted. Revisions shall be  
9 operative one hundred twenty (120) days after the last day of the  
10 month in which the Administrator submits the revisions to the  
11 Legislature if the Legislature takes no action or one hundred twenty  
12 (120) days after the last day of the month in which the Legislature  
13 disapproves them in part. The examining physician shall not follow  
14 the guides based on race or ethnic origin. The examining physician  
15 shall not deviate from said guides or any alternative thereof except  
16 as may be specifically provided for in the guides or modifications  
17 to the guides or except as may be specifically provided for in any  
18 alternative or modifications thereto adopted by the Administrator of  
19 the Workers' Compensation Court as provided for in Section 201.1 of  
20 this title. The guides or modifications thereto or alternative  
21 system or method of evaluating permanent impairment or modifications  
22 thereto shall be the exclusive basis for testimony and conclusions  
23 with regard to deafness or hearing impairment.

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

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

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

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

19       In case of an injury resulting in serious and permanent  
20 disfigurement, compensation shall be payable in an amount to be  
21 determined by the Court, but not in excess of Twenty Thousand  
22 Dollars (\$20,000.00); provided, that compensation for permanent  
23 disfigurement shall not be in addition to the other compensation

1 provided for in this section, but shall be taken into consideration  
2 in fixing the compensation otherwise provided.

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

18       Other Cases: In all other classes of disabilities, excluding  
19 only those heretofore referred to in paragraph 3 of this section,  
20 which disabilities result in loss of use of any portion of an  
21 employee's body, and which disabilities are permanent in quality but  
22 partial in character, disability shall mean the percentage of  
23 permanent impairment. The compensation ordered paid shall be

1 seventy percent (70%) of the employee's average weekly wage for the  
2 number of weeks which the partial disability of the employee bears  
3 to five hundred (500) weeks.

4 (b) With respect to injuries occurring after November 4, 1994,  
5 through December 31, 2001, in case of disability, partial in  
6 character but permanent in quality, the compensation shall be  
7 seventy percent (70%) of the employee's average weekly wages, and  
8 shall be paid to the employee for the period prescribed by the  
9 following schedule:

10 (1) For each percent of the first nine percent (9%) of  
11 disability, eighty percent (80%) of the number of weeks of  
12 compensation provided by law prior to November 4, 1994;

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

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

19 (4) For each remaining percent of disability, the identical  
20 number of weeks of compensation provided by law prior to November 4,  
21 1994.

22 (c) With respect to injuries occurring on or after January 1,  
23 2002, through December 31, 2002, in case of disability, partial in

1 character but permanent in quality, the compensation shall be  
2 seventy percent (70%) of the employee's average weekly wages, and  
3 shall be paid to the employee for the period prescribed by the  
4 following schedule:

5       Thumb: For the loss of thumb, sixty-three (63) weeks.

6       First Finger: For the loss of the first finger, commonly called  
7 the index finger, thirty-seven (37) weeks.

8       Second Finger: For the loss of a second finger, thirty-two (32)  
9 weeks.

10       Third Finger: For the loss of a third finger, twenty-one (21)  
11 weeks.

12       Fourth Finger: For the loss of a fourth finger, commonly called  
13 the little finger, sixteen (16) weeks.

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

22       Great Toe: For the loss of a great toe, thirty-two (32) weeks.

1 Other Toes: For the loss of one of the toes other than the  
2 great toe, eleven (11) weeks.

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

7 Hand: For the loss of a hand, two hundred ten (210) weeks.

8 Arm: For the loss of an arm, two hundred sixty-three (263)  
9 weeks.

10 Foot: For the loss of a foot, two hundred ten (210) weeks.

11 Leg: For the loss of a leg, two hundred sixty-three (263)  
12 weeks.

13 Eye: For the loss of an eye, two hundred sixty-three (263)  
14 weeks.

15 Deafness: Deafness from industrial cause, including occupations  
16 which are hazardous to hearing, accident or sudden trauma, three  
17 hundred fifteen (315) weeks, and total deafness of one ear from  
18 industrial cause, including occupations which are hazardous to  
19 hearing, accident or sudden trauma, one hundred five (105) weeks.

20 Except as otherwise provided herein, any examining physician shall  
21 only evaluate deafness or hearing impairment in accordance with the  
22 latest publication of the American Medical Association's "Guides to  
23 the Evaluation of Permanent Impairment" in effect at the time of the

1 injury. The Physician Advisory Committee may, pursuant to Section  
2 201.1 of this title, recommend the adoption of a method or system to  
3 evaluate permanent impairment that shall be used in place of or in  
4 combination with the American Medical Association's "Guides to the  
5 Evaluation of Permanent Impairment". Such recommendation shall be  
6 made to the Administrator of the Workers' Compensation Court who may  
7 adopt the recommendation in part or in whole. The adopted method or  
8 system shall be submitted by the Administrator to the Governor, the  
9 Speaker of the House of Representatives and President Pro Tempore of  
10 the Senate within the first ten (10) legislative days of a regular  
11 session of the Legislature. Such method or system to evaluate  
12 permanent impairment that shall be used in place of or in  
13 combination with the American Medical Association's "Guides to the  
14 Evaluation of Permanent Impairment" shall be subject to disapproval  
15 in whole or in part by joint or concurrent resolution of the  
16 Legislature during the legislative session in which submitted. Such  
17 method or system shall be operative one hundred twenty (120) days  
18 after the last day of the month in which the Administrator submits  
19 the adopted method or system to the Legislature if the Legislature  
20 takes no action or one hundred twenty (120) days after the last day  
21 of the month in which the Legislature disapproves it in part. If  
22 adopted, permanent impairment shall be evaluated only in accordance  
23 with the latest version of the alternative method or system in

1 effect at the time of injury. Except as otherwise provided in  
2 Section 11 of this title, all evaluations shall include an  
3 apportionment of injury causation. However, revisions to the guides  
4 made by the American Medical Association which are published after  
5 January 1, 1989, and before January 1, 1995, shall be operative one  
6 hundred twenty (120) days after the last day of the month of  
7 publication. Revisions to the guides made by the American Medical  
8 Association which are published after December 31, 1994, may be  
9 adopted in whole or in part by the Administrator following  
10 recommendation by the Physician Advisory Committee. Revisions  
11 adopted by the Administrator shall be submitted by the Administrator  
12 to the Governor, the Speaker of the House of Representatives and  
13 President Pro Tempore of the Senate within the first ten (10)  
14 legislative days of a regular session of the Legislature. Such  
15 revisions shall be subject to disapproval in whole or in part by  
16 joint or concurrent resolution of the Legislature during the  
17 legislative session in which submitted. Revisions shall be  
18 operative one hundred twenty (120) days after the last day of the  
19 month in which the Administrator submits the revisions to the  
20 Legislature if the Legislature takes no action or one hundred twenty  
21 (120) days after the last day of the month in which the Legislature  
22 disapproves them in part. The examining physician shall not follow  
23 the guides based on race or ethnic origin. The examining physician

1 shall not deviate from such guides or any alternative thereof except  
2 as may be specifically provided for in the guides or modifications  
3 to the guides or except as may be specifically provided for in any  
4 alternative or modifications thereto adopted by the Administrator of  
5 the Workers' Compensation Court as provided in Section 201.1 of this  
6 title. The guides or modifications thereto or alternative system or  
7 method of evaluating permanent impairment or modifications thereto  
8 shall be the exclusive basis for testimony and conclusions with  
9 regard to deafness or hearing impairment.

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

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

19       Amputations: Amputation between the elbow and the wrist shall  
20 be considered as the equivalent of the loss of a hand. Amputation  
21 between the knee and the ankle shall be considered as the loss of a  
22 foot. Amputation at or above the elbow shall be considered as the

1 loss of an arm. Amputation at or above the knee shall be considered  
2 as the loss of a leg.

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

6 In case of an injury resulting in serious and permanent  
7 disfigurement, compensation shall be payable in an amount to be  
8 determined by the Court, but not in excess of Twenty Thousand  
9 Dollars (\$20,000.00); provided, that compensation for permanent  
10 disfigurement shall not be in addition to the other compensation  
11 provided for in this section but shall be taken into consideration  
12 in fixing the compensation otherwise provided.

13 Hernia: In case of an injury resulting in hernia, temporary  
14 total compensation for six (6) weeks, and the cost of an operation  
15 shall be payable, unless the employee has not been released from  
16 active medical treatment, temporary total compensation not to exceed  
17 nine (9) weeks, and the cost of an operation shall be payable;  
18 provided, in any case where the injured employee has been twice  
19 previously operated on for hernia in the same area and it is  
20 established by opinion of a competent surgeon that further surgery  
21 in the same area will not result in full relief of the condition,  
22 the Court may then award compensation for disability resulting  
23 therefrom under paragraph 1 of this section, or, if not totally and

1 permanently disabled, then under the "Other Cases" subdivision  
2 following, and, after a second surgical attempt to repair hernia,  
3 the injured may not be required to submit to further surgery in an  
4 effort to relieve the disability thereafter existing; provided  
5 further, the use of any artificial reinforcement or device, with or  
6 without surgery, shall not be the basis of reducing extent of  
7 disability to be awarded.

