

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2652 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Daniel Sullivan _____

Reading Clerk

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 2652

By: Sullivan

7
8 PROPOSED COMMITTEE SUBSTITUTE

9
10 An Act relating to workers' compensation; amending 85
11 O.S. 2001, Section 3, as last amended by Section 9,
12 Chapter 1, 1st Extraordinary Session, O.S.L. 2005 (85
13 O.S. Supp. 2009, Section 3), which relates to
14 definitions; modifying definitions; amending 85 O.S.
15 2001, Section 3.1, which relates to death benefit
16 definitions; modifying definitions; providing for
17 compensation of certain alien nonresident dependents;
18 limiting certain benefits to nonresident dependents;
19 amending 85 O.S. 2001, Section 3.4, which relates to
20 procedure for commencing workers' compensation
21 claims; requiring certain employees to report
22 injuries to employer in writing within a certain
23 period; providing that failure to report injuries
24 shall relieve employer of duty to provide benefits to
employee; requiring employers to develop certain
reporting procedures; providing that certain signed
statements shall bar employee from compensation;
prohibiting employee remedies in certain
circumstances; authorizing Workers' Compensation
Court to promulgate certain rules for preliminary
conferences; requiring claimants be advised of
rights; authorizing Court to facilitate settlement of
claims; providing for payment of certain fees;
providing for the application of certain rules of
evidence; specifying burden of proof; specifying the
use of certain reports and depositions by Court;
amending 85 O.S. 2001, Section 3.6, which relates to
appellate procedures for workers' compensation
claims; restricting Supreme Court authority to

1 reverse certain decisions to specific issues or
2 grounds; authorizing Supreme Court to require a bond
3 in certain cases; amending 85 O.S. 2001, Section 3.7,
4 which relates to powers and duties of the Workers'
5 Compensation Administrator; modifying authority of
6 the Administrator; amending 85 O.S. 2001, Section 11,
7 as amended by Section 77, Chapter 264, O.S.L. 2006
8 (85 O.S. Supp. 2009, Section 11), which relates to
9 employer payment of certain compensation; modifying
10 compensation requirement; amending 85 O.S. 2001,
11 Section 12, as amended by Section 14, Chapter 1, 1st
12 Extraordinary Session, O.S.L. 2005 (85 O.S. Supp.
13 2009, Section 12), which relates to employer
14 liability; specifying applicability to certain
15 employers; modifying scope of immunity; providing
16 penalty for failure to secure compensation;
17 authorizing Court to serve certain orders for certain
18 violations; providing employers opportunity to
19 contest certain Court orders; allowing for hearings
20 to contest certain orders; specifying burden of
21 employer to overturn certain orders; providing for
22 hearings in certain disputes between employers and
23 insurers; requiring Court to notify insurer of
24 certain hearings; requiring insurer to respond to
certain notice of hearing within a certain period;
authorizing Court to assess certain fines for certain
violations; providing Court authority to petition
district court in certain circumstances; authorizing
Court to seek certain injunction; requiring employers
to post certain notices; specifying notice
requirements; specifying that employers shall not be
liable for certain injuries; amending 85 O.S. 2001,
Section 14, as last amended by Section 15, Chapter 1,
1st Extraordinary Session, O.S.L. 2005 (85 O.S. Supp.
2009, Section 14), which relates to the provision of
medical services after an injury; providing for the
limitation of certain medical treatments; providing
for the ongoing service and replacement of certain
medical devices; amending 85 O.S. 2001, Section 14.3,
as amended by Section 17, Chapter 1, 1st
Extraordinary Session, O.S.L. 2005 (85 O.S. Supp.
2009, Section 14.3), which relates to certified
workplace medical plans; extending period an insured
may contract with an independent insurer in certain
circumstances; requiring employees to obtain written
confirmation that dispute resolution has been
exhausted; specifying that certain medical

1 evaluations shall not be admissible if certain
2 conditions have not been met; requiring all state
3 agencies to adopt and implement certain certified
4 workplace plan; amending 85 O.S. 2001, Section 15,
5 which relates to employer requirement of providing
6 prosthetic devices in certain circumstances;
7 clarifying language; amending 85 O.S. 2001, Section
8 16, as amended by Section 18, Chapter 1, 1st
9 Extraordinary Session, O.S.L. 2005 (85 O.S. Supp.
10 2009, Section 16), which relates to vocational
11 rehabilitation and job placement services; requiring
12 Court to hire a Vocational Rehabilitation Director;
13 establishing qualifications of Vocational
14 Rehabilitation Director; specifying duties of
15 Vocational Rehabilitation Director; authorizing the
16 request of vocational rehabilitation services by
17 parties to a compensation claim under certain
18 circumstances; authorizing Vocational Rehabilitation
19 Director to issue certain administrative orders;
20 providing that such administrative orders are
21 appealable to Court; authorizing Director to assign
22 certain vocational rehabilitation counselors in
23 certain circumstances; providing certain services to
24 be paid by employer; authorizing concurrent medical
treatment and vocational rehabilitation services;
extending duration of vocational rehabilitation
services or training; specifying that vocational
rehabilitation services shall be payable only to
rehabilitating provider; extending time frame for
certain vocational rehabilitation services;
prohibiting the inclusion of certain payments for
vocational rehabilitation services in calculation of
legal fees; extending time frame for receipt of
certain benefits; amending 85 O.S. 2001, Section 22,
as last amended by Section 1, Chapter 172, O.S.L.
2009 (85 O.S. Supp. 2009, Section 22), which relates
to compensation schedules for specific injuries;
providing that the loss of certain body parts shall
constitute total disability; prohibiting the receipt
of both permanent total disability and any other
benefit simultaneously; authorizing annual
certification of continuing disability; providing
authority to Court to refer certain cases to fraud
unit; modifying eligibility for extension of benefits
for certain soft tissue injuries; establishing
partial disability rates for injuries incurred on or
after certain date; specifying that the odd-lot

1 doctrine shall not apply in permanent disability
2 cases; providing for the receipt of certain benefits
3 for injuries incurred prior to certain date;
4 providing the maximum amount of compensation to be
5 paid for certain disabilities; amending 85 O.S. 2001,
6 Section 24.2, which relates to notice requirements
7 for certain injuries; modifying notice requirements;
8 amending 85 O.S. 2001, Section 26, as amended by
9 Section 22, Chapter 1, 1st Extraordinary Session,
10 O.S.L. 2005 (85 O.S. Supp. 2009, Section 26), which
11 relates to specific notice requirements; removing
12 requirement that Administrator or certain judges
13 approve certain settlements; removing requirement
14 that Court promulgate certain rules with respect to
15 compromise settlements; removing authority of Court
16 to make certain rulings with respect to payment of
17 certain compromise settlements; removing authority of
18 Court to make certain final decisions; authorizing
19 Court to review any compensation order, decision or
20 award; providing for the review by the Court of
21 certain terminated benefits for certain reasons;
22 authorizing Court to make certain determinations upon
23 review of certain compensation orders; authorizing
24 Court to correct certain clerical errors; amending 85
O.S. 2001, Section 30, as amended by Section 23,
Chapter 1, 1st Extraordinary Session, O.S.L. 2005 (85
O.S. Supp. 2009, Section 30), which relates to
certain costs and penalties; modifying certain
settlement offer requirements; extending certain
settlement deadlines; limiting amount claimant's
attorney may be compensated in certain settlement
agreements; removing authority of Court to award
certain attorney fees; prohibiting claimant attorney
from deducting or withholding certain portions of
settlement proceeds from claimant for certain uses;
amending 85 O.S. 2001, Section 41, which relates to
the payment of certain permanent partial or permanent
total awards; removing authority for certain injured
persons to receive lump-sum awards; amending 85 O.S.
2001, Section 41.1, which relates to deductions and
credits for certain awards; authorizing employers or
insurers to deduct certain payments made from certain
permanent disability awards; removing authority of
certain self-insured employers to receive credit for
certain overpayments; amending 85 O.S. 2001, Section
42, which relates to the nonpayment or failure to pay
awards under certain circumstances; modifying

1 applicable interest rate; amending 85 O.S. 2001,
2 Section 43, as amended by Section 24, Chapter 1, 1st
3 Extraordinary Session, O.S.L. 2005 (85 O.S. Supp.
4 2009, Section 43), which relates to time limitations
5 of injury or death claims; reducing amount of time a
6 claimant may claim certain compensation after injury;
7 restricting the filing of certain claims after last
8 medical treatment; reducing amount of time a claimant
9 may seek compensation for certain repeated trauma
10 injuries; reducing amount of time a claimant may make
11 certain claims after termination of employment;
12 reducing amount of time a claimant may pursue a
13 hearing on certain claims; reducing amount of time
14 claims may be heard after termination of payments;
15 authorizing Court to reopen certain claims; amending
16 85 O.S. 2001, Section 44, as amended by Section 25,
17 Chapter 1, 1st Extraordinary Session, O.S.L. 2005 (85
18 O.S. Supp. 2009, Section 44), which relates to
19 certain claims against third parties; removing
20 prohibition against employer or insurer pursuing the
21 right of subrogation in certain circumstances;
22 eliminating cause of action against third parties in
23 certain circumstances; amending 85 O.S. 2001, Section
24 45, which relates to the determination of certain
benefits; providing that the unemployment laws of any
other state shall not result in duplicative payment
of certain benefits; amending 85 O.S. 2001, Section
47.1, which relates to waiver of compensation by
employees in certain circumstances; updating agency
designation; amending 85 O.S. 2001, Section 64, as
last amended by Section 79, Chapter 264, O.S.L. 2006
(85 O.S. Supp. 2009, Section 64), which relates to
insurance policy requirements; requiring that
insurers have complete settlement authority to attend
certain dispute resolution proceedings; specifying
that certain violations shall be subject to certain
penalties in dispute resolution proceedings; amending
85 O.S. 2001, Section 110, as amended by Section 1,
Chapter 338, O.S.L. 2002 (85 O.S. Supp. 2009, Section
110), which relates to inquiry into an employee's
prior claims; providing that an employee's failure to
answer truthfully certain inquiries into past
injuries shall subject the employee to discharge;
amending 85 O.S. 2001, Section 112, which relates to
the Advisory Council on Workers' Compensation;
modifying membership and requirements for
appointments; providing for selection of a chair;

1 prohibiting certain professionals from serving on the
2 Advisory Council; modifying quorum requirement of the
3 Advisory Council; amending 85 O.S. 2001, Section
4 201.1, as last amended by Section 31, Chapter 1, 1st
5 Extraordinary Session, O.S.L. 2005 (85 O.S. Supp.
6 2009, Section 201.1), which relates to the creation
7 of a Physician Advisory Committee; modifying duties;
8 defining terms; repealing 85 O.S. 2001, Section 21,
9 which relates to certain wage computations; repealing
10 85 O.S. 2001, Section 28, which relates to authority
11 of court to modify awards; repealing 85 O.S. 2001,
12 Section 122, which relates to right of employees to
13 recover certain damages; repealing 85 O.S. 2001,
14 Section 201.2, which relates to the development of
15 certain Physician Advisory Committee recommendations;
16 providing for codification; and providing an
17 effective date.

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

19 SECTION 1. AMENDATORY 85 O.S. 2001, Section 3, as last
20 amended by Section 9, Chapter 1, 1st Extraordinary Session, O.S.L.
21 2005 (85 O.S. Supp. 2009, Section 3), is amended to read as follows:

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

- 23 1. "Administrator" means the Administrator of workers'
24 compensation as provided for in the Workers' Compensation Act;
2. "Amount in dispute" means the dollar value of any permanent
disability award granted to the employee by the Court for a
disability claim which is greater than the dollar amount offered by
the employer to the employee for such disability claim if the
employer admits compensability within twenty (20) days of the filing
of the Employee's First Notice of Accidental Injury and Claim for

1 Compensation, has not disputed medical treatment, and has made a
2 written settlement offer within ~~fifteen (15)~~ thirty (30) days of the
3 employee reaching maximum medical improvement;

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

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

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

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

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

18 4. "Case manager" means a person who:

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

22 b. possesses one or more of the following certifications
23 which indicate the individual has a minimum number of
24 years of case management experience, has passed a

1 national competency test and regularly obtains
2 continuing education hours to maintain certification:

- 3 (1) Certified Disability Management Specialist
4 (CDMS),
- 5 (2) Certified Case Manager (CCM),
- 6 (3) Certified Rehabilitation Registered Nurse (CRRN),
- 7 (4) Case Manager - Certified (CMC),
- 8 (5) Certified Occupational Health Nurse (COHN), or
- 9 (6) Certified Occupational Health Nurse Specialist
10 (COHN-S);

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

13 6. a. "Compensable injury":

- 14 (1) means any injury or occupational illness, causing
15 internal or external harm to the body, which
16 arises out of and in the course of employment if
17 such employment was the major cause of the
18 specific injury or illness. An injury, other
19 than cumulative trauma, is compensable only if it
20 is caused by a specific incident and is
21 identifiable by time, place and occurrence unless
22 it is otherwise defined as compensable in this
23 title. A compensable injury must be established
24 by objective medical evidence, as defined in this

1 section. An injury by accident is compensable
2 only if the accident was the prevailing factor in
3 causing both the resulting medical condition and
4 disability. "The prevailing factor" is defined
5 to be the primary factor, in relation to any
6 other factor, causing both the resulting medical
7 condition and disability supported by objective
8 medical finding,

9 (2) includes heart-related or vascular injury,
10 illness or death only if an accident or the
11 claimant's employment is the major cause of the
12 heart-related or vascular injury. A heart-
13 related or vascular injury, illness, or death is
14 a compensable injury only if, in relation to
15 other factors contributing to the physical harm,
16 an accident is the major cause of the physical
17 harm.

18 An injury, illness or death included in this
19 subparagraph shall not be deemed to be a
20 compensable injury unless it is shown that the
21 exertion of the work necessary to precipitate
22 disability or death was extraordinary and unusual
23 in comparison to the usual work of the employee
24 in the course of the regular employment of the

1 employee, or alternatively, that some unusual and
2 unpredicted incident occurred which is found to
3 have been the major cause of the physical harm.

4 Stress, physical or mental, shall not be
5 considered in determining whether the employee or
6 claimant has met the burden of proof.

7 The injury must be established by objective
8 medical evidence, as defined in this section.

9 The employee has the burden of proof to establish
10 by a preponderance of the evidence that such
11 unexpected or unforeseen injury was in fact
12 caused by the employment. There is no
13 presumption from the mere occurrence of such
14 unexpected or unforeseen injury that the injury
15 was in fact caused by the employment,

16 (3) includes personal property which is used to make
17 up the physical structure of the body, such as
18 artificial dentures, artificial limbs, glass
19 eyes, eye glasses and other prostheses which are
20 placed in or on the body to replace the physical
21 structure which became damaged as a result of the
22 injury,

- 1 (4) includes injury due to the willful act of a third
2 person directed against an employee because of
3 the employee's employment, and
4 (5) includes an injury or disease resulting from a
5 vaccine administered at the direction of the
6 employer or in response to a declaration by the
7 Secretary of the United States Department of
8 Health and Human Services under the Public Health
9 Services Act to address an actual or potential
10 health risk related to the employee's employment.

11 b. "Compensable injury" shall not include:

- 12 (1) mental injury that is unaccompanied by physical
13 injury, except in the case of rape, holdups,
14 witnessing killings, or violent death which
15 arises out of and in the course of employment,
16 (2) alcoholism and disabilities attributable thereto,
17 (3) drug addiction or disabilities resulting
18 therefrom, except when such addiction or
19 disability resulted from the use of drugs or
20 medicines prescribed for the treatment of the
21 initial injury by an authorized physician and the
22 employee followed the dosage prescribed,
23 (4) an employee's use of a motor vehicle that was
24 provided to the employee by a motor vehicle

1 dealer and bears a dealer's license plate for
2 commuting to or from work or any other nonwork
3 activity,

4 (5) injury or disability caused primarily by the
5 natural deterioration of tissue, an organ or part
6 of the body, nor by the ordinary, gradual
7 deterioration or progressive degeneration caused
8 by the aging process, unless the employment is a
9 major cause of the deterioration or degeneration
10 and is supported by objective medical evidence,

11 (6) an injury incurred by an employee by the
12 employee's willful intention to injure oneself or
13 another,

14 (7) an injury or disease caused by exposure to a
15 toxic substance, including, but not limited to,
16 asbestos, silica, fungus or mold, unless there is
17 a preponderance of the evidence establishing that
18 exposure to the specific substance involved, at
19 the levels to which the employee was exposed, can
20 cause the injury or disease sustained by the
21 employee,

22 (8) a claim for mental stress resulting solely from
23 disciplinary action taken in good faith by the
24 employer,

1 (9) an injury resulting directly or indirectly from
2 idiopathic causes,

3 (10) any contagious or infectious disease unless it
4 arises out of and occurs during the course of
5 employment,

6 (11) death due to natural causes occurring while the
7 worker is at work,

8 (12) injury which was inflicted upon the employee at a
9 time when employment services were not being
10 performed or before the employee was hired or
11 after the employment relationship was terminated,
12 or

13 (13) injury where the accident was substantially
14 occasioned by the use of alcohol, illegal drugs,
15 or prescription drugs used in contravention of
16 the orders of a physician.

17 (a) The presence of alcohol, illegal drugs, or
18 prescription drugs used in contravention of
19 orders of a physician shall create a
20 rebuttable presumption that the injury or
21 accident was substantially occasioned by the
22 use of alcohol, illegal drugs, or
23 prescription drugs used in contravention of
24 orders of a physician.

1 (b) Every employee is deemed by his or her
2 performance of services to have impliedly
3 consented to reasonable and responsible
4 testing by properly trained medical or law
5 enforcement personnel for the presence of
6 any of the aforementioned substances in the
7 body of the employee.