8 Other Cases: In all other classes of disabilities, excluding  
9 only those heretofore referred to in this paragraph, which  
10 disabilities result in loss of use of any portion of an employee's  
11 body, and which disabilities are partial in character but permanent  
12 in quality, disability shall mean the percentage of permanent  
13 impairment. The compensation ordered paid shall be seventy percent  
14 (70%) of the employee's average weekly wage for the number of weeks  
15 which the partial disability of the employee bears to five hundred  
16 (500) weeks.

17 (d) With respect to injuries occurring on or after January 1,  
18 2003, in case of disability, partial in character but permanent in  
19 quality, the compensation shall be seventy percent (70%) of the  
20 employee's average weekly wages, and shall be paid to the employee  
21 for the period prescribed by the following schedule:

22 Thumb: For the loss of thumb, sixty-six (66) weeks.

1 First Finger: For the loss of the first finger, commonly called  
2 the index finger, thirty-nine (39) weeks.

3 Second Finger: For the loss of a second finger, thirty-three  
4 (33) weeks.

5 Third Finger: For the loss of a third finger, twenty-two (22)  
6 weeks.

7 Fourth Finger: For the loss of a fourth finger, commonly called  
8 the little finger, seventeen (17) weeks.

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

17 Great Toe: For the loss of a great toe, thirty-three (33)  
18 weeks.

19 Other Toes: For the loss of one of the toes other than the  
20 great toe, eleven (11) weeks.

21 Phalange of Toe: The loss of the first phalange of any toe  
22 shall be considered to be equal to the loss of one-half (1/2) of the

1 amount specified. The loss of more than one phalange shall be  
2 considered as the loss of the entire toe.

3 Hand: For the loss of a hand, two hundred twenty (220) weeks.

4 Arm: For the loss of an arm, two hundred seventy-five (275)  
5 weeks.

6 Foot: For the loss of a foot, two hundred twenty (220) weeks.

7 Leg: For the loss of a leg, two hundred seventy-five (275)  
8 weeks.

9 Eye: For the loss of an eye, two hundred seventy-five (275)  
10 weeks.

11 Deafness: Deafness from industrial cause, including occupations  
12 which are hazardous to hearing, accident or sudden trauma, three  
13 hundred thirty (330) weeks, and total deafness of one ear from  
14 industrial cause, including occupations which are hazardous to  
15 hearing, accident or sudden trauma, one hundred ten (110) weeks.

16 Except as otherwise provided herein, any examining physician shall  
17 only evaluate deafness or hearing impairment in accordance with the  
18 latest publication of the American Medical Association's "Guides to  
19 the Evaluation of Permanent Impairment" in effect at the time of the  
20 injury. The Physician Advisory Committee may, pursuant to Section  
21 201.1 of this title, recommend the adoption of a method or system to  
22 evaluate permanent impairment that shall be used in place of or in  
23 combination with the American Medical Association's "Guides to the

1 Evaluation of Permanent Impairment". Such recommendation shall be  
2 made to the Administrator of the Workers' Compensation Court who may  
3 adopt the recommendation in part or in whole. The adopted method or  
4 system shall be submitted by the Administrator to the Governor, the  
5 Speaker of the House of Representatives and President Pro Tempore of  
6 the Senate within the first ten (10) legislative days of a regular  
7 session of the Legislature. Such method or system to evaluate  
8 permanent impairment that shall be used in place of or in  
9 combination with the American Medical Association's "Guides to the  
10 Evaluation of Permanent Impairment" shall be subject to disapproval  
11 in whole or in part by joint or concurrent resolution of the  
12 Legislature during the legislative session in which submitted. Such  
13 method or system shall be operative one hundred twenty (120) days  
14 after the last day of the month in which the Administrator submits  
15 the adopted method or system to the Legislature if the Legislature  
16 takes no action or one hundred twenty (120) days after the last day  
17 of the month in which the Legislature disapproves it in part. If  
18 adopted, permanent impairment shall be evaluated only in accordance  
19 with the latest version of the alternative method or system in  
20 effect at the time of injury. Except as otherwise provided in  
21 Section 11 of this title, all evaluations shall include an  
22 apportionment of injury causation. However, revisions to the guides  
23 made by the American Medical Association which are published after

1 January 1, 1989, and before January 1, 1995, shall be operative one  
2 hundred twenty (120) days after the last day of the month of  
3 publication. Revisions to the guides made by the American Medical  
4 Association which are published after December 31, 1994, may be  
5 adopted in whole or in part by the Administrator following  
6 recommendation by the Physician Advisory Committee. Revisions  
7 adopted by the Administrator shall be submitted by the Administrator  
8 to the Governor, the Speaker of the House of Representatives and  
9 President Pro Tempore of the Senate within the first ten (10)  
10 legislative days of a regular session of the Legislature. Such  
11 revisions shall be subject to disapproval in whole or in part by  
12 joint or concurrent resolution of the Legislature during the  
13 legislative session in which submitted. Revisions shall be  
14 operative one hundred twenty (120) days after the last day of the  
15 month in which the Administrator submits the revisions to the  
16 Legislature if the Legislature takes no action or one hundred twenty  
17 (120) days after the last day of the month in which the Legislature  
18 disapproves them in part. The examining physician shall not follow  
19 the guides based on race or ethnic origin. The examining physician  
20 shall not deviate from such guides or any alternative thereof except  
21 as may be specifically provided for in the guides or modifications  
22 to the guides or except as may be specifically provided for in any  
23 alternative or modifications thereto adopted by the Administrator of

1 the Workers' Compensation Court as provided in Section 201.1 of this  
2 title. The guides or modifications thereto or alternative system or  
3 method of evaluating permanent impairment or modifications thereto  
4 shall be the exclusive basis for testimony and conclusions with  
5 regard to deafness or hearing impairment.

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

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

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

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

1        In case of an injury occurring before November 1, 2005,  
2        resulting in serious and permanent disfigurement, compensation shall  
3        be payable in an amount to be determined by the Court, but not in  
4        excess of Twenty Thousand Dollars (\$20,000.00); provided, that  
5        compensation for permanent disfigurement shall not be in addition to  
6        the other compensation provided for in this section but shall be  
7        taken into consideration in fixing the compensation otherwise  
8        provided. In case of an injury occurring on or after November 1,  
9        2005, resulting in serious and permanent disfigurement, compensation  
10       shall be payable in an amount to be determined by the Court, but not  
11       in excess of Thirty Thousand Dollars (\$30,000.00); provided, that  
12       compensation for permanent disfigurement shall not be in addition to  
13       the other compensation provided for in this section but shall be  
14       taken into consideration in fixing the compensation otherwise  
15       provided.

16        Hernia: In case of an injury resulting in hernia, temporary  
17        total compensation for six (6) weeks, and the cost of an operation  
18        shall be payable, unless the employee has not been released from  
19        active medical treatment, temporary total compensation not to exceed  
20        nine (9) weeks, and the cost of an operation shall be payable;  
21        provided, in any case where the injured employee has been twice  
22        previously operated on for hernia in the same area and it is  
23        established by opinion of a competent surgeon that further surgery

1 in the same area will not result in full relief of the condition,  
2 the Court may then award compensation for disability resulting  
3 therefrom under paragraph 1 of this section, or, if not totally and  
4 permanently disabled, then under the "Other Cases" subdivision  
5 following, and, after a second surgical attempt to repair hernia,  
6 the injured may not be required to submit to further surgery in an  
7 effort to relieve the disability thereafter existing; provided  
8 further, the use of any artificial reinforcement or device, with or  
9 without surgery, shall not be the basis of reducing extent of  
10 disability to be awarded.

11 Other Cases: In all other classes of disabilities, excluding  
12 only those heretofore referred to in this paragraph, which  
13 disabilities result in loss of use of any portion of an employee's  
14 body, and which disabilities are partial in character but permanent  
15 in quality, disability shall mean the percentage of permanent  
16 impairment. The compensation ordered paid shall be seventy percent  
17 (70%) of the employee's average weekly wage for the number of weeks  
18 which the partial disability of the employee bears to five hundred  
19 (500) weeks.

20 4. Temporary Partial Disability. (a) With respect to injuries  
21 occurring before November 4, 1994, in case of temporary partial  
22 disability, except the particular cases mentioned in paragraph 3 of  
23 this section, an injured employee shall receive seventy percent

1 (70%) of the difference between the employee's average weekly wages  
2 and the employee's wage-earning capacity thereafter in the same  
3 employment or otherwise, if less than before the injury, during  
4 continuance of such partial disability, but not to exceed one  
5 hundred fifty (150) weeks. Provided, after compensation has been  
6 paid for a period of one hundred forty (140) weeks, the employee may  
7 request a review of the case by a judge of the Court for continued  
8 temporary partial disability benefits provided by the Workers'  
9 Compensation Act. Upon a finding that benefits should be extended  
10 beyond the initial one-hundred-fifty-week period, compensation may  
11 be continued for an additional one hundred fifty (150) weeks.

12 (b) With respect to injuries occurring on or after November 4,  
13 1994, in case of temporary partial disability, except the particular  
14 cases mentioned in paragraph 3 of this section, an injured employee  
15 shall receive seventy percent (70%) of the difference between the  
16 employee's average weekly wages and the employee's wage-earning  
17 capacity thereafter in the same employment or otherwise, if less  
18 than before the injury, during continuance of such partial  
19 disability, but not to exceed fifty-two (52) weeks. Provided, after  
20 compensation has been paid for a period of forty-two (42) weeks, the  
21 employee may request a review of the case by a judge of the Court  
22 for continued temporary partial disability benefits provided by the  
23 Workers' Compensation Act. Upon a finding that benefits should be

1 extended beyond the initial fifty-two-week period, compensation may  
2 be continued for additional successive fifty-two-week periods  
3 provided the employee has requested review of the case at forty-two  
4 (42) weeks during each period involved, and upon a finding by the  
5 Court that benefits should be extended. Total payments of  
6 compensation for temporary partial disability may not exceed a  
7 maximum of three hundred (300) weeks in the aggregate.