8 (c) An employee shall not be entitled to
9 compensation unless it is proved by a
10 preponderance of the evidence that the
11 alcohol, illegal drugs, or prescription
12 utilized in contravention of the orders of
13 the physician did not substantially occasion
14 the injury or accident.

15 (d) Notwithstanding Section 554 of Title 40 of
16 the Oklahoma Statutes, a public or private
17 employer may require an employee to undergo
18 drug or alcohol testing if the employee or
19 another person has sustained a work-related
20 injury. For purposes of workers'
21 compensation, an employee who tests positive
22 for the presence of substances defined and
23 consumed pursuant to Section 465.20 of Title
24 63 of the Oklahoma Statutes, alcohol, or

1 prescription drugs not prescribed by the
2 employee's treating medical provider shall
3 not be eligible for such compensation unless
4 the employee proves by a preponderance of
5 the evidence that the substances or alcohol
6 were not the proximate cause of the injury
7 or accident.

8 c. A compensable injury must be established by medical
9 evidence supported by objective findings as defined in
10 the Workers' Compensation Act.

11 d. The burden of proof of a compensable injury shall be
12 on the employee.

13 e. When an employee is determined to have a compensable
14 injury, the employee is entitled to medical and
15 temporary disability as provided by this section.

16 (1) Permanent benefits shall be awarded only upon a
17 determination that the compensable injury was the
18 major cause of the disability or impairment.

19 (2) If any compensable injury combines with a
20 preexisting disease or condition or the natural
21 process of aging to cause or prolong disability
22 or a need for treatment, permanent benefits shall
23 be payable for the resultant condition only if
24

1 the compensable injury is the major cause of the
2 permanent disability or need for treatment.

3 (3) Under this subparagraph, benefits shall not be
4 payable for a condition which results from a non-
5 work-related independent intervening cause
6 following a compensable injury which causes or
7 prolongs disability or a need for treatment. A
8 non-work-related independent intervening cause
9 does not require negligence or recklessness on
10 the part of a claimant.

11 (4) Nothing in this subparagraph shall limit the
12 payment of rehabilitation benefits or benefits
13 for disfigurement as set forth in this section.

14 f. Aging and the effects of aging on a compensable injury
15 are not to be considered in determining whether there
16 has been a change in physical condition. Nor shall
17 aging or the effect of aging on a compensable injury
18 be considered in determining permanent disability
19 pursuant to this section or any other section in the
20 Workers' Compensation Act. The purpose and intent of
21 this section is to annul any and all case law
22 inconsistent with this section;

23 7. "Court" means the Workers' Compensation Court;
24

1 8. "Compensation" means the benefit payable to the employee or
2 the dependents of the employee in the form of:

3 a. temporary total or temporary partial disability
4 payments,

5 b. permanent partial or permanent total disability
6 payments, settlements or awards, and

7 c. other compensation which may include medical care,
8 prescription costs, other fees or costs associated
9 with physical or vocational rehabilitation and funeral
10 expenses.

11 Compensation shall be computed on the average weekly wage earned by
12 the employee in force at the time of the accident. Where the
13 injured employee was working other than full time, the average
14 weekly wage shall be determined by dividing the earnings of the
15 employee by the number of hours required to earn the wages during
16 the period not to exceed fifty-two (52) weeks preceding the week in
17 which the accident occurred and by multiplying this hourly wage by
18 the number of hours in a full-time work week as set out in this
19 title, as it applies to the claimant;

20 ~~7.~~ 9. "Cumulative trauma" means a compensable injury, the major
21 cause of which results from employment activities which are
22 repetitive in nature and engaged in over a period of time and which
23 is supported by objective medical evidence as defined in this
24 section;

1 ~~8-~~ 10. "Death" means only death resulting from a compensable
2 injury as defined in this title;

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

15 ~~9-~~ 12. "Employee" means any person engaged in the employment of
16 any person, firm, limited liability company or corporation covered
17 by the terms of the Workers' Compensation Act, and shall include
18 workers associating themselves together under an agreement for the
19 performance of a particular piece of work, in which event such
20 persons so associating themselves together shall be deemed employees
21 of the person having the work executed; provided, that if such
22 associated workers shall employ a worker in the execution of such
23 contract, then as to such employed worker, both the associated
24 employees and the principal employer shall at once become subject to

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

1 the limited liability company members or any or all stockholder-
2 employees as employees, if otherwise qualified, by endorsement to
3 the policy specifically including them under any policy of insurance
4 covering benefits under the Workers' Compensation Act. When so
5 included, the sole proprietors, members of a partnership, members of
6 a limited liability company or any or all stockholder-employees
7 shall be deemed to be employees as respects the benefits of the
8 Workers' Compensation Act. "Employee" shall also include any person
9 who is employed by the departments, instrumentalities and
10 institutions of this state and divisions thereof, counties and
11 divisions thereof, public trusts, boards of education and
12 incorporated cities or towns and divisions thereof. "Employee"
13 shall also include a member of the Oklahoma National Guard while in
14 the performance of duties only while in response to state orders and
15 any authorized voluntary or uncompensated worker, rendering services
16 as a firefighter, peace officer or emergency management worker.
17 Provided, "employee" shall not include any other person providing or
18 performing voluntary service who receives no wages for the services
19 other than meals, drug or alcohol rehabilitative therapy,
20 transportation, lodging or reimbursement for incidental expenses.
21 "Employee" shall also include a participant in a sheltered workshop
22 program which is certified by the United States Department of Labor.
23 "Employee" shall not include a person, commonly referred to as an
24 owner-operator, who owns or leases a truck-tractor or truck for

1 hire, if the owner-operator actually operates the truck-tractor or
2 truck and if the person contracting with the owner-operator is not
3 the lessor of the truck-tractor or truck. Provided, however, an
4 owner-operator shall not be precluded from workers' compensation
5 coverage under the Workers' Compensation Act if the owner-operator
6 elects to participate as a sole proprietor. "Employee" shall not
7 include a person referred to as a drive-away owner-operator who
8 privately owns and utilizes a tow vehicle in drive-away operations
9 and operates independently for hire, if the drive-away owner-
10 operator actually utilizes the tow vehicle and if the person
11 contracting with the drive-away owner-operator is not the lessor of
12 the tow vehicle. Provided, however, a drive-away owner-operator
13 shall not be precluded from workers' compensation coverage under the
14 Workers' Compensation Act if the drive-away owner-operator elects to
15 participate as a sole proprietor;

16 ~~10.~~ 13. "Drive-away operations" include every person engaged in
17 the business of transporting and delivering new or used vehicles by
18 driving, either singly or by tow bar, saddle mount or full mount
19 method, or any combination thereof, with or without towing a
20 privately owned vehicle;

21 ~~11.~~ 14. "Employment" includes work or labor in a trade,
22 business, occupation or activity carried on by an employer or any
23 authorized voluntary or uncompensated worker rendering services as a
24 firefighter, peace officer or emergency management worker;

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

3 ~~13. a. "Compensable injury" means any injury or occupational~~
4 ~~illness, causing internal or external harm to the~~
5 ~~body, which arises out of and in the course of~~
6 ~~employment if such employment was the major cause of~~
7 ~~the specific injury or illness. An injury, other than~~
8 ~~cumulative trauma, is compensable only if it is caused~~
9 ~~by a specific incident and is identifiable by time,~~
10 ~~place and occurrence unless it is otherwise defined as~~
11 ~~compensable in this title. A compensable injury must~~
12 ~~be established by objective medical evidence, as~~
13 ~~defined in this section.~~

14 ~~b. "Compensable injury" includes heart related or~~
15 ~~vascular injury, illness or death only if an accident~~
16 ~~or the claimant's employment is the major cause of the~~
17 ~~heart-related or vascular injury. Such injury shall~~
18 ~~be compensable only if it is demonstrated that the~~
19 ~~exertion necessary to produce the harm was~~
20 ~~extraordinary and unusual in comparison to other~~
21 ~~occupations and that the occupation was the major~~
22 ~~cause of the harm. The injury must be established by~~
23 ~~objective medical evidence, as defined in this~~
24 ~~section.~~

1 e. ~~"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 d. ~~"Compensable injury" shall not include the ordinary,~~
6 ~~gradual deterioration or progressive degeneration~~
7 ~~caused by the aging process, unless the employment is~~
8 ~~a major cause of the deterioration or degeneration and~~
9 ~~is supported by objective medical evidence, as defined~~
10 ~~in this section; nor shall it include injury incurred~~
11 ~~while engaging in, performing or as the result of~~
12 ~~engaging in or performing any recreational or social~~
13 ~~activities;~~

14 ~~14.~~ 15. "Healing period" means that period for healing of an
15 injury resulting from an accident;

16 16. "Insurance Commissioner" means the Insurance Commissioner
17 of the state;

18 17. a. "Major cause" means the predominant cause of the
19 resulting injury or illness is more than fifty-one
20 percent (51%) of the cause.

21 b. A finding of major cause shall be established
22 according to the preponderance of the objective
23 medical evidence only.

1 c. A determination that a work-related injury or illness
2 is noncompensable for any reason, including a finding
3 that the workplace was not a major cause of the injury
4 or illness, shall not adversely affect the exclusive
5 remedy provisions of this title, and shall not create
6 a separate cause of action outside of this title;

7 18. "Objective findings" are those findings which cannot come
8 under the voluntary control of the patient.

9 a. When determining physical or anatomical impairment,
10 neither a physician, any other medical provider,
11 administrative law judge nor the courts may consider
12 complaints of pain.

13 b. For the purpose of making physical or anatomical
14 impairment ratings to the spine, straight-leg-raising
15 tests or range-of-motion tests shall not be considered
16 objective finding.

17 c. Objective evidence necessary to prove physical or
18 anatomical impairment in occupational hearing-loss
19 cases may be established by medically recognized and
20 accepted clinical diagnostic methodologies, including,
21 but not limited to, audiological tests that measure
22 air and bone conduction thresholds and speech
23 discrimination ability.

1 d. Any difference in the baseline hearing levels must be
2 confirmed with a subsequent test within four (4) weeks
3 following the initial test or tests performed pursuant
4 to subparagraph c of this paragraph but not before
5 five (5) days and being adjusted for presbycusis.

6 e. Objective findings in support of medical evidence are
7 verifiable indications of injury or disease that may
8 include, but are not limited to, range of motion,
9 atrophy, muscle strength and palpable muscle spasm.
10 "Objective findings" does not include physical
11 findings or subjective responses to physical
12 examinations that are not reproducible, measurable or
13 observable.

14 f. Medical opinions addressing compensability and
15 permanent impairment must be stated within a
16 reasonable degree of medical certainty. Any medical
17 opinion addressing the issue of compensability must be
18 based on the treatment guidelines adopted under this
19 title, and any medical opinion addressing permanent
20 impairment must be based on the Court's most recently
21 adopted version of the American Medical Association's
22 "Guides to the Evaluation of Permanent Impairment",
23 excluding pain;

1 19. "Wages" means the money rate at which the service rendered
2 is recompensed ~~under the contract of hiring~~ in force at the time of
3 the injury, including the reasonable value of board, rent, housing,
4 lodging, or similar advantage received from the employer;

5 ~~15.~~ 20. "Insurance carrier" shall include CompSource Oklahoma,
6 stock corporations, reciprocal or interinsurance associations, or
7 mutual associations with which employers have insured, and employers
8 permitted to pay compensation, directly under the provisions of
9 paragraph 4 of subsection A of Section 61 of this title. Whenever
10 required by the context, the term "insurance carrier" shall be
11 deemed to include duly qualified self-insureds or self-insured
12 groups;

13 ~~16.~~ "Major cause" means the predominate cause of the resulting
14 injury or illness;

15 ~~17.~~ "Objective medical evidence" means evidence which meets the
16 criteria of Federal Rule of Evidence 702 and all U.S. Supreme Court
17 case law applicable thereto;

18 ~~18.~~ 21. "Occupational disease" means only that disease or
19 illness which is due to causes and conditions characteristic of or
20 peculiar to the particular trade, occupation, process or employment
21 in which the employee is exposed to such disease. An occupational
22 disease arises out of the employment only if the employment was the
23 major cause of the resulting occupational disease and such is
24 supported by objective medical evidence, as defined in this section.

1 No compensation shall be payable for any ordinary disease of life to
2 which the general public is exposed;

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

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

1 ~~joint or concurrent resolution of the Legislature during the~~
2 ~~legislative session in which submitted. Revisions shall be~~
3 ~~operative one hundred twenty (120) days after the last day of the~~
4 ~~month in which the Administrator submits the revisions to the~~
5 ~~Governor and the Legislature if the Legislature takes no action or~~
6 ~~one hundred twenty (120) days after the last day of the month in~~
7 ~~which the Legislature disapproves them in part. The examining~~
8 ~~physician shall not follow the guides based on race or ethnic~~
9 ~~origin. The examining physician shall not deviate from said guides~~
10 ~~or any alternative thereto except as may be specifically provided~~
11 ~~for in the guides or modifications to the guides or except as may be~~
12 ~~specifically provided for in any alternative or modifications~~
13 ~~thereto, adopted by the Administrator of the Workers' Compensation~~
14 ~~Court as provided for in Section 201.1 of this title. These~~
15 ~~officially adopted guides or modifications thereto or alternative~~
16 ~~system or method of evaluating permanent impairment or modifications~~
17 ~~thereto shall be the exclusive basis for testimony and rating~~
18 ~~conclusions with regard to permanent impairment with the exception~~
19 ~~of paragraph 3 of Section 22 of this title, relating and as it~~
20 ~~relates to individual scheduled member injury or loss, and~~
21 ~~impairment, including pain, and these officially adopted guides~~
22 ~~shall be the exclusive basis for testimony and rating conclusions~~
23 ~~with regard to permanent impairment combining scheduled member~~
24 ~~injury or loss of function or loss of strength. Permanent~~

1 impairment may be awarded with respect to those injuries or areas of
2 the body not specifically covered by said guides ~~or alternative to~~
3 ~~said guides.~~ However, in no event shall scheduled member injury or
4 impairment, including injuries to the shoulder or hip, be converted
5 or combined to the body as a whole. All evaluations of permanent
6 impairment must be supported by objective medical evidence and shall
7 not include pain;

8 ~~20.~~ 23. "Permanent total disability" means incapacity because
9 of accidental injury or occupational disease to earn any wages in
10 any employment for which the employee may become physically suited
11 and reasonably fitted by education, training or experience,
12 including vocational rehabilitation; loss of both hands, or both
13 feet, or both arms, or both legs, or both eyes, or any two thereof,
14 shall constitute permanent total disability;

15 ~~21.~~ 24. "Permanent partial disability" means permanent
16 disability which is less than total and shall be equal to or the
17 same as permanent impairment;

18 ~~22.~~ 25. "Maximum medical improvement" means that no further
19 material improvement would reasonably be expected from medical
20 treatment or the passage of time;

21 ~~23.~~ 26. "Independent medical examiner" means a licensed
22 physician authorized to serve as a medical examiner pursuant to
23 Section 17 of this title;

24

1 ~~24.~~ 27. "Certified workplace medical plan" means an
2 organization of health care providers or any other entity, certified
3 by the State Commissioner of Health pursuant to Section 14.3 of this
4 title, that is authorized to enter into a contractual agreement with
5 a self-insured employer, group self-insurance association plan, an
6 employer's workers' compensation insurance carrier or an insured,
7 which shall include any member of an approved group self-insured
8 association, policyholder or public entity, regardless of whether
9 such entity is insured by CompSource Oklahoma, to provide medical
10 care under the Workers' Compensation Act. ~~Certified plans shall~~
11 ~~only include such plans which provide medical services and payment~~
12 ~~for services on a fee for service basis to medical providers and~~
13 ~~shall not include other plans which contract in some other manner,~~
14 ~~such as capitated or pre paid plans; and~~

15 ~~25.~~ 28. "Surgery" means a medical procedure involving an
16 incision into the skin allowing insertion of an instrument or device
17 through the skin for treatment or diagnosis. An injection, or the
18 forcing of fluids beneath the skin, does not constitute surgery for
19 purposes of the Workers' Compensation Act regarding either temporary
20 or permanent disability determinations; and

21 29. "Treating physician" means the licensed physician selected
22 as provided in Section 14 of this title.

23 SECTION 2. AMENDATORY 85 O.S. 2001, Section 3.1, is
24 amended to read as follows:

1 Section 3.1 A. In respect to death benefits under the Workers'
2 Compensation Act, the following definitions shall apply:

3 ~~(1)~~ 1. "Actually dependent" means:

- 4 a. a surviving spouse as defined in this section~~,1~~,
- 5 b. a child as defined in this ~~section~~, act, or
- 6 c. any other person dependent in fact upon the employee
7 and refers only to a person who receives one-half
8 (1/2) or more of his support from the employee;

9 ~~(2)~~ 2. "Surviving spouse" means only the employee's spouse
10 living with or actually dependent upon the employee at the time of
11 his injury or death, or living apart for justifiable cause or by
12 reason of desertion by the employee;

13 ~~(3)~~ 3. "Child" means ~~a natural or adopted son or daughter of~~
14 ~~the employee under eighteen (18) years of age; or a natural or~~
15 ~~adopted son or daughter of an employee eighteen (18) years of age or~~
16 ~~over and physically or mentally incapable of self support; or any~~
17 ~~natural or adopted son or daughter of an employee eighteen (18)~~
18 ~~years of age or over who is actually dependent; or any natural or~~
19 ~~adopted son or daughter of an employee between eighteen (18) and~~
20 ~~twenty three (23) years of age who is enrolled as a full time~~
21 ~~student in any accredited educational institution. The term "child"~~
22 ~~includes a posthumous child, a child legally adopted or one for whom~~
23 ~~adoption proceedings are pending at the time of death, an actually~~
24 ~~dependent stepchild or an actually dependent acknowledged child born~~

1 ~~out of wedlock~~ any dependent child as defined by the Internal
2 Revenue Service;

3 ~~(4)~~ 4. "Grandchild" means a child of a child, as herein
4 defined;

5 ~~(5)~~ 5. "Brother" and "sister" ~~means~~ mean a sibling of the
6 employee under eighteen (18) years of age, eighteen (18) years of
7 age or over and physically or mentally incapable of self-support,
8 eighteen (18) years of age or over and actually dependent and
9 brothers and sisters by adoption. Married brothers or married
10 sisters shall not be included except as provided in paragraph ~~(1)~~ 1
11 of this ~~section~~ subsection; and

12 ~~(6)~~ 6. "Parent" means a mother or father, a stepparent, a
13 parent by adoption and a parent-in-law, if actually dependent in
14 each case except as provided in paragraph ~~(1)~~ 1 of this ~~section~~
15 subsection.