8 (c) With respect to injuries occurring on or after November 1,  
9 1997, total payments of compensation for temporary partial  
10 disability may not exceed a maximum of one hundred fifty-six (156)  
11 weeks in the aggregate except for good cause shown, as determined by  
12 the Court.

13 5. Notwithstanding any other section of the Workers'  
14 Compensation Act, temporary disability shall be payable without an  
15 award by the Court. The first payment of temporary disability  
16 compensation shall become due on the tenth day after the employer  
17 has received notice of injury as specified in Section 24.2 of this  
18 title. All compensation owed on that date shall be paid and  
19 thereafter payments shall be made weekly except when otherwise  
20 ordered by the Court.

21 If any compensation payments owed without an award are not paid  
22 within ten (10) days after becoming due, there shall be added to  
23 such owed payments an amount equal to ten percent (10%) of the

1 amount due which shall be paid at the same time in addition to the  
2 owed payments unless such nonpayment is excused by the Court after a  
3 showing by the employer that conditions exist over which the  
4 employer had no control in that either payments were not made within  
5 the prescribed time or the employer denies coverage within the time  
6 specified for the employer to respond.

7       6. Limitation. The compensation payments under the provisions  
8 of the Workers' Compensation Act shall not exceed the sum of  
9 seventy-five percent (75%) of the state's average weekly wage as  
10 determined by the Oklahoma Employment Security Commission, the sum  
11 of ninety percent (90%) of the state's average weekly wage beginning  
12 January 1, 1995, for injuries occurring after December 31, 1994, and  
13 the sum of one hundred percent (100%) of the state's average weekly  
14 wage beginning January 1, 1996, for injuries occurring after  
15 December 31, 1995, for temporary disability; Sixty Dollars (\$60.00)  
16 per week beginning as of the effective date of the Workers'  
17 Compensation Act, and Seventy Dollars (\$70.00) per week beginning  
18 January 1, 1979, and Eighty Dollars (\$80.00) per week beginning  
19 January 1, 1980, and Ninety Dollars (\$90.00) per week beginning  
20 January 1, 1981, and to fifty percent (50%) of the state's average  
21 weekly wage beginning January 1, 1982, for permanent partial  
22 disability; Seventy-five Dollars (\$75.00) per week beginning as of  
23 the effective date of the Workers' Compensation Act, and Ninety

1 Dollars (\$90.00) per week beginning January 1, 1979, and One Hundred  
2 Ten Dollars (\$110.00) per week beginning January 1, 1980, to sixty-  
3 six and two-thirds percent (66 2/3%) of the state's average weekly  
4 wage beginning January 1, 1981, to seventy-five percent (75%) of the  
5 state's average weekly wage beginning September 1, 1992, to ninety  
6 percent (90%) of the state's average weekly wage beginning January  
7 1, 1995, for injuries occurring after December 31, 1994, and to one  
8 hundred percent (100%) of the state's average weekly wage beginning  
9 January 1, 1996, for injuries occurring after December 31, 1995, for  
10 permanent total disability, or at any time be less than Thirty  
11 Dollars (\$30.00) per week; provided, however, that if the employee's  
12 wages at the time of the injury are less than Thirty Dollars  
13 (\$30.00) per week, the employee shall receive the employee's full  
14 weekly wages; provided further, that the compensation received, as  
15 provided for temporary partial disability, shall not, when added to  
16 the wages received by such employee after such injury, amount to a  
17 greater sum than eighty percent (80%) of the average weekly wages of  
18 the employee received prior to said injury.

19 The average weekly wage in this state shall be determined by the  
20 Oklahoma Employment Security Commission every three (3) years  
21 beginning July 1, 1984, and shall be used to establish maximum  
22 benefits under the Workers' Compensation Act for injuries occurring  
23 during a three-year period, which period shall begin on the first

1 day of November after publication by the Oklahoma Employment  
2 Security Commission. For the purpose of computing benefits payable  
3 under the Workers' Compensation Act, the state's average weekly wage  
4 shall be rounded to the nearest dollar amount.

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

10 7. Previous Disability. The fact that an employee has suffered  
11 previous disability or impairment or received compensation therefor  
12 shall not preclude the employee from compensation for a later  
13 accidental personal injury or occupational disease; but in  
14 determining compensation for the later accidental personal injury or  
15 occupational disease the employee's average weekly wages shall be  
16 such sum as will reasonably represent the employee's earning  
17 capacity at the time of the later accidental personal injury or  
18 occupational disease. In the event there exists a previous  
19 impairment, including a previous non-work-related injury or  
20 condition, which produced permanent disability and the same is  
21 aggravated or accelerated by an accidental personal injury or  
22 occupational disease, compensation for permanent disability shall be  
23 only for such amount as was caused by such accidental personal

1 injury or occupational disease and no additional compensation shall  
2 be allowed for the ~~pre-existing~~ preexisting disability or  
3 impairment. The sum of all permanent partial disability awards,  
4 excluding awards against the Multiple Injury Trust Fund and awards  
5 for amputations, and surgeries, shall not exceed one hundred percent  
6 (100%) permanent partial disability for any individual. An  
7 individual may not receive more than five hundred twenty (520)  
8 weeks' compensation for permanent partial disability, but may  
9 receive other benefits under the Workers' Compensation Act if  
10 otherwise eligible as provided in the Workers' Compensation Act.

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

15 (a) Benefit amounts for particular classes of dependents.

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

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

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

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

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

13 (5) The income benefits payable for the benefit of any child  
14 under this section shall cease:

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

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

20 c. when the actually dependent child ceases to be  
21 actually dependent, or

22 d. when the child has been enrolled as a full-time  
23 student in any accredited educational institution or

1           has been receiving education by other means, including  
2           education at home pursuant to Section 4 of Article  
3           XIII of the Oklahoma Constitution, and the child  
4           ceases to be so enrolled or educated or reaches  
5           twenty-three (23) years of age. A child who  
6           originally qualified as a dependent by virtue of being  
7           less than eighteen (18) years of age may, upon  
8           reaching eighteen (18) years of age, continue to  
9           qualify if the child satisfies the tests of being  
10          physically or mentally incapable of self-support,  
11          actually dependent, or enrolled in an accredited  
12          educational institution or being educated by other  
13          means, including education at home pursuant to Section  
14          4 of Article XIII of the Oklahoma Constitution.

15          (6) To each parent, if actually dependent, twenty-five percent  
16          (25%) of the average weekly wages the deceased was earning subject  
17          to the provisions of subparagraphs (c) and (d) of this paragraph.

18          (7) To the brothers, sisters, grandparents and grandchildren,  
19          if actually dependent, twenty-five percent (25%) of the average  
20          weekly wages the deceased was earning to each such dependent. If  
21          there should be more than one of such dependents, the total income  
22          benefits payable for the benefit of such dependents shall be divided

1 to share and share alike subject to the provisions of subparagraphs  
2 (c) and (d) of this paragraph.

3 (8) The income benefits of each beneficiary under divisions (6)  
4 and (7) above shall be paid until the beneficiary, if a parent or  
5 grandparent, dies, marries or ceases to be actually dependent, or,  
6 if a brother, sister or grandchild, dies, marries or reaches the age  
7 of eighteen (18), is over the age of eighteen (18) and ceases to be  
8 physically or mentally incapable of self-support or ceases to be  
9 actually dependent.

10 (9) A person ceases to be actually dependent when the person's  
11 income from all sources exclusive of workers' compensation income  
12 benefits is such that, if it had existed at the time the original  
13 determination of actual dependency was made, it would not have  
14 supported a finding of dependency. If the present annual income of  
15 an actually dependent person including workers' compensation income  
16 benefits at any time exceeds the total annual support received by  
17 the person from the deceased employee, the workers' compensation  
18 benefits shall be reduced so that the total annual income is no  
19 greater than such amount of annual support received from the  
20 deceased employee. In all cases, a person found to be actually  
21 dependent shall be presumed to be no longer actually dependent three  
22 (3) years after the time as of which the person was found to be  
23 actually dependent. This presumption may be overcome by proof of

1 continued actual dependency as defined in this paragraph and  
2 paragraph (1) of Section 3.1 of this title.

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

10 (c) Maximum income benefits for death. For the purposes of  
11 this section, the average weekly wage of the employee shall be taken  
12 as not more than the average weekly wage of the state. If the  
13 average weekly wages of the employee are equal to or greater than  
14 the average weekly wage of the state, then the aggregate weekly  
15 income benefits payable to all beneficiaries under this section  
16 shall not exceed the average weekly wage of the state. If the  
17 average weekly wages of the employee are less than the average  
18 weekly wage of the state, the aggregate weekly income benefits  
19 payable to all beneficiaries under this section shall not exceed one  
20 hundred percent (100%) of the average weekly wages of the employee.