16 B. All questions of relationship and dependency shall be
17 determined as of the time of injury for purposes of income benefits
18 for injury, and as of the time of death for purposes of income
19 benefits for death.

20 SECTION 3. NEW LAW A new section of law to be codified
21 in the Oklahoma Statutes as Section 3.1a of Title 85, unless there
22 is created a duplication in numbering, reads as follows:

23 Compensation to alien nonresident dependents of the United
24 States shall be the same in amount as provided for resident

1 dependents, except that alien nonresident dependents in any foreign
2 country shall be limited to the surviving spouse or minor children
3 or both surviving spouse and minor children.

4 SECTION 4. AMENDATORY 85 O.S. 2001, Section 3.4, is
5 amended to read as follows:

6 Section 3.4 A. Unless a single-incident injury either renders
7 the employee physically or mentally unable to do so, the employee
8 shall report the injury to the employer on a form prescribed or
9 approved by the Workers' Compensation Court and to a person or at a
10 place specified by the employer, and if not reported in writing
11 within ten (10) business days of the date of the injury, the
12 employer shall not be responsible for disability, medical or other
13 benefits. All reporting procedures shall be reasonable and shall
14 afford each employee reasonable notice of the reporting
15 requirements. Furthermore, any signed statement by an employee that
16 an injury or illness was not work-related shall serve as an absolute
17 bar against any future claim of workers' compensation for that
18 injury or illness. If a claim is found to be noncompensable due to
19 late filing of notice of injury, or for a prior statement having
20 been signed by the employee indicating that the injury or illness
21 was not work-related, there shall be no further remedy for the
22 employee outside of this title.

23 B. The Workers' Compensation Court is authorized and directed
24 to promulgate appropriate rules to establish and implement, for

1 claims with respect to injuries occurring on or after November 1,
2 2010, a preliminary conference procedure designed to accomplish the
3 following objectives:

4 1. To provide the claimant an opportunity to confer with a
5 counselor on the staff of the Court to be advised of the rights of
6 the claimant under the Workers' Compensation Act;

7 2. To provide an opportunity for, but not to compel, a binding
8 settlement of some or all the issues present at the time;

9 3. To facilitate the resolution of issues without the expense
10 of litigation or attorney fee for either party; and

11 4. a. To achieve compromise settlements entered into at or
12 as a result of the preliminary conference and
13 facilitating the filing of those joint petition
14 settlements entered into pursuant to the Workers'
15 Compensation Act.

16 b. The purpose and intent of this section is to affirm
17 the duty of the Court to provide assistance, thereby
18 reducing litigation and workers' compensation costs.

19 C. 1. All claims for any compensation or benefits under the
20 Workers' Compensation Act shall be commenced with the filing of a
21 notice of injury with the Administrator. The filing fee for
22 claimants shall be paid at the time of the filing of the Claimant's
23 Form 3. All claims filed for workers' compensation benefits shall
24 contain a statement that all matters stated therein are true and

1 accurate, and shall be signed by the claimant and the claimant's
2 agent, if any. Any person who signs this statement or causes
3 another to sign this statement knowing the statement to be false
4 shall be guilty of perjury. An individual who signs on behalf of a
5 claimant may be presumed to have the authorization of the claimant
6 and to be acting at the claimant's direction. All answers and
7 defenses to claims or other documents filed on behalf of a
8 respondent or the respondent's insurer in a workers' compensation
9 case shall contain a statement that all matters stated therein are
10 true and accurate, and shall be signed by the respondent, the
11 insurer, or their respective agents, if any. Any person who signs
12 such a statement or causes another to sign such a statement, knowing
13 the statement to be false, shall be guilty of perjury. An
14 individual who signs on behalf of a respondent, its insurer, or its
15 agent may be presumed to have the authorization of the respondent,
16 its insurer and agent to be acting at their direction.

17 2. All matters pertaining to such claims shall be presented to
18 the Administrator until such time as the Administrator is notified
19 in writing by a party that there is a controverted issue that cannot
20 be resolved by the parties or that the parties have received an
21 agreed final order from the Court. The Administrator shall, within
22 seven (7) days of the receipt of such notification, set the matter
23 for hearing at the earliest available time to be heard by the Court
24 in the appropriate judicial district as provided in Section 3.5 of

1 this title. The Administrator shall assign a member of the Court to
2 hear a docket in each judicial district of the state at least once
3 each calendar month when there has been a request for a hearing in
4 the judicial district. The Administrator shall assign judges to the
5 state judicial districts on a rotating basis for the purpose of
6 holding prehearing conferences and settlement conferences and
7 hearing cases. At the request of either party, a prehearing
8 conference shall be held before the member of the Court assigned to
9 the case within forty-five (45) days of the filing of a claimant's
10 request for a hearing. The purpose of the prehearing conference
11 shall be to mediate and encourage settlement of the case or
12 determine issues in dispute.

13 3. The Court, upon its own motion or at the request of any of
14 the parties, may set a settlement conference at any practicable
15 time. The conference shall be held before any Workers' Compensation
16 Court Judge or an Active Retired Judge sitting by special
17 designation for that purpose, other than the judge assigned to the
18 case. The purpose of the settlement conference is to permit an
19 informal discussion among the parties, the attorneys, and the
20 settlement judge on every aspect of the case bearing on its
21 settlement value in an effort to resolve the matter before trial.
22 The settlement judge shall not have any communications regarding the
23 case or the settlement conference with the assigned trial judge
24 other than to advise the trial judge that a settlement was or was

1 not reached. The setting of a settlement conference by the Court,
2 or a request for a settlement conference by any party, shall not
3 preclude any party from filing a Motion to Set for Trial.

4 4. The Court shall be vested with jurisdiction over all claims
5 filed pursuant to the Workers' Compensation Act. The Court shall
6 determine the lawfulness of any claim for compensation under the
7 Workers' Compensation Act based on the weight of evidence; provided,
8 however, any claim, and subsequent disability, that has as its
9 source a physical condition resulting from incremental damage or
10 injury or a gradual deterioration of physical health, which is
11 caused by a condition arising out of and in the course of
12 employment, must be proven by a preponderance of the evidence
13 presented to the Court.

14 ~~B. D.~~ All claims so filed shall be heard by the judge sitting
15 without a jury. ~~All petitions for final orders or awards filed~~
16 ~~pursuant to the provisions of Section 84 of this title must be~~
17 ~~approved by the Court having jurisdiction before a final order or~~
18 ~~award may be entered.~~ Any agreed-upon settlement between the
19 claimant and the employer shall be final upon signed agreement by
20 both parties. All matters relating to a claim for benefits under
21 the Workers' Compensation Act shall be filed with the Administrator.

22 E. 1. The Workers' Compensation Court shall be bound by the
23 Oklahoma Evidence Code. If there is a further question of evidence
24 or procedure, Title 12 of the Oklahoma Statutes shall be used.

1 2. When deciding any issue, the Court shall determine, on the
2 basis of the record as a whole, whether the party having the burden
3 of proof on the issue has established it by a preponderance of
4 evidence.

5 3. Medical reports or depositions shall only be allowed to
6 assist the Court in determining compensability of the claim.

7 SECTION 5. AMENDATORY 85 O.S. 2001, Section 3.6, is
8 amended to read as follows:

9 Section 3.6 A. All the evidence pertaining to each case,
10 except upon agreed orders, shall, insofar as may be possible, be
11 heard by the judge initially assigned to the case. Upon the
12 completion of such hearing or hearings, the judge hearing the cause
13 shall make such order, decision or award as is proper, just and
14 equitable in the matter. Either party feeling himself aggrieved by
15 such order, decision or award shall, within ten (10) days, have the
16 right to take an appeal from the order, decision or award of the
17 Judge to the Workers' Compensation Court sitting en banc. Such
18 appeal shall be allowed as a matter of right to either party upon
19 filing with the Administrator a notice of such appeal. Such Court
20 en banc shall consist of three (3) Judges of the Court, none of whom
21 shall have presided over any of the previous hearings on the claim.
22 The Court en banc may reverse or modify the decision only if it
23 determines that such decision was against the clear weight of the
24 evidence or contrary to law. Upon completion of the appeal, the

1 members of the Court sitting en banc shall issue such order,
2 decision or award as is proper, just and equitable. ~~Only those~~
3 ~~members participating in the hearing on appeal shall participate in~~
4 ~~the making of the order, decision or award. All orders, decisions~~
5 ~~or awards shall be approved by a majority of the members of the~~
6 ~~Court sitting en banc. Provided, there may be more than one Court~~
7 ~~en banc sitting at the same time for purposes of hearing the appeals~~
8 ~~provided for herein.~~ Appeals shall be allowed on a question of law
9 or a question of fact, or a mixed question of law and fact, and
10 shall be determined on the record made before the Judge. Provided,
11 when the order of the Judge of the Court making an award to a
12 claimant is appealed by the employer or the insurance carrier,
13 interest shall be allowed on the accrued amounts of the award due
14 from the date the award was filed, if the award is not modified or
15 vacated on appeal.

16 B. In each case filed in the Court en banc, and at the time of
17 filing same, the appellant shall deposit with the clerk as costs One
18 Hundred Twenty-five Dollars (\$125.00) of which no rebate of any part
19 thereof shall be made. The fee collected under this subsection
20 shall be deposited as follows: One Hundred Dollars (\$100.00) to the
21 credit of the Administrator of Workers' Compensation Revolving Fund
22 created by Section 95 of this title for the costs of administering
23 the Workers' Compensation Act; and Twenty-five Dollars (\$25.00) to
24 the credit of the Administrator of Workers' Compensation Revolving

1 Fund for purposes of implementing the provisions of ~~this act~~ the
2 Workers' Compensation Act, including strengthening and providing
3 additional funding for the Attorney General's Workers' Compensation
4 Fraud Unit, providing counseling services pursuant to the workers'
5 compensation counselor program and safety in the workplace.

6 C. The order, decision or award of the Court shall be final and
7 conclusive upon all questions within its jurisdiction between the
8 parties, unless, within twenty (20) days after a copy of such order,
9 decision or award has been sent by the Administrator to the parties
10 affected, an action is commenced in the Supreme Court of the state,
11 to review such order, decision or award. The Supreme Court may hear
12 appeals and modify, reverse, remand for rehearing, or set aside the
13 order or award, upon any of the following grounds, and no other,
14 that the:

- 15 1. Court acted without or in excess of its powers;
- 16 2. Order or award was procured by fraud; or
- 17 3. Order or award was against the clear weight of the evidence
18 of record.

19 Any order, decision or award made by a judge of the Court shall
20 be considered as final under the provisions of this section unless
21 appealed to the Workers' Compensation Court sitting en banc as
22 provided for in subsection A of this section. The order, decision
23 or award of a judge of the Court shall be final and conclusive upon
24 all questions within his jurisdiction between the parties unless

1 appealed directly to the Supreme Court or to the Workers'
2 Compensation Court sitting en banc as hereinbefore provided. Any
3 party litigant desiring to appeal directly from such order, decision
4 or award to the Supreme Court, shall, within twenty (20) days after
5 a copy of the order, decision or award has been sent by the
6 Administrator to the parties affected, commence an action in the
7 Supreme Court of the state to review such order, decision or award.
8 The Supreme Court shall have original jurisdiction of such action,
9 and shall prescribe rules for the commencement and trial of the
10 same. Such action shall be commenced by filing with the Clerk of
11 the Supreme Court a certified copy of the order, decision or award
12 of the Workers' Compensation Court sitting en banc or the judge
13 attached to the petition by the complaint wherein the complainant or
14 petitioner shall make his assignments or specifications as to
15 wherein said order, decision or award is erroneous or illegal.
16 Provided, however, no proceeding to reverse, vacate or modify any
17 order, decision or award of the Workers' Compensation Court sitting
18 en banc or judge of the Court wherein compensation has been awarded
19 an injured employee shall be entertained by the Supreme Court unless
20 the Administrator shall take a written undertaking to the claimant
21 executed on the part of the respondent or insurance carrier, or
22 both, with one or more sureties to be approved by the Administrator,
23 to the effect that the appellant will pay the amount of the award
24 rendered therein, together with interest thereon from the date of

1 the award by the judge of the Court and all costs of the proceeding,
2 or on the further order of the Workers' Compensation Court sitting
3 en banc or judge of the Court after the appeal has been decided by
4 the Supreme Court, except that municipalities and other political
5 subdivisions of the State of Oklahoma are exempt from making such
6 written undertakings. Before the Clerk of the Supreme Court shall
7 accept the action for filing, a certificate from the Administrator
8 shall be required, showing that this provision has been complied
9 with. Said proceedings shall be heard in a summary manner and shall
10 have precedence over all other civil cases in the Supreme Court,
11 except preferred Corporation Commission appeals. The Supreme Court
12 shall require the appealing party to file within forty-five (45)
13 days from the date of the filing of an appeal or an order appealed
14 from, a transcript of the record of the proceedings before the
15 Workers' Compensation Court, or upon application and for good cause
16 shown, the Supreme Court may extend the time for filing said
17 transcript of the record for a period of time not to exceed ninety
18 (90) days from said date, and such action shall be subject to the
19 law and practice applicable to other civil actions cognizable in
20 said Supreme Court. The Court whose action was appealed shall enter
21 any order directed by the Supreme Court under the final
22 determination.

23 D. When the only controverted issue in a death claim is the
24 determination of proper beneficiaries entitled to receive death

1 benefits, and the parties-beneficiary appeal the decision of the
2 Court, the employer or insurance carrier may pay the proceeds, as
3 they accrue, to the Administrator. The Administrator shall hold the
4 proceeds in trust in an interest-bearing account during the appeal
5 period and shall distribute the proceeds and interest to the proper
6 beneficiaries upon written direction of the Court. The employer or
7 insurance carrier shall not be taxed interest or cost on the order
8 of the death claim if payments have been made to the Administrator
9 as they accrue.

10 E. An action to reopen any case under the provisions of the
11 Workers' Compensation Act shall be assigned in the same manner as
12 original assignments made hereunder.

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

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

18 H. The Supreme Court may require a bond from any party, if it
19 deems necessary, in cases appealed to the Court.

20 SECTION 6. AMENDATORY 85 O.S. 2001, Section 3.7, is
21 amended to read as follows:

22 Section 3.7 The Administrator shall have the following powers
23 and duties:

24

- 1 1. To ~~hear and approve~~ accept and record settlements pursuant
2 ~~to direction by the judges of the Court;~~
- 3 2. To review and approve "own-risk" applications and group
4 Self-insurance associations applications;
- 5 3. To monitor "own-risk", self-insurer and group self-insurance
6 programs in accordance with the rules of the Court;
- 7 4. To establish a toll free telephone number in order to
8 provide information and answer questions about the Court;
- 9 5. To hear and determine claims concerning disputed medical
10 bills;
- 11 6. To promulgate necessary rules subject to the approval of the
12 presiding judge; and
- 13 7. Such other duties and responsibilities authorized by law or
14 as the judges of the Court may prescribe;
- 15 8. ~~To adopt rules which require every insurance company, the
16 State Insurance Fund and every self insurer authorized to transact
17 workers' compensation insurance in this state to report to the
18 Administrator its statistical experience and its experience
19 regarding the utilization of independent medical examiners in
20 permanent disability cases during the period from July 1, 1995, to
21 July 1, 1997. The information regarding utilization of independent
22 medical examiners shall include, but not be limited to, the number
23 of independent medical examiner appointments, the parties requesting
24 the independent medical examiner, the doctors participating and the~~

1 ~~number of evaluations done by each, a summary of awards and~~
2 ~~settlements, medical costs, and duration of temporary total~~
3 ~~disability. The Administrator shall compile the information~~
4 ~~collected and present a report of his findings to the President Pro~~
5 ~~Tempore of the Senate, the Speaker of the House of Representatives,~~
6 ~~the Governor, the Advisory Council on Workers' Compensation and the~~
7 ~~Physician Advisory Committee; and~~

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

12 SECTION 7. AMENDATORY 85 O.S. 2001, Section 11, as
13 amended by Section 77, Chapter 264, O.S.L. 2006 (85 O.S. Supp. 2009,
14 Section 11), is amended to read as follows:

15 Section 11. A. Every Subject to limitations found in the
16 Workers' Compensation Act, every employer subject to the provisions
17 of the Workers' Compensation Act shall pay, or provide as required
18 by the Workers' Compensation Act, compensation according to the
19 schedules of the Workers' Compensation Act for the disability or
20 death of an employee resulting from an accidental personal injury
21 sustained by the employee arising out of and in the course of
22 employment, without regard to fault as a cause of such injury, and
23 in the event of disability only, except as follows:

24

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

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

7 ~~3. An injury which occurs when an employee is using substances~~
8 ~~defined and consumed pursuant to Section 465.20 of Title 63 of the~~
9 ~~Oklahoma Statutes, or is using or abusing alcohol or illegal drugs,~~
10 ~~or is illegally using chemicals; provided, this paragraph shall only~~
11 ~~apply when the employee is unable to prove by a preponderance of the~~
12 ~~evidence that the substances, alcohol, illegal drugs, or illegally~~
13 ~~used chemicals were not the proximate cause of the injury or~~
14 ~~accident. For the purposes of this paragraph, post accident alcohol~~
15 ~~or drug testing results shall be admissible as evidence; and~~

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

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

23 1. The independent contractor shall, at all times, be liable
24 for compensation due to his or her direct employees, or the

1 employees of any subcontractor of such independent contractor, and
2 the principal employer shall also be liable in the manner
3 hereinafter specified for compensation due all direct employees,
4 employees of the independent contractors, subcontractors, or other
5 employees engaged in the general employer's business; provided,
6 however, if an independent contractor relies in good faith on proof
7 of a valid workers' compensation insurance policy issued to a
8 subcontractor of the independent contractor or on proof of an
9 Affidavit of Exempt Status Under the Workers' Compensation Act
10 properly executed by the subcontractor under Section ~~75~~ 924.4 of
11 ~~this act~~ Title 36 of the Oklahoma Statutes, then the independent
12 contractor shall not be liable for injuries of any employees of the
13 subcontractor. Provided further, such independent contractor shall
14 not be liable for injuries of any subcontractor of the independent
15 contractor unless an employer-employee relationship is found to
16 exist by the Workers' Compensation Court despite the execution of an
17 Affidavit of Exempt Status Under the Workers' Compensation Act.