21 (d) Maximum total payment. The maximum weekly income benefits  
22 payable for all beneficiaries in case of death shall not exceed one  
23 hundred percent (100%) of the average weekly wages the deceased was

1 earning, subject to the maximum limits in subparagraph (c) of this  
2 paragraph. The maximum aggregate limitation shall not apply in case  
3 of payment of two (2) years' income benefits to the surviving spouse  
4 upon remarriage, as provided under division (3) of subparagraph (a)  
5 of this paragraph, to prevent the immediate recalculation and  
6 payments of benefits to the remaining beneficiaries as provided  
7 under subparagraph (b) of this paragraph. The weekly income  
8 benefits as recalculated to the remaining beneficiaries shall not  
9 exceed the weekly benefit that was or would have been payable for  
10 total permanent disability to the deceased. The classes of  
11 beneficiaries specified in divisions (1), (2) and (4) of  
12 subparagraph (a) of this paragraph shall have priority over all  
13 other beneficiaries in the apportionment of income benefits. If the  
14 provisions of this subparagraph should prevent payments to other  
15 beneficiaries of the income benefits to the full extent otherwise  
16 provided for by this section, the gross remaining amount of income  
17 benefits payable to such other beneficiaries shall be apportioned by  
18 class, proportionate to the interest of each class in the remaining  
19 amount. Parents shall be considered to be in one class and those  
20 specified in division (7) of subparagraph (a) of this paragraph in a  
21 separate class.

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

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

5 10. ~~In~~ For deaths occurring before November 1, 2005, in the  
6 event that no benefits under other provisions of this section are  
7 paid to the dependents or the heirs-at-law of the deceased, an  
8 amount not to exceed Five Thousand Dollars (\$5,000.00) shall be paid  
9 for funeral expenses. For deaths occurring on or after November 1,  
10 2005, in the event that no benefits under other provisions of this  
11 section are paid to the dependents or the heirs-at-law of the  
12 deceased, an amount not to exceed Eight Thousand Dollars (\$8,000.00)  
13 shall be paid for funeral expenses.

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

1 Dollars (\$5,000.00) to each surviving child not to exceed two  
2 children.

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

8 (c) Any claim under this paragraph shall be substantiated by  
9 the filing of a properly executed and authenticated proof of loss,  
10 which form shall be prescribed by the Administrator, and payment of  
11 such sum shall be made within fifteen (15) days after adjudication  
12 of entitlement by the Court. Such sum shall not be subject to any  
13 award of attorney fees in uncontested cases, except the Court shall  
14 appoint a guardian ad litem to represent known and unknown minor  
15 children and said guardian ad litem shall be paid a reasonable fee  
16 for the services.

17 Provided, that all judgments rendered awarding lump-sum death  
18 benefits, except lump-sum attorney fee awards, may, at the  
19 discretion of the Court, provide that said benefits be paid in trust  
20 to an interest-bearing account in a federally insured banking  
21 institution in the county wherein the judgment was rendered. The  
22 banking institution may make appropriate charges to the beneficiary  
23 for costs of trust management. These charges shall be fixed by

1 agreement of such institution and the judge rendering the judgment.  
2 The judgment awarding lump-sum death benefits shall contain  
3 instructions for regularly scheduled disbursements to be fixed by  
4 the Court which may be modified by the Court upon a proper showing  
5 of change of circumstance. The banking institution shall issue a  
6 numbered receipt to the person paying the benefits into trust and  
7 deliver a copy of the receipt to the Administrator. Each banking  
8 institution receiving trust funds for deposit shall receive a  
9 schedule of disbursements and shall monthly pay said disbursements  
10 to the beneficiary as ordered by the Court. An annual accounting of  
11 all such trust funds received and deposited shall be rendered by  
12 each banking institution to the Court granting the judgment.

13 12. No payments on any permanent impairment order shall start  
14 until payments on any ~~pre-existing~~ preexisting permanent impairment  
15 orders have been completed.

16 13. (a) Any employee convicted of a misdemeanor or felony and  
17 sentenced to a term of incarceration of at least ninety (90) days in  
18 this state or in any other jurisdiction shall have all benefits for  
19 temporary total disability awarded by the Workers' Compensation  
20 Court forfeited by order of the Court on motion of the employer or  
21 the employer's insurer after confirmation of the employee's  
22 incarceration. The Court also may order the forfeiture of such  
23 benefits on its own motion upon receipt of notice from the Director

1 of the Department of Corrections that the person awarded the  
2 benefits is incarcerated as an inmate in a facility operated by or  
3 under contract with the Department. The provisions of this  
4 subparagraph shall not apply to any benefits awarded to an inmate  
5 for compensable injuries sustained by the inmate while in the employ  
6 of a private for-profit employer or while employed in private prison  
7 industries, involving a for-profit employer, which deal in  
8 interstate commerce or which sell products or services to the  
9 federal government.

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

21 SECTION 12. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 24.1A of Title 85, unless there  
23 is created a duplication in numbering, reads as follows:

1       A. 1. On or after November 1, 2005, reports made pursuant to  
2 Section 24.1 of this title shall be kept confidential for a period  
3 of sixty (60) days after the date the report is made to the Workers'  
4 Compensation Court, provided, such reports shall be made available  
5 immediately upon request by:

- 6           a. the injured employee named in the report,
- 7           b. the injured employee's legal representative, or
- 8           c. any prosecutorial authority.

9       2. Any person who knowingly violates this section and obtains  
10 or provides information made confidential by this section is guilty  
11 of a misdemeanor and shall be fined no more than Two Thousand Five  
12 Hundred Dollars (\$2,500.00). Second and subsequent offenses shall  
13 carry a penalty of imprisonment in the county jail for not more than  
14 thirty (30) days or a fine of not more than Five Thousand Dollars  
15 (\$5,000.00) or both.

16       B. 1. No public employee or officer shall allow a person to  
17 examine or reproduce such report if examination or reproduction of  
18 the report is sought for the purpose of making a commercial  
19 solicitation. Any person requesting a report may be required to  
20 state, in writing, under penalty of perjury, that the report will  
21 not be examined, reproduced or otherwise used for commercial  
22 solicitation purposes. It shall be unlawful and constitute a  
23 misdemeanor for any person to obtain or use information from the

1 report or a copy thereof for the purpose of making a commercial  
2 solicitation.

3 2. As used in this subsection "commercial solicitation" means  
4 any attempt to use, or offer for use, information contained in the  
5 report to solicit any person named in the report, or a relative of  
6 such person, or to solicit a professional, business, or commercial  
7 relationship.

8 SECTION 13. AMENDATORY 85 O.S. 2001, Section 43, is  
9 amended to read as follows:

10 Section 43. A. The right to claim compensation under the  
11 Workers' Compensation Act shall be forever barred unless, within two  
12 (2) years after the date of accidental injury or death, a claim for  
13 compensation is filed with the Workers' Compensation Court.  
14 Provided however, a claim may be filed within two (2) years of the  
15 last ~~payment of any compensation or remuneration paid in lieu of~~  
16 ~~compensation or~~ medical treatment which was authorized by the  
17 employer or the insurance carrier or payment of any compensation or  
18 remuneration paid in lieu of compensation. Provided further,  
19 however, with respect to disease or injury caused by repeated trauma  
20 causally connected with employment, a claim may be filed within two  
21 (2) years of the date of last trauma or hazardous exposure.  
22 Provided, further, however, in the case of asbestosis, silicosis or  
23 exposure to nuclear radiation causally connected with employment, a

1 claim may be filed within two (2) years of the date of last  
2 hazardous exposure or within two (2) years from the date said  
3 condition first becomes manifest by a symptom or condition from  
4 which one learned in medicine could, with reasonable accuracy,  
5 diagnose such specific condition, whichever last occurs. The filing  
6 of any form or report by the employer or insurance carrier shall not  
7 toll the above limitations.

8 B. When a claim for compensation has been filed with the  
9 Administrator as herein provided, unless the claimant shall in good  
10 faith request a hearing and final determination thereon within three  
11 (3) years from the date of filing thereof or within three (3) years  
12 from the date of last payment of compensation or wages in lieu  
13 thereof, same shall be barred as the basis of any claim for  
14 compensation under the Workers' Compensation Act and shall be  
15 dismissed by the Court for want of prosecution, which action shall  
16 operate as a final adjudication of the right to claim compensation  
17 thereunder. If represented by counsel, the claimant may, upon the  
18 payment of the Court's filing fee, dismiss any claim brought by the  
19 claimant at any time before final submission of the case to the  
20 Court for decision. Any claimant not represented by counsel may,  
21 upon the payment of the Court's filing fee and with an order of the  
22 Court, dismiss any claim brought by the claimant at any time before  
23 final submission of the case to the Court for decision. Such

1 dismissal shall be without prejudice unless the words "with  
2 prejudice" are included in the order. If any claim that is filed  
3 within the statutory time permitted by this section is dismissed  
4 without prejudice, a new claim may be filed within one (1) year  
5 after the entry of the order dismissing the first claim even if the  
6 statutory time for filing has expired.

7 C. The jurisdiction of the Court to reopen any cause upon an  
8 application based upon a change in condition shall extend for that  
9 period of time measured by the maximum number of weeks that could be  
10 awarded for the particular scheduled member where the change of  
11 condition occurred or two hundred eight (208) weeks, whichever is  
12 less, or for two hundred eight (208) weeks in the case of injuries  
13 to the body or injuries not otherwise scheduled under the provisions  
14 of Section 22 of this title, and unless filed within said period of  
15 time after the date of the last order, shall be forever barred. An  
16 order denying an application to reopen a claim shall not extend the  
17 period of the time set out herein for reopening the case.