18 2. The person entitled to such compensation shall have the
19 right to recover the same directly from the person's immediate
20 employer, the independent contractor or intermediate contractor, and
21 such claims may be presented against all such persons in one
22 proceeding. If it appears in such proceeding that the principal
23 employer has failed to require a compliance with the Workers'
24 Compensation Act of this state, by the independent contractor, then

1 such employee may proceed against such principal employer without
2 regard to liability of any independent, intermediate or other
3 contractor; provided, however, if a principal employer relies in
4 good faith on proof of a valid workers' compensation insurance
5 policy issued to an independent contractor of the employer or to a
6 subcontractor of the independent contractor or on proof of an
7 Affidavit of Exempt Status Under the Workers' Compensation Act
8 properly executed by the independent contractor or subcontractor
9 under Section ~~75~~ 924.4 of ~~this act~~ Title 36 of the Oklahoma
10 Statutes, then the principal employer shall not be liable for
11 injuries of any employees of the independent contractor or
12 subcontractor. Provided further, such principal employer shall not
13 be liable for injuries of any independent contractor of the employer
14 or of any subcontractor of the independent contractor unless an
15 employer-employee relationship is found to exist by the Workers'
16 Compensation Court despite the execution of an Affidavit of Exempt
17 Status Under the Workers' Compensation Act. Provided, however, in
18 any proceeding where compensation is awarded against the principal
19 employer under the provisions hereof, such award shall not preclude
20 the principal employer from recovering the same, and all expense in
21 connection with said proceeding from any independent contractor,
22 intermediate contractor or subcontractor whose duty it was to
23 provide security for the payment of such compensation, and such
24 recovery may be had by supplemental proceedings in the cause before

1 the Court or by an independent action in any court of competent
2 jurisdiction to enforce liability of contracts.

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

12 4. Where compensation is payable for an occupational disease,
13 the employer in whose employment the employee was last injuriously
14 exposed to the hazards of such disease and the insurance carrier, if
15 any, on the risk when such employee was last so exposed under such
16 employer, shall alone be liable therefor, without right to
17 contribution from any prior employer or insurance carrier; provided,
18 however, that in the case of silicosis or asbestosis, the only
19 employer and insurance carrier liable shall be the last employer in
20 whose employment the employee was last exposed to harmful quantities
21 of silicon dioxide (SiO₂) dust on each of at least sixty (60) days
22 or more, and the insurance carrier, if any, on the risk when the
23 employee was last so exposed under such employer.

24

1 5. Where compensation is payable for an injury resulting from
2 cumulative trauma, the last employer in whose employment the
3 employee was last injuriously exposed to the trauma during a period
4 of at least ninety (90) days or more, and the insurance carrier, if
5 any, on the risk when the employee was last so exposed under such
6 employer, shall alone be liable therefor, without right to
7 contribution from any prior employer or insurance carrier. If there
8 is no employer in whose employment the employee was injuriously
9 exposed to the trauma for a period of at least ninety (90) days,
10 then the last employer in whose employment the employee was last
11 injuriously exposed to the trauma and the insurance carrier, if any,
12 on the risk when such employee was last so exposed under such
13 employer, shall be liable therefor, with right to contribution from
14 any prior employer or insurance carrier.

15 SECTION 8. AMENDATORY 85 O.S. 2001, Section 12, as
16 amended by Section 14, Chapter 1, 1st Extraordinary Session, O.S.L.
17 2005 (85 O.S. Supp. 2009, Section 12), is amended to read as
18 follows:

19 Section 12. The liability prescribed in Section 11 of this
20 title shall be exclusive and in place of all other liability of the
21 employer and any of his employees, any architect, professional
22 engineer, or land surveyor retained to perform professional services
23 on a construction project, at common law or otherwise, for such
24 injury, loss of services, or death, to the employee, or the spouse,

1 personal representative, parents, or dependents of the employee, or
2 any other person. If an employer subject to the Workers'
3 Compensation Act has failed to secure the payment of compensation
4 for his injured employee, as provided for in this title, an injured
5 employee, or his legal representatives if death results from the
6 injury, may maintain an action in the courts for damages on account
7 of such injury, and in such action the defendant may not plead or
8 prove as a defense that the injury was caused by the negligence of a
9 fellow servant, or that the employee assumed the risk of his
10 employment, or that the injury was due to the contributory
11 negligence of the employee; provided:

12 ~~(i)~~ 1. The immunity created by the provisions of this section
13 shall not extend to action by an employee, or the spouse, personal
14 representative, parents, or dependents of the employee, or any other
15 person against another employer, or its employees, on the same job
16 as the injured or deceased worker where such other employer does not
17 stand in the position of an intermediate or principal employer to
18 the immediate employer of the injured or deceased worker;

19 ~~(ii)~~ 2. The immunity created by the provisions of this section
20 shall not extend to action against another employer, or its
21 employees, on the same job as the injured or deceased worker even
22 though such other employer may be considered as standing in the
23 position of a special master of a loaned servant where such special
24 master neither is the immediate employer of the injured or deceased

1 worker nor stands in the position of an intermediate or principal
2 employer to the immediate employer of the injured or deceased
3 worker; and

4 ~~(iii)~~ 3. This provision shall not be construed to abrogate the
5 loaned servant doctrine in any respect other than that described in
6 paragraph ~~(ii)~~ 2 of this section. This section shall not be
7 construed to relieve the employer from any other penalty provided
8 for in this title for failure to secure the payment of compensation
9 provided for in this title.

10 ~~(iv)~~ 4. For the purpose of extending the immunity of this
11 section, any architect, professional engineer, or land surveyor
12 shall be deemed an intermediate or principal employer for services
13 performed at or on the site of a construction project, but this
14 immunity shall not extend to the negligent preparation of design
15 plans and specifications.

16 ~~(v) Nothing contained herein shall abrogate any rights arising~~
17 ~~under the Oklahoma Constitution.~~

18 SECTION 9. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 12.1 of Title 85, unless there
20 is created a duplication in numbering, reads as follows:

21 A. 1. Any employer required to secure the payment of
22 compensation under the Workers' Compensation Act who fails to secure
23 compensation shall be subject to a fine of up to Ten Thousand
24 Dollars (\$10,000.00) as determined by the Workers' Compensation

1 Court payable to the Death and Permanent Total Disability Trust Fund
2 or be guilty of a misdemeanor and shall be punished by a fine not to
3 exceed Five Hundred Dollars (\$500.00), or by imprisonment in the
4 county jail for a term not to exceed one (1) year, or by both fine
5 and imprisonment.

6 2. This subsection shall not affect any other liability of the
7 employer under the Workers' Compensation Act.

8 B. 1. Whenever the Court has reason to believe that an
9 employer required to secure the payment of compensation under the
10 Workers' Compensation Act has failed to do so, the Court shall serve
11 upon the employer a proposed order declaring the employer to be in
12 violation of the Workers' Compensation Act and containing the
13 amount, if any, of the civil penalty to be assessed against the
14 employer pursuant to paragraph 5 of this subsection.

15 2. a. An employer may contest a proposed order of the Court
16 issued pursuant to paragraph 1 of this subsection by
17 filing with the Court, within twenty (20) days of
18 receipt of the proposed order, a written request for a
19 hearing.

20 b. Such a request for a hearing need not be in any
21 particular form but shall specify the grounds upon
22 which the person contests the proposed order, the
23 proposed assessment, or both.

24

1 c. If a written request for hearing is not filed with the
2 Court within this time, the proposed order, the
3 proposed penalty, or both, shall be a final order of
4 the Court and shall not be subject to further review
5 by any court.

6 d. A proposed order by the Court pursuant to this section
7 is prima facie correct, and the burden is upon the
8 employer to prove that the proposed order is
9 incorrect.

10 3. a. If the employer alleges that a carrier has contracted
11 to provide the employer workers' compensation
12 insurance coverage for the period in question, the
13 employer shall include the allegation in its request
14 for hearing and shall name the carrier.

15 b. The Court shall promptly notify the carrier of the
16 allegation of the employer and of the date of hearing.

17 c. The carrier shall promptly, and no later than five (5)
18 days prior to the hearing, respond in writing to the
19 allegation of the employer by providing evidence of
20 coverage for the period in question or by
21 affirmatively denying the allegation of the employer.

22 4. The Court may assess a fine against any employer who fails
23 to secure the payment of compensation in an amount up to One
24

1 Thousand Dollars (\$1,000.00) per day of violation payable to the
2 Fund.

3 5. If an employer fails to secure the payment of compensation
4 or pay any civil penalty assessed against the employer after an
5 order issued pursuant to this section has become final by operation
6 of law or upon appeal, the Court may petition the district court of
7 Oklahoma County or of the county where the principal place of
8 business of the employer is located for an order enjoining the
9 employer from engaging in further employment until the employer
10 secures the payment of compensation or makes full payment of all
11 civil penalties.

12 SECTION 10. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 12.2 of Title 85, unless there
14 is created a duplication in numbering, reads as follows:

15 A. Every employer who has secured compensation under the
16 provisions of the Workers' Compensation Act shall keep posted in a
17 conspicuous place in and about the place of business of the
18 employer, typewritten or printed notices in accordance with a form
19 prescribed by the Workers' Compensation Court. The notices shall
20 state that the employer has secured the payment of compensation in
21 accordance with the provisions of the Workers' Compensation Act.

22 B. The notices shall contain the name and address of the
23 carrier, if any, with whom the employer has secured payment of
24 compensation.

1 SECTION 11. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 13.1 of Title 85, unless there
3 is created a duplication in numbering, reads as follows:

4 The employer shall not be liable for any of the payments
5 provided for by the Workers' Compensation Act if the Workers'
6 Compensation Court determines that the injury is not compensable.

7 SECTION 12. AMENDATORY 85 O.S. 2001, Section 14, as last
8 amended by Section 15, Chapter 1, 1st Extraordinary Session, O.S.L.
9 2005 (85 O.S. Supp. 2009, Section 14), is amended to read as
10 follows:

11 Section 14. A. 1. The employer shall promptly provide for an
12 injured employee such medical, surgical or other attendance or
13 treatment, nurse and hospital service, medicine, crutches, and
14 apparatus as may be necessary after the injury. The treating
15 physician shall supply the injured employee and the employer with a
16 full examining report of injuries found at the time of examination
17 and proposed treatment, this report to be supplied within seven (7)
18 days after the examination; also, at the conclusion of the treatment
19 the treating physician shall supply a full report of the treatment
20 to the employer of the injured employee.

21 2. The treating physician who renders treatment to the employee
22 at any time shall promptly notify the employee and employer or the
23 employer's insurer in writing after the employee has reached maximum
24 medical improvement and is released from active medical care. If

1 the employee is capable of returning to modified light duty work,
2 the treating physician shall promptly notify the employee and the
3 employer or the employer's insurer thereof in writing and shall also
4 specify what restrictions, if any, must be followed by the employer
5 in order to return the employee to work. In the event the treating
6 physician provides such notification to the employer's insurer, the
7 insurer shall promptly notify the employer. If an injured employee,
8 only partially disabled, refuses employment consistent with any
9 restrictions ordered by the treating physician, the employee shall
10 not be entitled to temporary benefits during the continuance of such
11 refusal unless in the opinion of the treating physician such refusal
12 was justifiable; provided, before compensation may be denied, the
13 employee shall be served with a notice setting forth the
14 consequences of the refusal of employment and that temporary
15 benefits will be discontinued fifteen (15) days after the date of
16 such notice. The employee, upon receipt of such notice, may seek a
17 hearing before the Workers' Compensation Court. The Court shall
18 grant an expedited hearing within five (5) days of any such
19 application by the employee. At such hearing, the Court may enter
20 an order allowing the discontinuation of such benefits, denying the
21 discontinuance of such benefits or temporarily denying the
22 discontinuance of such benefits pending further hearing. An order
23 denying or temporarily denying the discontinuation of temporary
24 benefits shall be based on a finding by the Court that probable

1 cause exists to believe the work does not meet the conditions of the
2 treating physician's restrictions or that the restrictions are
3 unreasonable.

4 B. The employer's selected physician shall have the right and
5 responsibility to treat the injured employee. A report of such
6 examination shall be furnished to the employer and the injured
7 employee within seven (7) days after such examination.

8 C. If the employer fails or neglects to provide medical
9 treatment within three (3) days after actual knowledge of the injury
10 is received by the employer, the injured employee, during the period
11 of such neglect or failure, may select a physician to provide
12 medical treatment at the expense of the employer; provided, however,
13 that the injured employee, or another in the employee's behalf, may
14 obtain emergency treatment at the expense of the employer where such
15 emergency treatment is not provided by the employer. The attending
16 physician so selected by the employee shall notify the employer and
17 the insurance carrier within seven (7) days after examination or
18 treatment was first rendered. Once the employer has selected a
19 treating physician and has offered the employee treatment, the
20 physician selected by the employer shall become the treating
21 physician.

22 D. 1. If a self-insured employer, group self-insurance
23 association plan, an employer's workers' compensation insurance
24 carrier or an insured, which shall include any member of an approved

1 group self-insured association, policyholder or public entity,
2 regardless of whether such entity is insured by CompSource Oklahoma,
3 has previously contracted with a certified workplace medical plan,
4 the employer shall select for the injured employee a the treating
5 physician from the physicians listed within the network of the
6 certified workplace medical plan.

7 2. The claimant may apply for a change of physician by
8 utilizing the dispute resolution process set out in the certified
9 workplace medical plan on file with the State Department of Health.

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

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

24

1 2. Such charges and duration of treatment shall be limited to
2 the usual, customary and reasonable payments and duration of
3 treatment as prescribed and limited by a schedule of fees and
4 treatment for all medical providers to be adopted, after notice and
5 public hearing, by the Administrator. Beginning January 1, 2006,
6 the fee and treatment schedule for physician services shall be based
7 on the most current Relative Value Units (RVU) produced by the
8 Centers for Medicare and Medicaid Services (CMS) for the Medicare
9 Physician Fee Schedule as of January 1 of the prior year. These
10 relative values shall be multiplied by appropriate conversion
11 factors to be determined by the Administrator. The conversion
12 factors shall be adjusted by the Consumer Price Index and shall be
13 adequate to reflect the usual and customary rates for treatment of
14 workers' compensation patients taking into consideration all
15 relevant factors including, but not limited to, the additional time
16 required to provide disability management. The Current Procedural
17 Terminology (CPT) codes shall be adjusted to reflect any changes or
18 additions to the CPT codes and coding of supplies and materials as
19 published by the American Medical Association (AMA) or CMS. If the
20 AMA adds a new CPT code, the Administrator shall review the
21 procedure contemplated by the new CPT code, and after such review,
22 and notice and public hearing, the Administrator may add the new CPT
23 code and set the base fee for the CPT code to ensure the adequacy of
24 the physician's fee and treatment schedule. For services not valued

1 by CMS, the Administrator shall establish values based on the usual,
2 customary and reasonable medical payments to health care providers
3 in the same trade area for comparable treatment of a person with
4 similar injuries and the duration of treatment prevailing in this
5 state for persons with similar injuries. The fee and treatment
6 schedule shall be reviewed biennially by the Administrator and,
7 after such review, and notice and public hearing, the Administrator
8 shall be empowered to amend or alter the fee and treatment schedule
9 to ensure its adequacy. The Administrator shall not increase the
10 overall maximum reimbursement levels for health care providers,
11 including hospitals and ambulatory surgical centers, in an amount
12 exceeding the cumulative percentage of change of the Consumer Price
13 Index - Urban (CPI-U) for all costs since the last biennial review.
14 The fee schedule adopted by the Administrator as of January 1, 2006,
15 shall be structured so as to result in at least a four-percent
16 savings in workers' compensation medical costs. In no event shall
17 the reimbursement rate for any single procedure be equal to an
18 amount which is less than one hundred fifteen percent (115%) of the
19 current Medicare reimbursement rate for the procedure.

20 3. The Administrator shall adopt a new fee and treatment
21 schedule to be effective not later than January 1, 1998, which
22 establishes maximum allowable reimbursement levels for preparation
23 for or testimony at a deposition or court appearance which shall not
24

1 exceed Two Hundred Dollars (\$200.00) per hour and for work-related
2 or medical disability evaluation services.

3 4. An invoice for the actual cost to the hospital of an
4 implantable device shall be adjusted by the hospital to reflect all
5 applicable discounts, rebates, considerations and product
6 replacement programs and must be provided to the payor by the
7 hospital as a condition of payment for the implantable device.

8 5. The Administrator's review of medical and treatment charges
9 pursuant to this section shall be conducted pursuant to the fee and
10 treatment schedule in existence at the time the medical care or
11 treatment was provided. The order of the approving medical and
12 treatment charges pursuant to this section shall be enforceable by
13 the Court in the same manner as provided in the Workers'
14 Compensation Act for the enforcement of other compensation payments.
15 Any party feeling aggrieved by the order, decision or award of the
16 Administrator shall, within ten (10) days, have the right to request
17 a hearing on such medical and treatment charges by a judge of the
18 Workers' Compensation Court. The judge of the Court may affirm the
19 decision of the Administrator, or reverse or modify said decision
20 only if it is found to be contrary to the fee and treatment schedule
21 existing at the time the said medical care or treatment was
22 provided. The order of the judge shall be subject to the same
23 appellate procedure set forth in Section 3.6 of this title for all
24 other orders of the Court. The right to recover charges for every

1 type of medical care for personal injuries arising out of and in the
2 course of covered employment as herein defined, shall lie solely
3 with the Workers' Compensation Court, and all jurisdiction of the
4 other trial courts of this state over such action is hereby
5 abolished. The foregoing provision, relating to approval and
6 enforcement of such charges and duration of treatment, shall not
7 apply where a written contract exists between the employer or
8 insurance carrier and the person who renders such medical, surgical
9 or other attendance or treatment, nurse and hospital service, or
10 furnishes medicine, crutches or apparatus. When a medical care
11 provider has brought a claim in the Workers' Compensation Court to
12 obtain payment for services, a party who prevails in full on the
13 claim shall be entitled to a reasonable attorney fee.

14 6. Charges for prescription drugs shall be limited to ninety
15 percent (90%) of the average wholesale price of the prescription,
16 plus a dispensing fee of Five Dollars (\$5.00) per prescription.
17 "Average wholesale price" means the amount determined from the
18 latest publication of the blue book, a universally subscribed
19 pharmacist reference guide annually published by the Hearst
20 Corporation. "Average wholesale price" may also be derived
21 electronically from the drug pricing database synonymous with the
22 latest publication of the blue book and furnished in the National
23 Drug Data File (NDDF) by First Data Bank (FDB), a service of the

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1 Hearst Corporation. Physicians shall prescribe and pharmacies shall
2 dispense generic equivalent drugs when available.

3 G. Where the employee is not covered by a certified workplace
4 medical plan, the employer shall select the treating physician. The
5 Court on application of the employee shall order one change of
6 treating physician. In the event the employee makes application for
7 such a change, the employee shall list on such application three (3)
8 proposed physicians who are qualified to treat the body part
9 affected. The employer may agree to one of the physicians listed by
10 the employee or submit its own list of three (3) physicians. If the
11 employee and employer do not agree on the physician, the Court shall
12 select from the list of independent medical examiners maintained by
13 the Court a treating physician who is qualified to treat the body
14 part affected and who can see the employee within a reasonable time.
15 Additionally, a change of physician shall be allowed for each
16 individual body part injured if the treating physician determines
17 that the employee's injured body parts cannot be treated by the same
18 physician.

19 H. 1. For cases not covered by a certified workplace medical
20 plan, and where the insurance company does not provide case
21 management, case management may be granted by the Workers'
22 Compensation Court on the request of any party, or when the Court
23 determines that case management is appropriate. The Court shall
24

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, upon application of the employee, the Court may order the
7 employer to provide one change of case manager if the employee did
8 not make the initial selection of the case manager.

9 I. Diagnostic tests shall not be repeated sooner than six (6)
10 months from the date of the test unless agreed to by the parties or
11 ordered by the Court.

12 J. Duration of treatment is subject to the limitation
13 established in the treatment guidelines and protocols recommended by
14 the Physician Advisory Committee unless waived by the employer. For
15 compensable injuries resulting in the use of a medical device,
16 ongoing service for the medical device would be provided in
17 situations including, but not limited to, medical device battery
18 replacement, ongoing medication refills related to the medical
19 device, medical device repair or medical device replacement.

20 SECTION 13. AMENDATORY 85 O.S. 2001, Section 14.3, as
21 amended by Section 17, Chapter 1, 1st Extraordinary Session, O.S.L.
22 2005 (85 O.S. Supp. 2009, Section 14.3), is amended to read as
23 follows:
24

1 Section 14.3 A. Any person or entity may make written
2 application to the Commissioner of Health of the State of Oklahoma
3 to have a workplace medical plan certified that provides management
4 of quality treatment to injured employees for injuries and diseases
5 compensable under the Workers' Compensation Act. Each application
6 for certification shall be accompanied by a fee of One Thousand Five
7 Hundred Dollars (\$1,500.00). A workplace medical plan may be
8 certified to provide services to a limited geographic area. A
9 certificate is valid for a five-year period, unless revoked or
10 suspended. Application for certification shall be made in the form
11 and manner and shall set forth information regarding the proposed
12 program for providing services as the Commissioner may prescribe.
13 The information shall include, but not be limited to:

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

18 2. A description of the places and manner of providing services
19 under the plan.

20 B. 1. The Commissioner shall not certify a plan unless the
21 Commissioner finds that the plan:

22 a. proposes to provide quality services for all medical
23 services which:
24

- 1 (1) may be required by the Workers' Compensation Act
2 in a manner that is timely, effective and
3 convenient for the employee, and
- 4 (2) utilizes medical treatment guidelines and
5 protocols substantially similar to those
6 established for use by medical service providers,
7 which have been recommended by the Physician
8 Advisory Committee and adopted by the
9 Administrator pursuant to subsection B of Section
10 201.1 of this title. If the Administrator has
11 not adopted medical treatment guidelines and
12 protocols, the Commissioner may certify a plan
13 that utilizes medical guidelines and protocols
14 established by the plan if, in the discretion of
15 the Commissioner, the guidelines and protocols
16 are reasonable and will carry out the intent of
17 the Workers' Compensation Act. Certified plans
18 must utilize medical treatment guidelines and
19 protocols substantially similar to those adopted
20 by the Administrator pursuant to Section 201.1 of
21 this title, as such guidelines and protocols
22 become adopted,
- 23 b. is reasonably geographically convenient to residents
24 of the area for which it seeks certification,

- 1 c. provides appropriate financial incentives to reduce
2 service costs and utilization without sacrificing the
3 quality of service,
- 4 d. provides adequate methods of peer review, utilization
5 review and dispute resolution to prevent
6 inappropriate, excessive or medically unnecessary
7 treatment, and excludes participation in the plan by
8 those providers who violate these treatment standards,
- 9 e. requires the dispute resolution procedure of the plan
10 to include a requirement that disputes on an issue,
11 including a subsequent change of physician as
12 described in the provisions of Section 14 of this
13 title and this section, related to medical care under
14 the plan be attempted to be resolved within ten (10)
15 days of the time the dispute arises and if not
16 resolved within ten (10) days, the employee may pursue
17 remedies in the Workers' Compensation Court,
- 18 f. provides aggressive case management for injured
19 employees and a program for early return to work,
- 20 g. provides workplace health and safety consultative
21 services,
- 22 h. provides a timely and accurate method of reporting to
23 the Commissioner necessary information regarding
24 medical service costs and utilization to enable the

1 Commissioner to determine the effectiveness of the
2 plan,

- 3 i. authorizes necessary emergency medical treatment for
4 an injury provided by a provider of medical, surgical,
5 and hospital services who is not a part of the plan,
- 6 j. does not discriminate against or exclude from
7 participation in the plan any category of providers of
8 medical, surgical, or hospital services and includes
9 an adequate number of each category of providers of
10 medical, surgical, and hospital services to give
11 participants access to all categories of providers and
12 does not discriminate against ethnic minority
13 providers of medical services, and
- 14 k. complies with any other requirement the Commissioner
15 determines is necessary to provide quality medical
16 services and health care to injured employees.

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

20 C. If any insurer, except CompSource Oklahoma, fails to
21 contract with or provide access to a certified workplace medical
22 plan, an insured, after sixty (60) days' written notice to its
23 insurance carrier, shall be authorized to contract independently
24 with a plan of his or her choice for a period of ~~one (1) year~~ five

1 (5) years, to provide medical care under the Workers' Compensation
2 Act. The insured shall be authorized to contract, after sixty (60)
3 days' written notice to its insurance carrier, for additional ~~one-~~
4 year five-year periods if his or her insurer has not contracted with
5 or provided access to a certified workplace medical plan.

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

17 E. 1. An employee shall ~~exhaust~~ obtain written confirmation
18 from the certified workplace medical plan that the dispute
19 resolution procedure of the certified workplace medical plan has
20 been exhausted before seeking legal relief on an issue related to
21 medical care under the plan, including a subsequent change of
22 physician as described in the provisions of Section 14 of this title
23 and this section, provided the dispute resolution procedure shall
24 create a process which shall attempt to resolve the dispute within

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

4 2. For those employees covered by a certified workplace medical
5 plan, any medical evaluation obtained outside the plan, after the
6 commencement of treatment under the plan and prior to obtaining
7 written confirmation from the plan that the dispute resolution
8 process has been exhausted, shall not be admissible unless such
9 evaluation provides clear and convincing evidence that the treatment
10 offered under the plan is contrary to the nationally recognized
11 treatment guidelines adopted by the plan.

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

17 G. On or before November 1, 2005, the Commissioner of Health
18 shall implement a site visit protocol for employees of the State
19 Department of Health to perform an inspection of a certified
20 workplace medical plan to ensure that medical services to a claimant
21 and the medical management of the claimant's needs are adequately
22 met in a timely manner and that the certified workplace medical plan
23 is complying with all other applicable provisions of ~~this act~~ the

1 Workers' Compensation Act and the rules of the State Department of
2 Health. Such protocol shall include, but not be limited to:

3 1. A site visit shall be made to each certified workplace
4 medical plan not less often than once every year, but not later than
5 thirty (30) days following the anniversary date of issuance of the
6 initial or latest renewal certificate;

7 2. A site visit shall conclude with a determination that a
8 certified workplace medical plan is or is not operating in
9 accordance with its latest application to the State Department of
10 Health;

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

12 a. timely and effective medical services are available
13 with reasonable geographic convenience,

14 b. use of appropriate treatment guidelines and protocols,
15 and

16 c. effective programs for utilization review, case
17 management, grievances, and dispute resolution;

18 4. Performance of a site visit shall include:

19 a. inspection of organizational documentation,
20 b. inspection of systems documentation and processes,
21 c. random or systematic sampling of closed and open case
22 management cases (files),
23 d. random or systematic sampling, or a one hundred
24 percent (100%) inspection of all dispute resolution,

1 grievance, and/or Department of Health request for
2 assistance files,

3 e. workplace medical plan employee and management
4 interviews, as appropriate;

5 5. An initial site visit may occur with an interval of less
6 than twelve (12) months to a recently certified plan, or a site
7 visit may occur more often than once in every twelve (12) months if
8 the Commissioner of Health has reason to suspect that a plan is not
9 operating in accordance with its certification;

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

15 7. A deficient practice that is not remedied by a certified
16 workplace medical plan on a timely basis shall require the
17 Commissioner of Health to revoke or to suspend the certification of
18 a plan;

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

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

22 b. One Thousand Dollars (\$1,000.00) if a follow-up visit
23 is performed,
24

- 1 c. separate from the once in five (5) years certification
2 application fee, and
3 d. not charged if more than two site visits occur in a
4 twelve-month period; and

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

12 H. The State Board of Health shall adopt such rules as may be
13 necessary to implement the provisions of this title and this
14 section. Such rules shall authorize any person to petition the
15 Commissioner of Health for decertification of a certified workplace
16 medical plan for material violation of any rules promulgated
17 pursuant to this section.

18 I. All state agencies shall adopt and implement the certified
19 workplace medical plan of their insurer's choice no later than
20 November 1, 2011.

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

23 Section 15. ~~Where~~ If a compensable injury results in the loss
24 of one or more eyes, teeth, or limbs of the body, the employer shall

1 furnish such prosthetic devices as may be necessary as determined by
2 the Court in the treatment and rehabilitation of the injured ~~workman~~
3 employee. ~~Where a workman~~ If an employee sustains a compensable
4 injury, arising out of and in the course of ~~his~~ their employment,
5 which results in damage to a prosthetic device with which such
6 ~~workman~~ employee is equipped, the employer shall repair or replace
7 such device.

8 SECTION 15. AMENDATORY 85 O.S. 2001, Section 16, as
9 amended by Section 18, Chapter 1, 1st Extraordinary Session, O.S.L.
10 2005 (85 O.S. Supp. 2009, Section 16), is amended to read as
11 follows:

12 Section 16. A. The Administrator of the Workers' Compensation
13 Court shall hire a Vocational Rehabilitation Director to oversee the
14 vocational rehabilitation program of the Court. The Vocational
15 Rehabilitation Director shall have not less than a masters degree in
16 rehabilitation counseling and at least ten (10) years of experience
17 in rehabilitation of injured workers.

18 B. The Vocational Rehabilitation Director shall help injured
19 workers return to the work force through the encouragement of light-
20 duty work or retraining. Upon the request of either party, the
21 Vocational Rehabilitation Director shall determine if it is
22 appropriate for a claimant to receive vocational rehabilitation
23 training or services, and shall oversee such training. If
24 appropriate, the Vocational Rehabilitation Director shall issue

1 administrative orders, including, but not limited to, an order for a
2 vocational rehabilitation evaluation for any injured employee unable
3 to work for at least ninety (90) days. In addition, the Vocational
4 Rehabilitation Director may assign injured workers to vocational
5 rehabilitation counselors for coordination of recommended services.
6 The cost of the services shall be paid by the employer. If
7 possible, vocational rehabilitation services shall begin
8 concurrently with medical treatment, while the injured employee is
9 temporarily totally disabled and receiving benefits. The Director
10 may order an evaluation for any injured worker receiving medical
11 case management services. All such administrative orders are
12 subject to appeal.

13 C. An employee who has suffered an accidental injury or
14 occupational disease covered by the Workers' Compensation Act shall
15 be entitled to prompt and reasonable physical rehabilitation
16 services. When, as a result of the injury, the employee is unable
17 to perform the same occupational duties he was performing prior to
18 the injury, the employee shall be entitled to such vocational
19 rehabilitation services provided by a technology center school, a
20 public vocational skills center or public secondary school offering
21 vocational-technical education courses, or a member institution of
22 The Oklahoma State System of Higher Education, which shall include
23 retraining and job placement so as to restore the employee to
24 gainful employment. No person shall be adjudicated to be

1 permanently and totally disabled unless first having obtained an
2 evaluation as to the practicability of restoration to gainful
3 employment through vocational rehabilitation services or training.
4 The employee shall pay the cost of the evaluation. If an employee
5 claiming permanent total disability status unreasonably refuses to
6 be evaluated or to accept vocational rehabilitation services or
7 training, permanent total disability benefits shall not be awarded
8 during the period of such refusal, and the employee shall be limited
9 to permanent partial disability benefits only. The Administrator
10 shall promulgate rules governing notice to an injured employee of
11 the right to receive vocational rehabilitation. If rehabilitation
12 services are not voluntarily offered by the employer and accepted by
13 the employee, the judge of the Court may on the Court's own motion,
14 or if requested by a party may, after affording all parties an
15 opportunity to be heard, refer the employee to a qualified physician
16 or facility for evaluation of the practicability of, need for and
17 kind of rehabilitation services or training necessary and
18 appropriate in order to restore the employee to gainful employment.
19 The cost of the evaluation shall be paid by the employer. Following
20 the evaluation, if the employee refuses the services or training
21 ordered by the Court, or fails to complete in good faith the
22 vocational rehabilitation training ordered by the Court, then the
23 cost of the evaluation and services or training rendered may, in the
24 discretion of the Court, be deducted from any award of benefits to

1 the employee which remains unpaid by the employer. Upon receipt of
2 such report, and after affording all parties an opportunity to be
3 heard, the Court shall order that any rehabilitation services or
4 training, recommended in the report, or such other rehabilitation
5 services or training as the Court may deem necessary, provided the
6 employee elects to receive such services, shall be provided at the
7 expense of the employer. Except as otherwise provided in this
8 subsection, refusal to accept rehabilitation services by the
9 employee shall in no way diminish any benefits allowable to an
10 employee.

11 B. D. Vocational rehabilitation services or training shall not
12 extend for a period of more than ~~fifty two (52)~~ one hundred four
13 (104) weeks. This period may be extended for an additional fifty-
14 two (52) weeks or portion thereof by special order of the Court,
15 after affording the interested parties an opportunity to be heard.
16 A request for vocational rehabilitation services or training may be
17 filed with the Administrator by an interested party at any time
18 after the date of injury but not later than sixty (60) days from the
19 date of the final determination that permanent partial disability
20 benefits are payable to the employee. Vocational rehabilitation
21 services or training shall be payable only to the appropriate
22 agency, institution or facility performing the rehabilitation and
23 shall not be payable as a separate item in any settlement, order or
24 award to the claimant. The value of such vocational rehabilitation

1 services or training shall not be included in any calculation for
2 legal fees.

3 ~~C.~~ E. 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 the employee's board, lodging, travel,
6 tuition, books and necessary equipment in training shall be paid for
7 by the insurer in addition to weekly compensation benefits to which
8 the employee is otherwise entitled under the Workers' Compensation
9 Act.

10 ~~D.~~ F. During the period when an employee is actively and in
11 good faith being evaluated or participating in a retraining or job
12 placement program for purposes of evaluating permanent total
13 disability status, the employee shall be entitled to receive
14 benefits at the same rate as the employee's temporary total
15 disability benefits computed pursuant to Section 22 of this title
16 for a period of ~~fifty two (52)~~ one hundred four (104) weeks which
17 may be extended by the Court for up to a maximum of an additional
18 fifty-two (52) weeks. No attorney fees shall be awarded or deducted
19 from such benefits received during this period. All tuition related
20 to vocational rehabilitation services shall be paid by the employer
21 or the employer's insurer on a periodic basis directly to the
22 facility providing the vocational rehabilitation services or
23 training to the employee.