18 D. Each employer shall post a notice advising employees that  
19 they are covered by the Workers' Compensation Act and that workers'  
20 compensation counselor services are available at the Workers'  
21 Compensation Court. The form of the notice shall be prescribed by  
22 the rules of the Court. No other notice to the employee shall be  
23 required other than said poster required by this section; provided

1 that nothing in this subsection shall be construed to toll the  
2 Statute of Limitations provided above.

3 SECTION 14. AMENDATORY 85 O.S. 2001, Section 45, is  
4 amended to read as follows:

5 Section 45. A. No benefits, saving or insurance of the injured  
6 employee, independent of the provisions of this act shall be  
7 considered in determining the compensation or benefit to be paid  
8 under this act.

9 B. No employee may receive temporary total disability benefits  
10 covering the same period of time as unemployment compensation  
11 benefits received by the employee as provided by the Oklahoma  
12 Employment Security Commission.

13 C. There shall be a rebuttable presumption that an employee has  
14 no loss of earning capacity resulting from impairment and is not  
15 eligible for temporary total disability benefits while receiving  
16 retirement benefits under the federal social security act or  
17 retirement benefits from any other retirement system, program or  
18 plan which is provided by the employer against which the employee is  
19 making a workers' compensation claim.

20 SECTION 15. AMENDATORY 85 O.S. 2001, Section 48, is  
21 amended to read as follows:

22 Section 48. Claims for compensation or benefits due under the  
23 Workers' Compensation Act shall not be assigned, released or

1 commuted except as provided by the Workers' Compensation Act, and  
2 shall be exempt from all claims of creditors and from levy,  
3 execution or attachment or other remedy for recovery or collection  
4 of a debt, which exemption may not be waived. Compensation and  
5 benefits shall be paid only to employees; provided, that if an  
6 employee dies as a result of his accidental personal injury or  
7 occupational disease, any unaccrued portions of an award or order  
8 for compensation benefits shall abate. Nothing in this section  
9 shall be construed to prohibit any party from the enforcement of any  
10 valid lien for child support or valid income assignment for child  
11 support.

12 The term "dependent", as used in this section, means actually  
13 dependent in fact upon the deceased employee, and refers only to a  
14 person who received more than half of his support from the employee.

15 1. An award made to a claimant for permanent partial disability  
16 under the provisions of the Workers' Compensation Act shall, in case  
17 of the death of the claimant, due to causes other than ~~his~~ injury  
18 for which ~~he~~ the person has been awarded permanent partial  
19 compensation, be payable to and for the benefit of the following  
20 persons:

21 (a) If there is a surviving spouse and no child of the deceased  
22 under the age of eighteen (18) years, to the surviving spouse.

1 (b) If there is a surviving child or children of the deceased  
2 under the age of eighteen (18) years, or dependent blind or  
3 dependent crippled child or children of any age, but no surviving  
4 spouse then for the support of each such child, to share and share  
5 alike until the full payment of the award.

6 (c) If there is a surviving spouse, a surviving child or  
7 children of the deceased under the age of eighteen (18) years, or a  
8 dependent blind or dependent crippled child or children of any age,  
9 one-half (1/2) shall be payable to the surviving spouse and the  
10 other half to the surviving child or children.

11 (d) If there is no surviving spouse or child under the age of  
12 eighteen (18), or dependent blind or dependent crippled child of any  
13 age, then to the dependent parents to share and share alike, and if  
14 there are no dependent parents, then to the dependent brothers and  
15 sisters, to share and share alike.

16 (e) In the event the claimant is survived by none of the above  
17 named, then the award for compensation benefits shall abate.

18 2. If claimant has been adjudged a permanent totally disabled  
19 person prior to ~~his~~ death, and such death has resulted from causes  
20 other than ~~his~~ the person's accidental personal injury or  
21 occupational disease causing such total permanent disability, the  
22 award may be revived and made payable to the following persons:

1 (a) If there is a surviving spouse, to such surviving spouse,  
2 fifty percent (50%) of the average weekly ~~wages the deceased was~~  
3 ~~earning, but in no event more than a maximum of Fifty Dollars~~  
4 ~~(\$50.00) per week~~ income benefit that was or would have been payable  
5 for permanent total disability to the deceased.

6 (b) If there is a surviving spouse and dependent children under  
7 the age of eighteen (18) years or dependent blind or dependent  
8 crippled child of any age, the surviving spouse shall receive the  
9 amount set forth in subparagraph (a) of this paragraph and in  
10 addition the following amounts shall be paid:

11 (1) To one dependent child, fifteen percent (15%) of the weekly  
12 benefits awarded employee, but in no event more than a maximum of  
13 Fifteen Dollars (\$15.00) per week.

14 (2) To two or more dependent children, twenty-five percent  
15 (25%) of the weekly benefits awarded employee, but in no event more  
16 than a maximum of Twenty-five Dollars (\$25.00) per week, which shall  
17 be divided among the children, to share and share alike.

18 (c) If there is no surviving spouse, but there is a surviving  
19 child under the age of eighteen (18) years, or a dependent blind or  
20 dependent crippled child of any age, the child shall receive  
21 twenty-five percent (25%) of the weekly benefits awarded the  
22 decedent, but in no event more than a maximum of Twenty-five Dollars  
23 (\$25.00) per week.

1 (d) If there is no surviving spouse, but there are two or more  
2 surviving children under the age of eighteen (18) years, or  
3 dependent blind or dependent crippled children of any age, the  
4 children shall receive fifty percent (50%) of the weekly benefits  
5 awarded the decedent, but in no event more than a maximum of Fifty  
6 Dollars (\$50.00) per week, which shall be divided among the children  
7 to share and share alike.

8 (e) The income benefits payable to any spouse under this  
9 section shall cease when the spouse dies or remarries.

10 (f) The income benefits payable for the benefit of any child  
11 under this section shall cease when the child dies, marries or  
12 reaches the age of eighteen (18) years, or when a child over  
13 eighteen (18) years of age ceases to be physically or mentally  
14 incapable of self-support, or if actually dependent ceases to be  
15 actually dependent, or if enrolled as a full-time student in any  
16 accredited educational institution, ceases to be so enrolled or  
17 reaches the age of twenty-three (23) years. A child who originally  
18 qualified as a dependent by virtue of being less than eighteen (18)  
19 years of age may, upon reaching age eighteen (18) years, continue to  
20 qualify if the child satisfies the tests of being physically or  
21 mentally incapable of self-support, actually dependent or enrolled  
22 in an accredited educational institution.

1       ~~(f)~~ (g) If there is no surviving spouse or children under the  
2 age of eighteen (18) years or dependent blind or dependent crippled  
3 children of any age, then to the surviving dependent parents of the  
4 decedent fifty percent (50%) of the weekly benefits awarded the  
5 employee, but in no event more than a maximum of Fifty Dollars  
6 (\$50.00) per week. If there is only one dependent surviving parent,  
7 then the surviving dependent parent shall receive twenty-five  
8 percent (25%) of the weekly benefits awarded employee, but in no  
9 event more than a maximum of Twenty-five Dollars (\$25.00) per week.  
10 Payments shall continue during the dependent parent's lifetime and  
11 shall abate upon the death of the dependent parent or when the  
12 dependent parent is no longer dependent.

13       ~~(g)~~ (h) If there ~~is~~ are no surviving dependent persons as set  
14 forth herein, the award for compensation benefits shall abate.

15       ~~(h)~~ (i) The maximum weekly income benefits payable for all  
16 persons in case of the employee's death due to causes other than the  
17 accidental personal injury or occupational disease shall not exceed  
18 seventy-five percent (75%) of the average weekly wage of the  
19 employee, subject to the maximum limits of compensation set forth in  
20 Section 22 of this title.

21       SECTION 16.       AMENDATORY       85 O.S. 2001, Section 171, is  
22 amended to read as follows:

1 Section 171. For the purpose of Sections 171 through 176 of  
2 this title, the term "physically impaired person" means a person who  
3 as a result of accident, disease, birth, military action, or any  
4 other cause, has suffered the loss of the sight of one eye, the loss  
5 by amputation of the whole or a part of a member of his body, or the  
6 loss of the use or partial loss of the use of a member such as is  
7 obvious and apparent from observation or examination by an ordinary  
8 layman, that is, a person who is not skilled in the medical  
9 profession, or any ~~pre-existing~~ previous adjudications of disability  
10 adjudged and determined by the Workers' Compensation Court or any  
11 disability resulting from separately adjudicated injuries and  
12 adjudicated occupational diseases even though arising at the same  
13 time.

14 SECTION 17. AMENDATORY 85 O.S. 2001, Section 172, is  
15 amended to read as follows:

16 Section 172. A. 1. For actions filed before November 1, 1999,  
17 except as otherwise provided in this section, an employee, who is a  
18 "physically impaired person" and who receives an accidental personal  
19 injury compensable under the Workers' Compensation Act which results  
20 in additional permanent disability so that the degree of disability  
21 caused by the combination of both disabilities is materially greater  
22 than that which would have resulted from the subsequent injury  
23 alone, shall receive compensation on the basis of such combined

1 disabilities from the Multiple Injury Trust Fund. Only disability  
2 due to an injury to the body as a whole shall be combinable with a  
3 prior body disability, except that disability to a major member may  
4 be combined with disability to the body as a whole.