24

1 G. Any employer offering to provide on-the-job training to an
2 injured employee may opt out of workers' compensation insurance
3 while the employee is in such training.

4 H. If an employer does not offer light duty or early return to
5 work programs, the injured employee shall be eligible for a
6 vocational evaluation.

7 SECTION 16. AMENDATORY 85 O.S. 2001, Section 22, as last
8 amended by Section 1, Chapter 172, O.S.L. 2009 (85 O.S. Supp. 2009,
9 Section 22), is amended to read as follows:

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

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

16 (a) In the absence of clear and convincing proof to the
17 contrary, the loss of both hands, both legs, both arms, or both eyes
18 shall constitute permanent total disability.

19 (b) Except in a statutory permanent total disability case, in no
20 case shall a claimant receive both permanent total disability and
21 any other form of disability, including but not limited to permanent
22 partial, temporary partial or temporary total, at the same time or
23 for the same period of disability.

1 (c) No more often than annually, the carrier, self-insured
2 employer or the Death and Permanent Total Disability Trust Fund may
3 require an injured worker receiving permanent total disability
4 benefits, or the treating physician, or both injured worker and
5 treating physician, to certify on forms provided by the Court that
6 the injured worker is permanently and totally disabled and not
7 gainfully employed. Failure of the employee to so certify within
8 thirty (30) days after receipt of the notice shall permit the
9 discontinuation of benefits without penalty. If the Court finds
10 that the claim of permanent total disability was made in bad faith
11 by the employee, or if the employee made misleading representations
12 regarding disability benefits, the Court shall refer the case to the
13 Workers' Compensation Fraud Unit for appropriate prosecution.

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

1 one-hundred-fifty-week period, compensation may be continued for an
2 additional one hundred fifty (150) weeks.

3 (b) With respect to injuries occurring on or after November 4,
4 1994, in cases of temporary total disability, seventy percent (70%)
5 of the employee's average weekly wages shall be paid to the employee
6 during the continuance thereof, but not in excess of fifty-two (52)
7 weeks, except as otherwise provided in the Workers' Compensation
8 Act. Provided, after compensation has been paid for a period of
9 forty-two (42) weeks, the employee may request a review of the case
10 by a judge of the Court for continued temporary total disability
11 benefits provided by the Workers' Compensation Act. Upon a finding
12 that benefits should be extended beyond the initial fifty-two-week
13 period, compensation may be continued for additional successive
14 fifty-two-week periods, provided the employee has requested review
15 of the case at forty-two (42) weeks during each period involved, and
16 upon a finding by the Court that benefits should be extended. Total
17 payments of compensation for temporary total disability may not
18 exceed a maximum of three hundred (300) weeks in the aggregate.

19 (c) With respect to injuries occurring on or after November 1,
20 1997, total payments of compensation for temporary total disability
21 may not exceed a maximum of one hundred fifty-six (156) weeks in the
22 aggregate except for good cause shown, as determined by the Court.
23 Total payments of compensation for temporary total disability,
24

1 inclusive of consequential injuries, may not exceed a maximum of
2 three hundred (300) weeks in the aggregate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 Deafness: Deafness from industrial cause, including occupations
14 which are hazardous to hearing, accident or sudden trauma, three
15 hundred (300) weeks, and total deafness of one ear from industrial
16 cause, including occupations which are hazardous to hearing,
17 accident or sudden trauma, one hundred (100) weeks. Except as
18 otherwise provided herein, any examining physician shall only
19 evaluate deafness or hearing impairment in accordance with the
20 latest publication of the American Medical Association's "Guides to
21 the Evaluation of Permanent Impairment" in effect at the time of the
22 injury. The Physician Advisory Committee may, pursuant to Section
23 201.1 of this title, recommend the adoption of a method or system to
24 evaluate permanent impairment that shall be used in place of or in

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

1 this title. The guides or modifications thereto or alternative
2 system or method of evaluating permanent impairment or modifications
3 thereto shall be the exclusive basis for testimony and conclusions
4 with regard to deafness or hearing impairment.

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

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

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

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

23 In case of an injury resulting in serious and permanent
24 disfigurement, compensation shall be payable in an amount to be

1 determined by the Court, but not in excess of Twenty Thousand
2 Dollars (\$20,000.00); provided, that compensation for permanent
3 disfigurement shall not be in addition to the other compensation
4 provided for in this section, but shall be taken into consideration
5 in fixing the compensation otherwise provided.

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

21 Other Cases: In all other classes of disabilities, excluding
22 only those heretofore referred to in paragraph 3 of this section,
23 which disabilities result in loss of use of any portion of an
24 employee's body, and which disabilities are permanent in quality but

1 partial in character, disability shall mean the percentage of
2 permanent impairment. The compensation ordered paid shall be
3 seventy percent (70%) of the employee's average weekly wage for the
4 number of weeks which the partial disability of the employee bears
5 to five hundred (500) weeks.

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

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

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

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

21 (4) For each remaining percent of disability, the identical
22 number of weeks of compensation provided by law prior to November 4,
23 1994.

24

1 (c) With respect to injuries occurring on or after January 1,
2 2002, through December 31, 2002, in case of disability, partial in
3 character but permanent in quality, the compensation shall be
4 seventy percent (70%) of the employee's average weekly wages, and
5 shall be paid to the employee for the period prescribed by the
6 following schedule:

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

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

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

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

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

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

24 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 great
2 toe, eleven (11) weeks.

3 Phalange of Toe: The loss of the first phalange of any toe shall
4 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) weeks.

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

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

19 Except as otherwise provided herein, any examining physician shall
20 only evaluate deafness or hearing impairment in accordance with the
21 latest publication of the American Medical Association's "Guides to
22 the Evaluation of Permanent Impairment" in effect at the time of the
23 injury. The Physician Advisory Committee may, pursuant to Section
24 201.1 of this title, recommend the adoption of a method or system to

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

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

24

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

8 Hernia: In case of an injury resulting in hernia, temporary
9 total compensation for six (6) weeks, and the cost of an operation
10 shall be payable, unless the employee has not been released from
11 active medical treatment, temporary total compensation not to exceed
12 nine (9) weeks, and the cost of an operation shall be payable;
13 provided, in any case where the injured employee has been twice
14 previously operated on for hernia in the same area and it is
15 established by opinion of a competent surgeon that further surgery
16 in the same area will not result in full relief of the condition,
17 the Court may then award compensation for disability resulting
18 therefrom under paragraph 1 of this section, or, if not totally and
19 permanently disabled, then under the "Other Cases" subdivision
20 following, and, after a second surgical attempt to repair hernia,
21 the injured may not be required to submit to further surgery in an
22 effort to relieve the disability thereafter existing; provided
23 further, the use of any artificial reinforcement or device, with or

24

1 without surgery, shall not be the basis of reducing extent of
2 disability to be awarded.

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

12 (d) With respect to injuries occurring on or after January 1,
13 2003, in case of disability, partial in character but permanent in
14 quality, the compensation shall be seventy percent (70%) of the
15 employee's average weekly wages, and shall be paid to the employee
16 for the period prescribed by the following schedule:

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

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

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

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

24

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

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

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

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

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

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

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

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

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

24

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

3 Deafness: Deafness from industrial cause, including occupations
4 which are hazardous to hearing, accident or sudden trauma, three
5 hundred thirty (330) weeks, and total deafness of one ear from
6 industrial cause, including occupations which are hazardous to
7 hearing, accident or sudden trauma, one hundred ten (110) weeks.

8 Except as otherwise provided herein, any examining physician shall
9 only evaluate deafness or hearing impairment in accordance with the
10 latest publication of the American Medical Association's "Guides to
11 the Evaluation of Permanent Impairment" in effect at the time of the
12 injury. The Physician Advisory Committee may, pursuant to Section
13 201.1 of this title, recommend the adoption of a method or system to
14 evaluate permanent impairment that shall be used in place of or in
15 combination with the American Medical Association's "Guides to the
16 Evaluation of Permanent Impairment". Such recommendation shall be
17 made to the Administrator of the Workers' Compensation Court who may
18 adopt the recommendation in part or in whole. The adopted method or
19 system shall be submitted by the Administrator to the Governor, the
20 Speaker of the House of Representatives and President Pro Tempore of
21 the Senate within the first ten (10) legislative days of a regular
22 session of the Legislature. Such method or system to evaluate
23 permanent impairment that shall be used in place of or in
24 combination with the American Medical Association's "Guides to the

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

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

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

22 For the permanent partial loss of use of a member, loss of
23 hearing or sight of an eye, seventy percent (70%) of the employee's
24 average weekly wage during that portion of the number of weeks in

1 the foregoing schedule provided for the loss of such member or sight
2 of an eye which the partial loss of use thereof bears to the total
3 loss of use of such member, loss of hearing or sight of an eye.

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

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

13 In case of an injury resulting in serious and permanent
14 disfigurement, compensation shall be payable in an amount to be
15 determined by the Court, but not in excess of Twenty Thousand
16 Dollars (\$20,000.00) for an injury occurring before November 1,
17 2005, and not in excess of Fifty Thousand Dollars (\$50,000.00) for
18 an injury occurring on or after November 1, 2005; provided, that
19 compensation for permanent disfigurement shall not be in addition to
20 the other compensation provided for in this section but shall be
21 taken into consideration in fixing the compensation otherwise
22 provided.

23 Hernia: In case of an injury resulting in hernia, temporary
24 total compensation for six (6) weeks, and all necessary medical

1 costs including, but not limited to, the cost of an operation shall
2 be payable. A claimant who has had surgery for a hernia may
3 petition the court for one extension of temporary total compensation
4 and the court may order such an extension, not to exceed six (6)
5 additional weeks, if the treating physician indicates such an
6 extension is appropriate, or as agreed to by all parties.

7 Soft Tissue Injury: In case of a nonsurgical soft tissue injury,
8 temporary total compensation shall not exceed eight (8) weeks. A
9 claimant who has been recommended by a treating physician for
10 surgery for a soft tissue injury, or who has had surgery for a soft
11 tissue injury as a result of a recommendation by a treating
12 physician, may petition the Court for one extension of temporary
13 total compensation and the court may order such an extension, not to
14 exceed sixteen (16) additional weeks, if the treating physician
15 indicates that such an extension is appropriate or as agreed to by
16 all parties. In the event the surgery is not recommended, or is
17 recommended but not performed within ninety (90) days after the
18 recommendation, the benefits for the extension period shall be
19 terminated. For purposes of this section, "soft tissue injury"
20 means damage to one or more of the tissues that surround bones and
21 joints. "Soft tissue injury" includes, but is not limited to:
22 sprains, strains, contusions, tendonitis, and muscle tears.
23 Cumulative trauma is to be considered a soft tissue injury. "Soft
24 tissue injury" does not include any of the following:

1 (1) Injury to or disease of the spine, spinal disks, spinal
2 nerves or spinal cord, where corrective surgery is performed;

3 (2) Brain or closed-head injury as evidenced by:

- 4 a. sensory or motor disturbances,
- 5 b. communication disturbances,
- 6 c. complex integrated disturbances of cerebral function,
- 7 d. episodic neurological disorders, or
- 8 e. other brain and closed-head injury conditions at least
9 as severe in nature as any condition provided in
10 subdivisions a through d of this division; or

11 (3) Total knee replacement.

12 In all cases of soft tissue injury, the employee shall only be
13 entitled to appropriate and necessary medical care and temporary
14 total disability as set out in ~~paragraph 2 of this section~~, this
15 subparagraph. The employee shall not be entitled to permanent
16 impairment unless there is objective medical evidence of a permanent
17 anatomical abnormality. In determining the existence of such an
18 abnormality, the Court may consider if there is credible medical
19 evidence that the ability of the employee to earn wages at the same
20 level as before the injury has been permanently impaired.

21 Other Cases: In all other classes of disabilities, excluding
22 only those heretofore referred to in this paragraph, which
23 disabilities result in loss of use of any portion of an employee's
24 body, and which disabilities are partial in character but permanent

1 in quality, disability shall mean the percentage of permanent
2 impairment. The compensation ordered paid shall be seventy percent
3 (70%) of the employee's average weekly wage for the number of weeks
4 which the partial disability of the employee bears to five hundred
5 (500) weeks. No permanent disability shall be awarded unless there
6 is objective medical evidence, as defined in Section 3 of this
7 title, of a permanent anatomical abnormality. In determining the
8 existence of such an abnormality, the Court may consider if there is
9 credible medical evidence that the ability of the employee to earn
10 wages at the same level as before the injury has been permanently
11 impaired.

12 (e) With respect to injuries occurring on or after November 1,
13 2010, in case of disability, partial in character but permanent in
14 quality, the compensation shall be sixty-six and two-thirds percent
15 (66 2/3%) of the employee's average weekly wages, not to exceed
16 Three Hundred Forty-two Dollars (\$342.00) per week, and shall be
17 paid to the employee for the period prescribed by the following
18 schedule:

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

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

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

24

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

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

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

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

14 Other toes: For the loss of one of the toes other than the great
15 toe, eleven (11) weeks.

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

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

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

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

24

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

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

5 Deafness: Deafness, three hundred thirty (330) weeks, and total
6 deafness of one ear, one hundred ten (110) weeks.

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

10 For the permanent partial loss of use of a member, loss of
11 hearing or sight of an eye, sixty-six and two-thirds percent (66
12 2/3%) of the employee's average weekly wage during that portion of
13 the number of weeks in the foregoing schedule provided for the loss
14 of such member or sight of an eye which the partial loss of use
15 thereof bears to the total loss of use of such member, loss of
16 hearing or sight of an eye.

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

23 Permanent disfigurement: In case of an injury resulting in
24 serious and permanent disfigurement to that portion of the body not

1 normally covered by clothing and open to public view, compensation
2 shall be payable in an amount to be determined by the Court, but not
3 in excess of Five Thousand Dollars (\$5,000.00).

4 Hernia: In case of an injury resulting in hernia, temporary
5 total compensation for six (6) weeks, and all necessary medical
6 costs including, but not limited to, the cost of an operation shall
7 be payable. A claimant who has had surgery for a hernia may
8 petition the court for one extension of temporary total compensation
9 and the court may order such an extension, not to exceed six (6)
10 additional weeks, if the treating physician indicates such an
11 extension is appropriate, or as agreed to by all parties.

12 Soft Tissue Injury: In case of a nonsurgical soft tissue injury,
13 temporary total compensation shall not exceed eight (8) weeks. A
14 claimant who has been recommended by a treating physician for
15 surgery for a soft tissue injury, or who has had surgery for a soft
16 tissue injury as a result of a recommendation by a treating
17 physician, may petition the Court for one extension of temporary
18 total compensation and the Court may order such an extension, not to
19 exceed sixteen (16) additional weeks, if the treating physician
20 indicates that such an extension is appropriate or as agreed to by
21 all parties. In the event the surgery is not recommended, or is
22 recommended but not performed within ninety (90) days after the
23 recommendation, the benefits for the extension period shall be
24 terminated. For purposes of this section, "soft tissue injury"

1 includes, but is not limited to: sprains, strains, contusions,
2 tendonitis, and muscle tears. Cumulative trauma is to be considered
3 a soft tissue injury. In all cases of nonsurgical soft tissue
4 injury, the employee shall only be entitled to appropriate and
5 necessary medical care and temporary total disability as set out in
6 this subparagraph. "Soft tissue injury" does not include any of the
7 following:

8 (1) Injury to or disease of the spine, spinal disks, spinal
9 nerves or spinal cord, where corrective surgery is performed;

10 (2) Brain or closed-head injury as evidenced by:

11 a. sensory or motor disturbances,

12 b. communication disturbances,

13 c. complex integrated disturbances of cerebral function,

14 d. episodic neurological disorders, or

15 e. other brain and closed-head injury conditions at least

16 as severe in nature as any condition provided in

17 subdivisions a through d of this division; or

18 (3) Total knee replacement.

19 Odd-lot doctrine: The Court shall not consider the odd-lot

20 doctrine for permanent disability claims.

21 4. Temporary Partial Disability. (a) With respect to injuries
22 occurring before November 4, 1994, in case of temporary partial
23 disability, except the particular cases mentioned in paragraph 3 of
24 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
24 extended beyond the initial fifty-two-week period, compensation may

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

7 (c) With respect to injuries occurring on or after November 1,
8 1997, total payments of compensation for temporary partial
9 disability may not exceed a maximum of one hundred fifty-six (156)
10 weeks in the aggregate except for good cause shown, as determined by
11 the Court. Total payments of compensation for temporary partial
12 disability, inclusive of consequential injuries, may not exceed a
13 maximum of three hundred (300) weeks in the aggregate.

14 (d) With respect to injuries occurring before November 1, 2010,
15 in case of temporary partial disability, except the particular cases
16 mentioned in paragraph 3 of this section, an injured employee shall
17 receive sixty-six and two-thirds percent (66 2/3%) of the difference
18 between the employee's average weekly wages and the employee's wage-
19 earning capacity thereafter in the same employment or otherwise, if
20 less than before the injury, during continuance of such partial
21 disability, but not to exceed one hundred four (104) weeks.

22 5. Notwithstanding any other section of the Workers'
23 Compensation Act, temporary disability shall be payable without an
24 award by the Court. The first payment of temporary disability

1 compensation shall become due on the tenth day after the employer
2 has received notice of injury as specified in ~~Section 24.2~~ of this
3 title. All compensation owed on that date shall be paid and
4 thereafter payments shall be made weekly except when otherwise
5 ordered by the Court.

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

15 6. Limitation. The compensation payments under the provisions
16 of the Workers' Compensation Act shall not exceed the sum of
17 seventy-five percent (75%) of the state's average weekly wage as
18 determined by the Oklahoma Employment Security Commission, the sum
19 of ninety percent (90%) of the state's average weekly wage beginning
20 January 1, 1995, for injuries occurring after December 31, 1994, and
21 the sum of one hundred percent (100%) of the state's average weekly
22 wage beginning January 1, 1996, for injuries occurring after
23 December 31, 1995, for temporary disability; Sixty Dollars (\$60.00)
24 per week beginning as of the effective date of the Workers'

1 Compensation Act, and Seventy Dollars (\$70.00) per week beginning
2 January 1, 1979, and Eighty Dollars (\$80.00) per week beginning
3 January 1, 1980, and Ninety Dollars (\$90.00) per week beginning
4 January 1, 1981, and to fifty percent (50%) of the state's average
5 weekly wage beginning January 1, 1982, for permanent partial
6 disability; Seventy-five Dollars (\$75.00) per week beginning as of
7 the effective date of the Workers' Compensation Act, and Ninety
8 Dollars (\$90.00) per week beginning January 1, 1979, and One Hundred
9 Ten Dollars (\$110.00) per week beginning January 1, 1980, to sixty-
10 six and two-thirds percent (66 2/3%) of the state's average weekly
11 wage beginning January 1, 1981, to seventy-five percent (75%) of the
12 state's average weekly wage beginning September 1, 1992, to ninety
13 percent (90%) of the state's average weekly wage beginning January
14 1, 1995, for injuries occurring after December 31, 1994, and to one
15 hundred percent (100%) of the state's average weekly wage beginning
16 January 1, 1996, for injuries occurring after December 31, 1995, for
17 permanent total disability, or at any time be less than Thirty
18 Dollars (\$30.00) per week; provided, however, that if the employee's
19 wages at the time of the injury are less than Thirty Dollars
20 (\$30.00) per week, the employee shall receive the employee's full
21 weekly wages; provided further, that the compensation received, as
22 provided for temporary partial disability, shall not, when added to
23 the wages received by such employee after such injury, amount to a
24 greater sum than eighty percent (80%) of the average weekly wages of

1 the employee received prior to said injury. Provided, further, that
2 for injuries occurring after November 1, 2010, the compensation for
3 permanent partial disability shall not exceed Three Hundred Forty-
4 two Dollars (\$342.00) per week.

5 The average weekly wage in this state shall be determined by the
6 Oklahoma Employment Security Commission every year beginning July 1,
7 1984, and shall be used to establish maximum benefits under the
8 Workers' Compensation Act for injuries occurring during a one-year
9 period, which period shall begin on the first day of November after
10 publication by the Oklahoma Employment Security Commission. For the
11 purpose of computing benefits payable under the Workers'
12 Compensation Act, the state's average weekly wage shall be rounded
13 to the nearest dollar amount.

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

19 7. Previous Disability. The fact that an employee has suffered
20 previous disability or impairment or received compensation therefore
21 shall not preclude the employee from compensation for a later
22 accidental personal injury or occupational disease; but in
23 determining compensation for the later accidental personal injury or
24 occupational disease the employee's average weekly wages shall be

1 such sum as will reasonably represent the employee's earning
2 capacity at the time of the later accidental personal injury or
3 occupational disease. In the event there exists a previous
4 impairment, including a previous non-work-related injury or
5 condition which produced permanent disability and the same is
6 aggravated or accelerated by an accidental personal injury or
7 occupational disease, compensation for permanent disability shall be
8 only for such amount as was caused by such accidental personal
9 injury or occupational disease and no additional compensation shall
10 be allowed for the pre-existing disability or impairment. The sum
11 of all permanent partial disability awards, excluding awards against
12 the Multiple Injury Trust Fund and awards for amputations, and
13 surgeries, shall not exceed one hundred percent (100%) permanent
14 partial disability for any individual. An individual may not
15 receive more than five hundred twenty (520) weeks' compensation for
16 permanent partial disability, but may receive other benefits under
17 the Workers' Compensation Act if otherwise eligible as provided in
18 the Workers' Compensation Act.

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

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

24

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

5 (2) If there is a child or children, to such child or children
6 fifteen percent (15%) of the average weekly wages the deceased was
7 earning for each child. Where there are more than two such
8 children, the income benefits payable for the benefit of all
9 children shall be divided among all children, to share and share
10 alike, subject to the provisions of subparagraphs (c) and (d) of
11 this paragraph.

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

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

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

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

- 1 b. when the child over eighteen (18) years of age ceases
2 to be physically or mentally incapable of self-
3 support,
4 c. when the actually dependent child ceases to be
5 actually dependent, or
6 d. when the child has been enrolled as a full-time
7 student in any accredited educational institution or
8 has been receiving education by other means, including
9 education at home pursuant to Section 4 of Article
10 XIII of the Oklahoma Constitution, and the child
11 ceases to be so enrolled or educated or reaches
12 twenty-three (23) years of age. A child who
13 originally qualified as a dependent by virtue of being
14 less than eighteen (18) years of age may, upon
15 reaching eighteen (18) years of age, continue to
16 qualify if the child satisfies the tests of being
17 physically or mentally incapable of self-support,
18 actually dependent, or enrolled in an accredited
19 educational institution or being educated by other
20 means, including education at home pursuant to Section
21 4 of Article XIII of the Oklahoma Constitution.

22 (6) To each parent, if actually dependent, twenty-five percent
23 (25%) of the average weekly wages the deceased was earning subject
24 to the provisions of subparagraphs (c) and (d) of this paragraph.

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

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

15 (9) A person ceases to be actually dependent when the person's
16 income from all sources exclusive of workers' compensation income
17 benefits is such that, if it had existed at the time the original
18 determination of actual dependency was made, it would not have
19 supported a finding of dependency. If the present annual income of
20 an actually dependent person including workers' compensation income
21 benefits at any time exceeds the total annual support received by
22 the person from the deceased employee, the workers' compensation
23 benefits shall be reduced so that the total annual income is no
24 greater than such amount of annual support received from the

1 deceased employee. In all cases, a person found to be actually
2 dependent shall be presumed to be no longer actually dependent three
3 (3) years after the time as of which the person was found to be
4 actually dependent. This presumption may be overcome by proof of
5 continued actual dependency as defined in this paragraph and
6 paragraph (1) of Section 3.1 of this title.

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

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

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

1 9. Where some pecuniary loss may be shown by heirs-at-law of
2 the deceased, as defined by the descent and distribution statutes of
3 Oklahoma, who are otherwise not entitled to receive benefits under
4 other provisions of this section, such heirs-at-law shall receive
5 compensation for their pecuniary loss not to exceed an aggregate of
6 Five Thousand Dollars (\$5,000.00).

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

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

1 Twenty Thousand Dollars (\$20,000.00) to the spouse and Five Thousand
2 Dollars (\$5,000.00) to each surviving child not to exceed two
3 children. For deaths occurring on or after November 1, 2005, if
4 there is a surviving spouse and surviving children entitled to
5 receive death benefits herein, such survivors shall be entitled to
6 an immediate lump-sum payment of One Hundred Thousand Dollars
7 (\$100,000.00) to the spouse and Twenty-five Thousand Dollars
8 (\$25,000.00) to each surviving child not to exceed two children. In
9 addition, the survivors shall be entitled to receive funeral
10 benefits in an amount not to exceed Ten Thousand Dollars
11 (\$10,000.00).

12 (b) For deaths occurring before November 1, 2005, if there is no
13 surviving spouse but there are surviving children entitled to
14 receive death benefits herein, such surviving children shall be
15 entitled to a lump-sum payment of Ten Thousand Dollars (\$10,000.00)
16 to be divided among all the children to share and share alike. For
17 deaths occurring on or after November 1, 2005, if there is no
18 surviving spouse but there are surviving children entitled to
19 receive death benefits herein, each surviving child shall be
20 entitled to a lump-sum payment of Twenty-five Thousand Dollars
21 (\$25,000.00), provided the total amount of lump-sum payments shall
22 not exceed One Hundred Fifty Thousand Dollars (\$150,000.00), to be
23 divided among all the children to share and share alike. The
24

1 survivors shall also be entitled to receive funeral benefits in an
2 amount not to exceed Ten Thousand Dollars (\$10,000.00).

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

12 Provided, that all judgments rendered awarding lump-sum death
13 benefits, except lump-sum attorney fee awards, may, at the
14 discretion of the Court, provide that said benefits be paid in trust
15 to an interest-bearing account in a federally insured banking
16 institution in the county wherein the judgment was rendered. The
17 banking institution may make appropriate charges to the beneficiary
18 for costs of trust management. These charges shall be fixed by
19 agreement of such institution and the judge rendering the judgment.
20 The judgment awarding lump-sum death benefits shall contain
21 instructions for regularly scheduled disbursements to be fixed by
22 the Court which may be modified by the Court upon a proper showing
23 of change of circumstance. The banking institution shall issue a
24 numbered receipt to the person paying the benefits into trust and

1 deliver a copy of the receipt to the Administrator. Each banking
2 institution receiving trust funds for deposit shall receive a
3 schedule of disbursements and shall monthly pay said disbursements
4 to the beneficiary as ordered by the Court. An annual accounting of
5 all such trust funds received and deposited shall be rendered by
6 each banking institution to the Court granting the judgment.

7 12. No payments on any permanent impairment order shall start
8 until payments on any pre-existing permanent impairment orders have
9 been completed.

10 13. (a) 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 or in any other jurisdiction shall have all benefits for
13 temporary total disability awarded by the Workers' Compensation
14 Court forfeited by order of the Court on motion of the employer or
15 the employer's insurer after confirmation of the employee's
16 incarceration. The Court also may order the forfeiture of such
17 benefits on its own motion upon receipt of notice from the Director
18 of the Department of Corrections that the person awarded the
19 benefits is incarcerated as an inmate in a facility operated by or
20 under contract with the Department. The provisions of this
21 subparagraph shall not apply to any benefits awarded to an inmate
22 for compensable injuries sustained by the inmate while in the employ
23 of a private for-profit employer or while employed in private prison
24 industries, involving a for-profit employer, which deal in

1 interstate commerce or which sell products or services to the
2 federal government.

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

14 SECTION 17. AMENDATORY 85 O.S. 2001, Section 24.2, is
15 amended to read as follows:

16 Section 24.2 A. Unless an employee or former employee gives
17 ~~oral or~~ written notice to the employer or former employer within
18 ~~thirty (30)~~ ten (10) business days of the date an injury occurs ~~or~~
19 ~~the employee receives medical attention from a licensed physician~~
20 ~~during the thirty day period from the date an injury occurred,~~ the
21 rebuttable presumption shall be that the injury was not work
22 related. Such presumption must be overcome by a preponderance of
23 the evidence. For an occupational disease or cumulative trauma,
24 written notice shall be given to the employer within the statutory

1 period for occupational disease set out in ~~Section 43~~ of this title;
2 provided, there shall be a rebuttable presumption that injury from
3 occupational disease or injury caused by cumulative trauma does not
4 arise out of and in the course of employment unless ~~oral or~~ written
5 notice is given by the employee to the employer within ~~ninety (90)~~
6 thirty (30) days of the employee's separation from employment. Such
7 presumption must be overcome by a preponderance of the evidence.

8 B. If the employer has notice of the injury and the injury is
9 not disputed and weekly temporary total disability benefit payments
10 are not commenced within twenty (20) days or if any subsequent
11 installment of temporary total disability benefits is not made
12 within ten (10) days after it becomes due, the insurer of the
13 employer shall pay to the employee a penalty of fifteen percent
14 (15%) of the unpaid or delayed weekly benefits. This penalty may be
15 imposed by the Court for good cause shown on a case-by-case basis.

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

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

21 SECTION 18. AMENDATORY 85 O.S. 2001, Section 26, as
22 amended by Section 22, Chapter 1, 1st Extraordinary Session, O.S.L.
23 2005 (85 O.S. Supp. 2009, Section 26), is amended to read as
24 follows:

1 Section 26. A. The Administrator shall provide printed notice
2 forms to be used by the injured employee. Notice of injury filed by
3 the employee with the Administrator shall be verified subject to the
4 laws of perjury of this state and shall be styled: In re: Claim of
5 the _____ (the name of the employee) and shall include in addition
6 to any other requirements the following information:

- 7 1. The name and social security number of the employee;
- 8 2. The name of the employer;
- 9 3. The judicial district of the county of residence of the
10 employee at the time of the injury;
- 11 4. The address of the principal place of business of the
12 employer;
- 13 5. The judicial district of the county where the injury
14 occurred; and
- 15 6. The judicial district of the county where the injured
16 employee wants the claim docketed.

17 B. Any time after the expiration of the first three (3) days of
18 disability on the part of the injured employee, a claim for
19 compensation may be presented to the Administrator. If the employer
20 and the injured employee shall reach a final agreement as to the
21 facts with relation to an injury, and the resulting disability for
22 which compensation is claimed under the Workers' Compensation Act, a
23 memorandum of such agreement, in form as prescribed by the
24 Administrator, signed by both the employer and employee shall be

1 filed by the employer with the Administrator. In cases in which the
2 claimant is not represented by legal counsel, the claimant and the
3 employer may reach a compromise settlement of all issues. The
4 ~~settlement must be approved by the Administrator or a judge of the~~
5 ~~Court after the filing of an Employer's First Notice of Injury and~~
6 ~~may be paid in a lump sum.~~ There shall be no requirement for the
7 filing of an Employee's First Notice of Accidental Injury and Claim
8 for Compensation to effect such settlement. ~~The Court shall~~
9 ~~promulgate rules to allow the creation of a file, the making of a~~
10 ~~record before a reporter of the Workers' Compensation Court, and the~~
11 ~~approval of the settlement. This procedure shall be known as a~~
12 ~~"compromise settlement". Compensation received by a claimant in a~~
13 ~~compromise settlement as defined by this subsection or in a~~
14 ~~settlement based upon a dismissal of a claim with prejudice shall~~
15 ~~not be considered to be an award of permanent partial disability.~~
16 In the absence of fraud this agreement shall be deemed binding upon
17 the parties thereto. ~~The Court shall have full power and authority~~
18 ~~to determine all questions in relation to payment of claims for~~
19 ~~compensation under the provisions of the Workers' Compensation Act.~~
20 ~~The Court shall make, or cause to be made, such investigation as it~~
21 ~~deems necessary, and upon application of either party shall order a~~
22 ~~hearing, and as soon as practicable, after a claim for compensation~~
23 ~~is submitted under this section, or such hearing closed, shall make~~
24 ~~or deny an award determining such claim for compensation, and file~~

1 ~~the same in the office of the Administrator, together with the~~
2 ~~statement of its conclusion of fact and rulings of law. Upon a~~
3 ~~hearing pursuant to this section either party may present evidence~~
4 ~~and be represented by counsel. The decision of the Court shall be~~
5 ~~final as to all questions of fact, and except as provided in Section~~
6 ~~3.6 of this title, as to all questions of law.~~

7 C. A good faith effort shall be made on the part of any
8 insurance carrier, CompSource Oklahoma, or group self-insured plan
9 to notify an insured employer of the possibility of, and/or terms
10 of, any settlement of a workers' compensation case pursuant to this
11 section. Written comments or objections to settlements shall be
12 filed with the Workers' Compensation Court and periodically shared
13 with the management of the applicable insurer. A written notice
14 shall be made to all policyholders of their right to a good faith
15 effort by their insurer to notify them of any proposed settlement,
16 if the policyholder so chooses.

17 SECTION 19. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 28.1 of Title 85, unless there
19 is created a duplication in numbering, reads as follows:

20 A. 1. The Workers' Compensation Court may review any
21 compensation order, award, or decision, except joint petition
22 settlements which have been agreed upon and filed with the Court.

23 2. Review by the Court of any compensation order or award, made
24 by the Court, may be done at any time within three (3) months of

1 termination of the compensation period fixed in the original
2 compensation order or award, upon the application of any party in
3 interest, on the ground of a change in physical condition.

4 3. Upon the review, the Court may make an order or award
5 terminating, continuing, decreasing, or increasing for the future
6 the compensation previously awarded, subject to the maximum limits
7 provided for in the Workers' Compensation Act.

8 B. The review and subsequent order or award shall be made in
9 accordance with the procedure prescribed in the Workers'
10 Compensation Act.

11 C. The Court may, at any time within twelve (12) months from
12 the issuance of any order or award, correct any clerical error in
13 any order or award.

14 SECTION 20. AMENDATORY 85 O.S. 2001, Section 30, as
15 amended by Section 23, Chapter 1, 1st Extraordinary Session, O.S.L.
16 2005 (85 O.S. Supp. 2009, Section 30), is amended to read as
17 follows:

18 Section 30. A. 1. If the Workers' Compensation Court before
19 which any proceedings for compensation or concerning an award of
20 compensation have been brought, under the Workers' Compensation Act,
21 determines that such proceedings have not been brought on a
22 reasonable ground, or that denial of benefits has not been based on
23 a reasonable ground, the Court shall assess the total cost of the
24

1 proceedings on the party, who has brought them or the party who has
2 unreasonably denied payment of benefits.

3 2. In the event a respondent fails to pay travel expenses as
4 required by an order of the Court within twenty-five (25) business
5 days of such order, the Court shall assess a Five Hundred Dollar
6 (\$500.00) penalty against the respondent and payable to the
7 claimant.

8 B. Claims for services or treatment rendered or supplies
9 furnished pursuant to Section 14 of this title shall not be
10 enforceable unless approved by the Court. If approved, such claim
11 shall become a lien upon the compensation awarded, but shall be paid
12 therefrom only in the manner fixed by the Court.

13 C. A claim for legal services shall be determined by the Court
14 pursuant to the provisions of this subsection.

15 1. A claim for legal services in contested temporary disability
16 cases shall not exceed ten percent (10%) of the amount of the award
17 for temporary disability. Legal service fees paid in uncontested
18 cases for temporary total disability shall not exceed ten percent
19 (10%) as ordered by the Court.

20 2. A claim for legal services shall not exceed twenty percent
21 (20%) of the amount of the award for permanent disability or death
22 benefits.