5       2.   a.   For actions filed before November 1, 1999, if such  
6               combined disabilities constitute partial permanent  
7               disability as defined in Section 3 of this title, then  
8               the employee shall receive full compensation as now  
9               provided by law for the disability resulting directly  
10              and specifically from the subsequent injury, and in  
11              addition thereto the employee shall receive full  
12              compensation for the combined disability as above  
13              defined, after deducting therefrom the percent of that  
14              disability that constituted the employee a "physically  
15              impaired person", as defined herein, all of which  
16              shall be computed upon the schedule and pursuant to  
17              the provisions of the Workers' Compensation Act.  
18              After payments by the employer or the insurance  
19              carrier of the employer, if any, have ceased, the  
20              remainder of such compensation shall immediately be  
21              paid out of the Multiple Injury Trust Fund provided  
22              for in Section 173 of this title, in periodic  
23              installments. The employer or the insurance carrier

1 of the employer shall be liable only for the degree of  
2 percent of disability which would have resulted from  
3 the latter injury if there had been no preexisting  
4 impairment.

5 b. For actions filed on or after November 1, 1999, but  
6 before June 1, 2000, if the combined disabilities  
7 constitute partial permanent disability as defined in  
8 Section 3 of this title, then the employee shall  
9 receive full compensation as now provided by law for  
10 the disability resulting directly and specifically  
11 from the subsequent injury. The employee shall not  
12 receive any additional compensation for the combined  
13 disability as above defined, after deducting therefrom  
14 the percent of disability that constituted the  
15 employee a "physically impaired person".

16 B. 1. For actions in which the subsequent injury occurred  
17 before June 1, 2000, or on or after November 1, 2005, if such  
18 combined disabilities constitute permanent total disability, as  
19 defined in Section 3 of this title, then the employee shall receive  
20 full compensation as provided by law for the disability resulting  
21 directly and specifically from the subsequent injury. In addition,  
22 the employee shall receive full compensation for the combined  
23 disability if such combined disability constitutes permanent total

1 disability, as above defined, all of which shall be computed upon  
2 the schedule and provisions of the Workers' Compensation Act. The  
3 employer shall be liable only for the degree of percent of  
4 disability which would have resulted from the subsequent injury if  
5 there had been no preexisting impairment. After all permanent  
6 partial disability payments by the employer or the insurance carrier  
7 of the employer have ceased, ~~the remainder of the~~ compensation for  
8 permanent total disability resulting from the combination of  
9 injuries shall be paid out of the Multiple Injury Trust Fund  
10 provided for in Section 173 of this title, in periodic installments.  
11 ~~In permanent total disability cases the same may be paid in periodic~~  
12 ~~payments,~~ as set forth in Section 22 of this title, or may be  
13 commuted to a lump-sum payment, by agreement of the claimant and the  
14 Multiple Injury Trust Fund. The compensation rate for permanent  
15 total awards from the Multiple Injury Trust Fund shall be the  
16 compensation rate for permanent partial disability paid by the  
17 employer in the last combinable compensable injury. Permanent total  
18 awards from the Multiple Injury Trust Fund shall be payable for a  
19 period of five (5) years or until the employee reaches sixty-five  
20 (65) years of age, whichever period is the longer. Multiple Injury  
21 Trust Fund awards shall accrue from the file date of the court order  
22 finding the claimant to be permanently and totally disabled.

1           2. For actions in which the subsequent injury occurred on or  
2 after June 1, 2000, but before November 1, 2005, if such combined  
3 disabilities constitute permanent total disability, as defined in  
4 Section 3 of this title, then the claimant shall receive full  
5 compensation as now provided by law for the disability resulting  
6 directly and specifically from the subsequent injury. In addition,  
7 the claimant shall receive full compensation for ~~the combined~~  
8 permanent total disability if the combination of injuries renders  
9 the employee permanently totally disabled, as above defined, all of  
10 which shall be computed upon the schedule and provisions of the  
11 Workers' Compensation Act. The employer shall be liable for the  
12 degree of percent of disability which would have resulted from the  
13 subsequent injury if there had been no preexisting impairment and  
14 for ~~any material increase resulting from~~ permanent total disability  
15 if the combination of such injuries renders the employee permanently  
16 totally disabled. Payment for the ~~degree of~~ permanent total  
17 ~~disability resulting from the material increase in disability~~  
18 resulting from the combination of injuries may be paid in periodic  
19 installments or may be commuted to a lump-sum payment upon agreement  
20 of the claimant and the employer or insurance carrier for the  
21 employer. The compensation rate for permanent total awards  
22 resulting from a combination of injuries shall be the compensation  
23 rate for permanent partial disability paid by the employer in the

1 last combinable compensable injury. Permanent total awards  
2 ~~resulting from a material increase in disability~~ resulting from a  
3 combination of injuries shall be payable for a period of fifteen  
4 (15) years or until the claimant reaches sixty-five (65) years of  
5 age, whichever period is the longer. Such awards shall be paid from  
6 the date the court order finding the claimant to be permanently and  
7 totally disabled is filed.

8 C. For all actions filed prior to November 1, 1999, before a  
9 physically impaired person can proceed against the Multiple Injury  
10 Trust Fund, the preexisting permanent partial disability and the  
11 permanent partial disability from the last injury must exceed a  
12 total amount equal to forty percent (40%) to the body.

13 D. Awards under this section shall abate upon the death, from  
14 any cause, of the employee.

15 E. Reopening any prior injury claim other than the last  
16 employer injury claim shall not give a claimant the right to  
17 additional Multiple Injury Trust Fund benefits or additional  
18 benefits from any employer or an insurance carrier for any employer,  
19 for ~~a material increase in~~ permanent total disability resulting from  
20 the combination of injuries.

21 F. Awards that are not claimed within two (2) years of the date  
22 on which the award first becomes available shall be returned to the  
23 party who is responsible for payment of the award, less any attorney

1 fees, as specified in the original court order awarding benefits for  
2 ~~a material increase in~~ permanent total disability resulting from a  
3 combination of injuries. Payment for attorney fees shall be made  
4 separately from payment to a claimant. If the claimant is  
5 subsequently found and claims the award, such award and interest as  
6 required by Section 42 of this title shall be paid to the claimant  
7 by the party who is responsible for payment of the award, within  
8 sixty (60) days of the claim.

9 SECTION 18. AMENDATORY 85 O.S. 2001, Section 173, as  
10 amended by Section 4, Chapter 31, O.S.L. 2002 (85 O.S. Supp. 2004,  
11 Section 173), is amended to read as follows:

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

15 A. 1. a. As soon as practicable after January 1 of each year  
16 ~~and until such time as the Board of Managers of~~  
17 ~~CompSource Oklahoma, pursuant to an independent~~  
18 ~~actuarial audit, has certified that there are~~  
19 ~~sufficient funds to satisfy all outstanding~~  
20 ~~obligations of the Multiple Injury Trust Fund, the~~  
21 Workers' Compensation Court Administrator shall  
22 establish an assessment rate applicable to each mutual  
23 or interinsurance association, stock company,

1                   CompSource Oklahoma, or other insurance carrier  
2                   writing workers' compensation insurance in this state,  
3                   each employer carrying its own risk, and each group  
4                   self-insurance association, for amounts for purposes  
5                   of computing the assessment authorized by this section  
6                   necessary to pay the annual obligations of the  
7                   Multiple Injury Trust Fund determined on or before  
8                   December 31 of each year by the Board of Managers of  
9                   CompSource Oklahoma to be outstanding for the next  
10                  calendar year, and to pay the allocations provided for  
11                  in subsection I of this section. The rate shall be  
12                  equal for all parties required to pay the assessment.

13                  b. ~~Until such time as the Board of Managers of CompSource~~  
14                  ~~Oklahoma, pursuant to an independent actuarial audit,~~  
15                  ~~has certified that there are sufficient funds to~~  
16                  ~~satisfy all outstanding obligations of the Multiple~~  
17                  ~~Injury Trust Fund, the The Oklahoma Tax Commission~~  
18                  shall assess and collect from any uninsured employer a  
19                  temporary assessment at the rate of five percent (5%)  
20                  of the total compensation for permanent total  
21                  disability awards, permanent partial disability  
22                  awards, and death benefits paid out during each  
23                  quarter of the calendar year by the employers.

1           2. The assessments shall be paid to the ~~Oklahoma~~ Tax  
2 Commission. Insurance carriers, self-insurers, group self-insurance  
3 associations and CompSource Oklahoma shall pay the assessment in  
4 four equal installments not later than the fifteenth day of the  
5 month following the close of each quarter of the calendar year of  
6 the assessment. Assessments shall be determined based upon gross  
7 direct written premiums, normal premiums or actual paid losses of  
8 the paying party, as applicable, during the calendar quarter for  
9 which the assessment is due. Uninsured employers shall pay the  
10 assessment not later than the fifteenth day of the month following  
11 the close of each quarter of the calendar year of the assessment.  
12 For purposes of this section, "uninsured employer" means an employer  
13 required by law to carry workers' compensation insurance but who has  
14 failed or neglected to do so. Only one-third (1/3) of assessments  
15 against insurance carriers and CompSource Oklahoma may be charged to  
16 policyholders and shall not be considered in determining whether any  
17 rate is excessive. The remaining two-thirds (2/3) of assessments  
18 against insurance carriers and CompSource Oklahoma may not be  
19 included in any rate, premium, charge, fee, assessment or other  
20 amount to be collected from a policyholder. Insurance carriers and  
21 CompSource Oklahoma shall not separately state the amount of the  
22 assessment on any invoice or billing assessment.



1 ~~the same time and manner as provided for the payment~~  
2 ~~of rebates in Section 2 of this act.~~

3 ~~e.~~ For purposes of this subsection:

4 (1) "actual paid losses" means all medical and  
5 indemnity payments, including temporary  
6 disability, permanent disability, and death  
7 benefits, and excluding loss adjustment expenses  
8 and reserves, and

9 (2) "normal premium" means a standard premium less  
10 any discounts.

11 4. By April 15 of each year, the Insurance Commissioner, Board  
12 of Managers of CompSource Oklahoma and each individual and group  
13 self-insured shall provide the Administrator with such information  
14 as the Administrator may determine is necessary to effectuate the  
15 purposes of this section.

16 5. Each mutual or interinsurance association, stock company,  
17 CompSource Oklahoma, or other insurance carrier writing workers'  
18 compensation insurance in this state, and each employer carrying its  
19 own risk, including each group self-insurance association, shall be  
20 notified by the Administrator in writing of the rate for the  
21 assessment on or before May 1 of each year in which a rate is  
22 determined. The rate determined by the Administrator shall be in

1 effect for four calendar quarters beginning July 1 following  
2 determination by the Administrator.

- 3       6.    a.    No mutual or interinsurance association, stock  
4                    company, CompSource Oklahoma, or other insurance  
5                    carrier writing workers' compensation insurance in  
6                    this state, may be assessed in any year an amount  
7                    greater than six percent (6%) of the gross direct  
8                    written premiums of that insurer.
- 9                    b.    No employer carrying its own risk may be assessed in  
10                   any year an amount greater than six percent (6%) of  
11                   the total actual paid losses of that individual self-  
12                   insured.
- 13                  c.    No group self-insurance association may be assessed in  
14                   any year an amount greater than six percent (6%) of  
15                   the normal premium of that group self-insurance  
16                   association.
- 17                  d.    If the maximum assessment does not provide in any one  
18                   year an amount sufficient to make all necessary  
19                   payments for obligations of the Multiple Injury Trust  
20                   Fund and for the allocations provided for in  
21                   subsection I of this section, the unpaid portion shall  
22                   be paid as soon thereafter as funds become available.

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

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

9           D. Any mutual or interinsurance association, stock company, or  
10 other insurance company, which is subject to regulation by the  
11 Insurance Commissioner, or CompSource Oklahoma, failing to make  
12 payments required herein promptly and correctly, and failing to  
13 report payment of the same to the Insurance Commission within ten  
14 (10) days of payment shall be subject to administrative penalties as  
15 allowed by law, including but not limited to, a fine in the amount  
16 of Five Hundred Dollars (\$500.00) or an amount equal to one percent  
17 (1%) of the unpaid amount, whichever is greater, to be paid to the  
18 Insurance Commissioner.

19           E. Any employer carrying its own risk, or group self-insurance  
20 association failing to make payments required herein promptly and  
21 correctly, and failing to report payment of the same to the  
22 Administrator within ten (10) days of payment shall be subject to  
23 administrative penalties as allowed by law, including but not

1 limited to a fine in the amount of Five Hundred Dollars (\$500.00) or  
2 an amount equal to one percent (1%) of the unpaid amount, whichever  
3 is greater, to be paid to the Administrator.

4 F. On or before the first day of April of each year, the State  
5 Treasurer shall advise the Court Administrator, the Board of  
6 Managers of CompSource Oklahoma and the ~~Oklahoma~~ Tax Commission of  
7 the amount of money held as of March 1 of that year by the State  
8 Treasurer to the credit of the Multiple Injury Trust Fund. On or  
9 before the first day of November of each year, the State Treasurer  
10 shall advise the Court Administrator, the Board of Managers of  
11 CompSource Oklahoma and the ~~Oklahoma~~ Tax Commission of the amount of  
12 money held as of October 1 of that year by the State Treasurer to  
13 the credit of the Multiple Injury Trust Fund.

14 G. Eighty percent (80%) of all sums held by the State Treasurer  
15 to the credit of the Multiple Injury Trust Fund may by order of the  
16 ~~Commissioner~~ President and Chief Executive Officer of CompSource  
17 Oklahoma, with the approval of the Board of Managers of CompSource  
18 Oklahoma, be invested in or loaned on the pledge of any of the  
19 securities in which a state bank may invest the monies deposited  
20 therein by the State Treasurer; or may be deposited in state or  
21 national banks or trust companies upon insured time deposit bearing  
22 interest at a rate no less than currently being paid upon insured  
23 savings accounts in said institutions. "Insured" as used in this

1 section shall mean insurance as provided by an agency of the federal  
2 government. All such securities or evidence of indebtedness shall  
3 be placed in the hands of the State Treasurer, who shall be the  
4 custodian thereof, who shall collect the principal and interest when  
5 due, and pay the same into the Multiple Injury Trust Fund. The  
6 State Treasurer shall pay by vouchers drawn on the Multiple Injury  
7 Trust Fund for the making of such investments, when signed by the  
8 ~~Commissioner~~ President and Chief Executive Officer of CompSource  
9 Oklahoma and approved by the Board of Managers of CompSource  
10 Oklahoma, upon delivery of such securities or evidence of  
11 indebtedness to the State Treasurer. The ~~Commissioner~~ President and  
12 Chief Executive Officer of CompSource Oklahoma may, upon like  
13 approval of the Board of Managers of CompSource Oklahoma, sell any  
14 of such securities, the proceeds thereof to be paid over to the  
15 State Treasurer for the Multiple Injury Trust Fund.

16 H. The refund provisions of Sections 227 through 229 of Title  
17 68 of the Oklahoma Statutes shall be applicable to any payments made  
18 to the Multiple Injury Trust Fund. Refunds shall be paid from and  
19 out of the Multiple Injury Trust Fund.

20 I. Beginning January 1, 2002, the ~~Oklahoma~~ Tax Commission shall  
21 pay, monthly, to the State Treasurer to the credit of the Multiple  
22 Injury Trust Fund all monies collected pursuant to the provisions of  
23 this section, less the annual sum of ~~One Million Seven Hundred~~

1 ~~Thousand Dollars (\$1,700,000.00)~~ Two Million Six Hundred Thousand  
2 Dollars (\$2,600,000.00), of which ~~Eight Hundred Fifty Thousand~~  
3 ~~Dollars (\$850,000.00)~~ One Million One Hundred Fifty Thousand Dollars  
4 (\$1,150,000.00) shall be payable by the ~~Oklahoma~~ Tax Commission to  
5 the State Treasurer in equal monthly installments to the credit of  
6 the Department of Labor, ~~Four Hundred Twenty-five Thousand Dollars~~  
7 ~~(\$425,000.00)~~ Seven Hundred Twenty-five Thousand Dollars  
8 (\$725,000.00) shall be payable in equal monthly installments to the  
9 credit of the Office of the Attorney General, and ~~Four Hundred~~  
10 ~~Twenty-five Thousand Dollars (\$425,000.00)~~ Seven Hundred Twenty-five  
11 Thousand Dollars (\$725,000.00) shall be payable in equal monthly  
12 installments to the credit of the Oklahoma Department of Career and  
13 Technology Education. Monies received by the Department of Labor  
14 under this section shall be used for safety consultation and the  
15 regulation of the safety of public employees through the  
16 Occupational Safety and Health Act of 1970. Monies received by the  
17 Office of the Attorney General shall be deposited to the credit of  
18 the Attorney General's Workers' Compensation Fraud Unit Revolving  
19 Fund created pursuant to Section 19.2 of Title 74 of the Oklahoma  
20 Statutes. Monies received by the Oklahoma Department of Career and  
21 Technology Education shall supplement other funding to the  
22 Department for purposes of implementing the provisions of subsection  
23 B of Section 414 of Title 40 of the Oklahoma Statutes. The State

1 Treasurer shall pay out of the Multiple Injury Trust Fund only upon  
2 the order and direction of the Court of this state acting under the  
3 provisions hereof.

4 J. The Administrator of the Workers' Compensation Court shall  
5 promulgate rules as the Administrator deems necessary to effectuate  
6 the provisions of this section and Section 174 of this title.

7 K. The Insurance Commissioner shall promulgate rules relating  
8 to insurers as defined in Title 36 of the Oklahoma Statutes, as the  
9 Insurance Commissioner deems necessary to effectuate the provisions  
10 of this section.

11 SECTION 19. AMENDATORY 85 O.S. 2001, Section 201.1, as  
12 last amended by Section 9, Chapter 229, O.S.L. 2003 (85 O.S. Supp.  
13 2004, Section 201.1), is amended to read as follows:

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

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

- 1           b.    the President Pro Tempore of the Senate shall appoint  
2                    three members, one of whom shall be licensed in this  
3                    state as a doctor of medicine and surgery, one of whom  
4                    shall be licensed in this state either as a doctor of  
5                    medicine or a doctor of osteopathy and shall be  
6                    engaged in the practice of occupational medicine, and  
7                    one of whom shall be licensed in this state as a  
8                    podiatric physician,
- 9           c.    the Speaker of the House of Representatives shall  
10                    appoint three members, one of whom shall be licensed  
11                    in this state as an osteopathic physician, one of whom  
12                    shall be licensed in this state either as a doctor of  
13                    medicine or a doctor of osteopathy, and one of whom  
14                    shall be licensed in this state as a chiropractic  
15                    physician.
- 16        2.    a.    To fill the positions for which the term of office  
17                    expires on January 1, 1996, the Governor shall appoint  
18                    a resident of the Fifth Congressional District, the  
19                    President Pro Tempore of the Senate shall appoint a  
20                    resident of the First Congressional District and the  
21                    Speaker of the House of Representatives shall appoint  
22                    a resident of the Second Congressional District.

- 1           b.    To fill the positions for which the term of office  
2                    expires on January 1, 1997, the Governor shall appoint  
3                    a resident of the Sixth Congressional District, the  
4                    President Pro Tempore of the Senate shall appoint a  
5                    resident of the Third Congressional District and the  
6                    Speaker of the House of Representatives shall appoint  
7                    a resident of the Fourth Congressional District.
- 8           c.    To fill the positions for which the term of office  
9                    expires on January 1, 1998, the Governor, the  
10                   President Pro Tempore of the Senate and the Speaker of  
11                   the House of Representatives shall appoint residents  
12                   of the state at large.
- 13          d.    Thereafter, appointments shall be made from the  
14                   Congressional District numbered the same as the  
15                   district from which the original appointment was made  
16                   pursuant to this paragraph, if a Congressional  
17                   District so numbered exists. When congressional  
18                   districts are redrawn, each member appointed prior to  
19                   July 1 of the year in which such modification becomes  
20                   effective shall complete the current term of office  
21                   and appointments made after July 1 of the year in  
22                   which such modification becomes effective shall be  
23                   based on the redrawn districts. Appointments that

1                   were to be made from a numbered Congressional District  
2                   which no longer exists shall be appointed from the  
3                   state at large.

4           B. The Committee shall:

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

17           2. Assist the Administrator of the Workers' Compensation Court  
18 in reviewing medical practices of health care providers, including  
19 evaluations of permanent impairment provided by health care  
20 providers, as provided for in Section 201 of this title. The  
21 Committee shall review and make findings and recommendations to the  
22 Administrator with respect to charges of abusive practices by health

1 care providers providing medical services or evaluations of  
2 permanent impairment through the workers' compensation system;

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

10 4. After public hearing, review and make recommendations for an  
11 alternative method or system to evaluate permanent impairment that  
12 shall be used in place of or in combination with the American  
13 Medical Association's "Guides to the Evaluation of Permanent  
14 Impairment". Appropriate and scientific data shall be considered.  
15 The alternative method or system to evaluate permanent impairment  
16 may be adopted, in part or in whole, by the Administrator to be used  
17 as provided for in paragraph 11 of Section 3 and Section 22 of this  
18 title. Revisions, deviations and alternatives to the American  
19 Medical Association's "Guides to the Evaluation of Permanent  
20 Impairment" shall become effective as provided in paragraph 11 of  
21 Section 3 and Section 22 of this title;

22 5. After public hearing, review and make recommendations for  
23 treatment guidelines and protocols for treatment of injuries,

1 including but not limited to injuries to the back, knee, neck and  
2 shoulder and utilization controls for all treatment, including but  
3 not limited to x-ray and imaging technology for diagnostic purposes,  
4 ~~for adoption, in part or in whole,~~ by the Administrator. Treatment  
5 guidelines and protocols ~~and utilization controls may be adopted~~  
6 ~~incrementally in the descending order of utilization frequency shall~~  
7 be based upon nationally accepted practice standards and shall  
8 indicate when surgery is indicated and the appropriate surgical  
9 procedure for the condition. Compliance with treatment guidelines  
10 shall be mandatory and an employer or insurer for an employer shall  
11 not be required to pay for treatment which is not in compliance with  
12 the guidelines, unless prior authorization is received;

13 6. After public hearing, adopt guidelines for the prescription  
14 and dispensing of any controlled substance included in Schedule II  
15 of the Uniform Controlled Dangerous Substances Act;

16 7. Provide general recommendations to the judges of the  
17 Workers' Compensation Court on the issues of injury causation and  
18 apportionment;

19 ~~7.~~ 8. Conduct educational seminars for the judges of the  
20 Workers' Compensation Court, employers, employees, and other  
21 interested parties;

22 ~~8.~~ 9. Assist the judges of the Workers' Compensation Court in  
23 accessing medical information from scientific literature; and

1       ~~9.~~ 10. Report its progress annually to the Governor, the  
2 President Pro Tempore of the Senate, and the Speaker of the House of  
3 Representatives.

4       C. The term of office for initial appointees shall expire March  
5 1, 1994. Thereafter, successors in office shall serve as follows:

6       1. The term of office for three positions, one each appointed  
7 by the Governor, the President Pro Tempore of the Senate and the  
8 Speaker of the House of Representatives, shall expire on January 1,  
9 1996;

10       2. The term of office for three positions, one each appointed  
11 by the Governor, the President Pro Tempore of the Senate and the  
12 Speaker of the House of Representatives, shall expire on January 1,  
13 1997;

14       3. The term of office for three positions, one each appointed  
15 by the Governor, the President Pro Tempore of the Senate and the  
16 Speaker of the House of Representatives, shall expire on January 1,  
17 1998;

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

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

1 D. Members of the Physician Advisory Committee shall receive no  
2 compensation for serving on the Committee but shall be reimbursed by  
3 the Workers' Compensation Court for their necessary travel expenses  
4 incurred in the performance of their duties in accordance with the  
5 State Travel Reimbursement Act.

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

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

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

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

1 investigation, or preparation of the report or other information so  
2 provided.

3 SECTION 20. NEW LAW A new section of law to be codified  
4 in the Oklahoma Statutes as Section 902.4 of Title 36, unless there  
5 is created a duplication in numbering, reads as follows:

6 Rates for workers' compensation insurance may be used before  
7 being filed with the State Board for Property and Casualty Rates;  
8 provided, a rate shall be filed with the Board within thirty (30)  
9 days of initial use. The rate shall stay in effect unless the Board  
10 reviews and disapproves the filing.

11 SECTION 21. NEW LAW A new section of law to be codified  
12 in the Oklahoma Statutes as Section 2357.46 of Title 68, unless  
13 there is created a duplication in numbering, reads as follows:

14 A. 1. For tax years beginning after December 31, 2005, there  
15 shall be allowed against the tax imposed by Section 2355 of this  
16 title, a credit for eligible wages paid by an employer to an  
17 employee. The amount of the credit shall be ten percent (10%) of  
18 the amount of the gross wages paid to the employee for a period not  
19 to exceed ninety (90) days but in no event shall the credit exceed  
20 Five Thousand Dollars (\$5,000.00) for each employee of each  
21 taxpayer. In no event shall the total credit claimed exceed Twenty-  
22 five Thousand Dollars (\$25,000.00) any one year for any taxpayer.

1           2. For tax years beginning after December 31, 2005, there shall  
2 be allowed against the tax imposed by Section 2355 of this title, a  
3 credit for eligible modification expenses of an employer. The  
4 amount of the credit shall be fifty percent (50%) the amount of the  
5 funds expended for eligible modification expenses or new tools or  
6 equipment but in no event shall the credit exceed One Thousand  
7 Dollars (\$1,000.00) for eligible modification expenses incurred for  
8 any single employee. In no event shall the total credit claimed  
9 exceed Ten Thousand Dollars (\$10,000.00) in any year for any  
10 taxpayer.

11           3. As used in this section:

- 12           a. "employee", "employer", "maximum medical improvement",  
13 "treating physician", and "wages" shall be defined as  
14 in Section 3 of Title 85 of the Oklahoma Statutes,  
15           b. "eligible wages" means gross wages paid by an employer  
16 to an employee who is injured as a result of an injury  
17 which is compensable under the Workers' Compensation  
18 Act and which are paid beginning when the employee  
19 returns to work with restricted duties as provided by  
20 the employee's treating physician before the employee  
21 has reached maximum medical improvement, and ending  
22 after ninety (90) days or when the employee has  
23 reached maximum medical improvement, and

1           c.    "eligible modification expenses" means expenses  
2                    incurred by an employer to modify a workplace, tools  
3                    or equipment or to obtain new tools or equipment and  
4                    which are incurred by an employer solely to enable a  
5                    specific injured employee who is injured as a result  
6                    of an injury which is compensable under the Workers'  
7                    Compensation Act to return to work with restricted  
8                    duties as provided by the employee's treating  
9                    physician before the employee has reached maximum  
10                  medical improvement, and which workplace, tools or  
11                  equipment are used primarily by the injured employee.

12           B.    In no event shall the amount of the credit(s) exceed the  
13                  amount of any tax liability of the taxpayer.

14           C.    The Oklahoma Tax Commission shall have the authority to  
15                  promulgate rules necessary to effectuate the purposes of this  
16                  section.

17           SECTION 22.        REPEALER        36 O.S. 2001, Section 902.1, as  
18                  last amended by Section 5, Chapter 519, O.S.L. 2004 (36 O.S. Supp.  
19                  2004, Section 902.1), is hereby repealed.

20           SECTION 23.        REPEALER        40 O.S. 2001, Sections 415.1 and  
21                  415.2, are hereby repealed.

22           SECTION 24.    This act shall become effective November 1, 2005.

23    COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 2-22-05 - DO  
24    PASS, As Amended and Coauthored.