23 D. Claims for legal services for temporary disability awards
24 shall be paid periodically. Claims for legal fees for permanent

1 total disability awards shall be paid periodically at the rate of
2 twenty percent (20%) of each weekly check to the claimant until the
3 attorney fee is satisfied, based upon a maximum of four hundred
4 (400) weeks of compensation. The right to any such attorney fee
5 shall be vested at the time the award therefor becomes final.
6 Claims for legal services for permanent partial disability awards
7 may be paid in a lump sum the same to be deducted from the end of
8 the award. Claims for legal services for death awards may be paid
9 in a lump sum which shall be deducted from the periodic compensation
10 payments at a rate of ten percent (10%) per payment until the
11 attorney fee is satisfied.

12 E. In any claim in which the respondent has ~~admitted~~
13 ~~compensability of an accidental injury within twenty (20) days of~~
14 ~~the filing of an Employee's First Notice of Accidental Injury and~~
15 ~~Claim for Compensation, has not disputed medical treatment, and has~~
16 made a settlement offer in writing within ~~fifteen (15)~~ thirty (30)
17 days after receipt of notice that the claimant ~~reaches~~ has reached
18 maximum medical improvement, the attorney fee shall be limited to
19 ~~thirty five percent (35%)~~ twenty percent (20%) of the amount of any
20 award or settlement of permanent partial disability which is greater
21 than the amount of the offer. ~~In addition, an attorney fee shall be~~
22 ~~awarded for other contested benefits obtained on behalf of the~~
23 ~~claimant at any time during the pendency of the claim and shall be~~
24 ~~based upon a reasonable hourly rate.~~ In no event shall the total

1 attorney fee be in excess of twenty percent (20%) of the total
2 permanent partial disability award or settlement. All attorney fees
3 shall be deducted from the award or settlement to the claimant.

4 F. An attorney and counselor shall not deduct or withhold any
5 portion of a judgment from the Court, a court of law, settlement
6 proceeds of a client, or any monies held in trust for a client for
7 the purpose of donating or contributing funds or monies to a
8 political fund, political action committee, campaign of any kind, or
9 candidate for state, federal or local office.

10 SECTION 21. AMENDATORY 85 O.S. 2001, Section 41, is
11 amended to read as follows:

12 Section 41. A. Awards for permanent partial disability under
13 Section 22 of this title shall be made for the total number of weeks
14 of compensation which the Court shall find the claimant will be
15 entitled to receive, less any sums previously paid which the Court
16 may find to be a proper credit thereon. When the award becomes
17 final, the whole sum or any unpaid portion thereof shall operate as
18 a final adjudicated obligation and payment thereof may be enforced
19 by the claimant or in case of his death, by the surviving
20 beneficiary entitled to the proceeds as provided in ~~Section 48 of~~
21 this title. All awards shall be paid by periodic installments as
22 determined by the Court. Whenever an injured person receives an
23 award for permanent partial disability, ~~permanent total disability~~
24 ~~or death benefits~~, the injured employee or claimant, for good cause

1 shown, may have the award commuted to a lump-sum payment by
2 permission of the Court. This authorization for commutation shall
3 not be applicable to attorney fees in permanent total disability
4 cases. The lump-sum payment shall not exceed Four Thousand Dollars
5 (\$4,000.00) or twenty-five percent (25%) of the total award,
6 whichever is the larger sum. Attorney fees shall be based upon not
7 more than a five-hundred-week award and, with respect to attorney
8 fees in a permanent total disability case, shall be paid
9 periodically. Such commutation shall be in addition to any
10 commutation to a lump-sum payment for legal services. The balance
11 of the total award shall be paid in periodic installments. In case
12 of the death of a claimant due to causes other than his accidental
13 personal injury or occupational disease at any time before
14 satisfaction or payment of the total award is made, the award shall
15 not abate, but shall be revived in favor of the persons determined
16 by the Court to be entitled thereto. In proceedings to enforce
17 claims for compensation during a period of healing or temporary
18 total disability, the compensation under the provisions of the
19 Workers' Compensation Act shall be payable periodically, in
20 accordance with the method of payment of the wages of the employee
21 at the time of his injury, and shall be so provided for in any award
22 made.

23 B. Awards for permanent total disability shall be made by the
24 Court under Section 22 of this title. The Court shall make a

1 determination that the claimant will be entitled to receive the
2 weekly income benefits provided in this title as long as his
3 permanent total disability continues to exist. When an award for
4 total permanent disability becomes final, the accrued portion
5 thereof shall operate as a final adjudicated obligation and payment
6 thereof may be enforced by the claimant. In proceedings to enforce
7 claims for total permanent disability, the compensation under the
8 provisions of the Workers' Compensation Act shall be payable
9 periodically and shall be so provided in any award made thereon.
10 Total permanent disability awards shall not be commuted to a
11 lump-sum payment.

12 C. All payments shall be made on any award in the manner and
13 form prescribed by the Court not to exceed the weekly rate of
14 compensation specified in Section 22 of this title, and employers
15 and insurance carriers shall, for such purposes, be permitted, or
16 when necessary to protect the interests of the beneficiary, may be
17 required to make deposits with the Administrator to secure the
18 prompt and convenient payment of awards made. Provided that, all
19 weekly or periodic payments shall be made through the use of United
20 States legal tender, negotiable instruments payable on demand or
21 negotiable drafts when each such payment does not exceed One
22 Thousand Dollars (\$1,000.00). Failure for ten (10) days to pay any
23 final award or any portion thereof, as ordered shall immediately
24 entitle the beneficiary to an order finding the respondent and/or

1 insurance carrier to be in default and all unpaid portions,
2 including future periodic installments unpaid, shall immediately
3 become due and may be immediately enforced as provided by ~~Section 42~~
4 ~~of~~ this title.

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

10 SECTION 22. AMENDATORY 85 O.S. 2001, Section 41.1, is
11 amended to read as follows:

12 Section 41.1 ~~A.~~ In the event salary or any other remuneration
13 is paid in lieu of temporary total compensation during the period of
14 temporary total disability or for any other period of time, ~~ne~~ a
15 respondent or insurance carrier shall be allowed to deduct from the
16 amount of the award for permanent total or ~~partial~~ permanent partial
17 disability any amounts paid for temporary total disability, ~~nor~~ and
18 shall he be given credit for such additional payments on future
19 temporary total disability, permanent partial disability,
20 disfigurement, or any other compensation provided by the workers'
21 compensation law.

22 ~~B. Notwithstanding the provisions of subsection A of this~~
23 ~~section, a qualified individual self-insured employer that pays~~
24 ~~temporary total disability benefits at a higher weekly rate than~~

1 ~~required by statute, without diminishing the employee's accrued~~
2 ~~leave on such payments, shall be given credit for such overpayment~~
3 ~~against any permanent partial disability owed, after payment of~~
4 ~~attorney fees and taxes. This provision shall not apply where~~
5 ~~salary continuation was made by the self-insured employer pursuant~~
6 ~~to an applicable collective bargaining agreement.~~

7 SECTION 23. AMENDATORY 85 O.S. 2001, Section 42, is
8 amended to read as follows:

9 Section 42. A. If payment of compensation or an installment
10 payment of compensation due under the terms of an award, except in
11 the case of an appeal of an award or an award from the Multiple
12 Injury Trust Fund, is not made within ten (10) days after the same
13 is due by the employer or insurance carrier liable therefor, the
14 Court may order a certified copy of the award to be filed in the
15 office of the court clerk of any county, which award whether
16 accumulative or lump sum shall have the same force and be subject to
17 the same law as judgments of the district court. Any compensation
18 awarded and all payments thereof directed to be made by order of the
19 Court, except in the case of an appeal of an award or an award of
20 compensation from the Multiple Injury Trust Fund, shall bear
21 interest at the rate of ~~eighteen percent (18%)~~ the average U.S.
22 Treasury Bill rate of the preceding calendar year per year from the
23 date ordered paid by the Court until the date of satisfaction. On
24 or after November 1, 2001, compensation ordered to be paid from the

1 Multiple Injury Trust Fund shall bear simple interest only at the
2 percentage rate applicable to judgments in civil cases pursuant to
3 Section 727 of Title 12 of the Oklahoma Statutes from the date of
4 the award. Any award from the Multiple Injury Trust Fund prior to
5 November 4, 1994, shall bear interest at the percentage rate
6 applicable to judgments in civil cases pursuant to Section 727 of
7 Title 12 of the Oklahoma Statutes. Upon the filing of the certified
8 copy of the Court award a writ of execution shall issue and process
9 shall be executed and the cost thereof taxed, as in the case of
10 writs of execution, on judgments of courts of record, as provided by
11 Title 12 of the Oklahoma Statutes; provided, however, the provisions
12 of this section relating to execution and process for the
13 enforcement of awards shall be and are cumulative to other
14 provisions now existing or which may hereafter be adopted relating
15 to liens or enforcement of awards or claims for compensation.

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

23 SECTION 24. AMENDATORY 85 O.S. 2001, Section 43, as
24 amended by Section 24, Chapter 1, 1st Extraordinary Session, O.S.L.

1 2005 (85 O.S. Supp. 2009, Section 43), is amended to read as
2 follows:

3 Section 43. A. The right to claim compensation under the
4 Workers' Compensation Act shall be forever barred unless, within ~~two~~
5 ~~(2) years~~ six (6) months after the date of accidental injury or
6 death, a claim for compensation is filed with the Workers'
7 Compensation Court. Provided however, a claim may be filed within
8 ~~two (2) years~~ ninety (90) days of the last medical treatment which
9 was authorized by the employer or the insurance carrier or payment
10 of any compensation or remuneration paid in lieu of compensation.
11 Provided further however, with respect to disease or injury caused
12 by repeated trauma causally connected with employment, a claim may
13 be filed within ~~two (2) years~~ six (6) months of the date of last
14 trauma or hazardous exposure. Provided, further however, in the
15 case of asbestosis, silicosis or exposure to nuclear radiation
16 causally connected with employment, a claim may be filed within two
17 (2) years of the date of last hazardous exposure or within two (2)
18 years from the date said condition first becomes manifest by a
19 symptom or condition from which one learned in medicine could, with
20 reasonable accuracy, diagnose such specific condition, whichever
21 last occurs. The filing of any form or report by the employer or
22 insurance carrier shall not toll the above limitations. ~~Post-~~
23 ~~termination injury~~ Injury claims shall be filed within ~~six (6)~~
24 ~~months~~ ten (10) business days of termination of employment, provided

1 that nothing herein shall extend any limitation period set forth in
2 this section.

3 B. When a claim for compensation has been filed with the
4 Administrator as herein provided, unless the claimant shall in good
5 faith request a hearing and final determination thereon within ~~three~~
6 ~~(3)~~ two (2) years from the date of filing thereof or within ~~three~~
7 ~~(3)~~ ~~years~~ one (1) year from the date of last payment of compensation
8 or wages in lieu thereof, same shall be barred as the basis of any
9 claim for compensation under the Workers' Compensation Act and shall
10 be dismissed by the Court for want of prosecution, which action
11 shall operate as a final adjudication of the right to claim
12 compensation thereunder. If represented by counsel, the claimant
13 may, upon the payment of the Court's filing fee, dismiss any claim
14 brought by the claimant at any time before final submission of the
15 case to the Court for decision. Any claimant not represented by
16 counsel may, upon the payment of the Court's filing fee and with an
17 order of the Court, dismiss any claim brought by the claimant at any
18 time before final submission of the case to the Court for decision.
19 Such dismissal shall be without prejudice unless the words "with
20 prejudice" are included in the order. If any claim that is filed
21 within the statutory time permitted by this section is dismissed
22 without prejudice, a new claim may be filed within one (1) year
23 after the entry of the order dismissing the first claim even if the
24 statutory time for filing has expired.

1 C. The jurisdiction of the Court to reopen any ~~cause~~
2 surgically-treated claim upon an application based upon a change in
3 condition for the worse shall extend for three (3) years from the
4 date of the last order, and unless filed within said period of time,
5 shall be forever barred. An order denying an application to reopen
6 a such surgically-treated claim shall not extend the period of the
7 time set out herein for reopening the case.

8 D. Each employer shall post a notice advising employees that
9 they are covered by the Workers' Compensation Act and that workers'
10 compensation counselor services are available at the Workers'
11 Compensation Court. The form of the notice shall be prescribed by
12 the rules of the Court. No other notice to the employee shall be
13 required other than said poster required by this section; provided
14 that nothing in this subsection shall be construed to toll the
15 Statute of Limitations provided above.

16 SECTION 25. AMENDATORY 85 O.S. 2001, Section 44, as
17 amended by Section 25, Chapter 1, 1st Extraordinary Session, O.S.L.
18 2005 (85 O.S. Supp. 2009, Section 44), is amended to read as
19 follows:

20 Section 44. (a) If a worker entitled to compensation under the
21 Workers' Compensation Act is injured or killed by the negligence or
22 wrong of another not in the same employ, such injured worker shall,
23 before any suit or claim under the Workers' Compensation Act, elect
24 whether to take compensation under the Workers' Compensation Act, or

1 to pursue his remedy against such other. Such election shall be
2 evidenced in such manner as the Administrator may by rule or
3 regulation prescribe. If he elects to take compensation under the
4 Workers' Compensation Act, the cause of action against such other
5 shall be assigned to the insurance carrier liable for the payment of
6 such compensation, and if he elects to proceed against such other
7 person or insurance carrier, as the case may be, the employer's
8 insurance carrier shall contribute only the deficiency, if any,
9 between the amount of the recovery against such other person
10 actually collected, and the compensation provided or estimated by
11 the Workers' Compensation Act for such case. The compromise of any
12 such cause of action by the worker at any amount less than the
13 compensation provided for by the Workers' Compensation Act shall be
14 made only with the written approval of the Court. Whenever recovery
15 against such other person is effected without compromise settlement
16 by the employee or his representatives, the employer or insurance
17 company having paid compensation under the Workers' Compensation Act
18 shall be entitled to reimbursement as hereinafter set forth and
19 shall pay from its share of said reimbursement a proportionate share
20 of the expenses, including attorneys fees, incurred in effecting
21 said recovery to be determined by the ratio that the amount of
22 compensation paid by the employer bears to the amount of the
23 recovery effected by the employee. After the expenses and attorneys
24 fees have been paid, the balance of the recovery shall be

1 apporportioned between the employer or insurance company having paid
2 the compensation and the employee or his representatives in the same
3 ratio that the amount of compensation paid by the employer bears to
4 the total amount recovered; provided, however, the balance of the
5 recovery may be divided between the employer or insurance company
6 having paid compensation and the employee or his representatives as
7 they may agree.

8 In the event that recovery is effected by compromise settlement,
9 then in that event the expenses, attorneys fees and the balance of
10 the recovery may be divided between the employer or insurance
11 company having paid compensation and the employee or his
12 representatives as they may agree. Provided, that in the event they
13 are unable to agree, then the same shall be apportioned by the
14 district court having jurisdiction of the employee's action against
15 such other person, in such manner as is just and reasonable.

16 ~~(b) Notwithstanding subsection (d) of this section, the~~
17 ~~employer or his insurance carrier shall not have the right of~~
18 ~~subrogation to recover money paid by the employer or his insurance~~
19 ~~carrier for death claims or death benefits under the Workers'~~
20 ~~Compensation Act from third persons, with all common law rights~~
21 ~~against other than the employer and his employees preserved and to~~
22 ~~be in those persons who would have had such rights had there been no~~
23 ~~death claim or death benefits under the Workers' Compensation Act.~~

24

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

8 ~~(d) An employer shall have a cause of action against a third~~
9 ~~party whose wrongful or negligent conduct causes the death of an~~
10 ~~employee entitled to compensation under this title to recover any~~
11 ~~money paid for death benefits on behalf of the employee. Nothing~~
12 ~~contained in this section shall allow an employer or insurance~~
13 ~~carrier for an employer to seek an interest in either the death~~
14 ~~benefits received by the employee or the employee's beneficiary or~~
15 ~~in a life insurance policy procured by the employee.~~

16 SECTION 26. AMENDATORY 85 O.S. 2001, Section 45, is
17 amended to read as follows:

18 Section 45. A. No benefits, saving or insurance of the injured
19 employee, independent of the provisions of ~~this act~~ the Workers'
20 Compensation Act shall be considered in determining the compensation
21 or benefit to be paid under ~~this act~~ the Workers' Compensation Act.

22 B. No employee may receive temporary total disability benefits
23 covering the same period of time as unemployment compensation
24 benefits received by the employee as provided by the Oklahoma

1 Employment Security Commission or the unemployment insurance law of
2 any other state.

3 SECTION 27. AMENDATORY 85 O.S. 2001, Section 47.1, is
4 amended to read as follows:

5 Section 47.1 Where an applicant for employment, though not
6 actually disabled, is found to be affected by silicosis or
7 asbestosis, he may, subject to the approval of the ~~State Industrial~~
8 ~~Commission~~ Workers' Compensation Court, be permitted to waive in
9 writing full compensation for any aggravation of his condition that
10 may result from his continuing in his hazardous occupation. In the
11 event of total disablement as a result of the disease with which the
12 employee was so affected, after such a waiver, compensation shall
13 nevertheless be payable as herein elsewhere provided, but in no case
14 for longer than one hundred (100) weeks or to exceed Two Thousand
15 (\$2,000.00) Dollars in the aggregate. A waiver so permitted shall
16 remain effective, for the trade, occupation, process or employment
17 for which executed, notwithstanding a change or changes of employer.
18 The ~~Commission~~ Court shall make reasonable rules and regulations
19 relative to the form, execution, filing or registration and public
20 inspection of waivers or records thereof.

21 SECTION 28. AMENDATORY 85 O.S. 2001, Section 64, as last
22 amended by Section 79, Chapter 264, O.S.L. 2006 (85 O.S. Supp. 2009,
23 Section 64), is amended to read as follows:

24

1 Section 64. A. Every policy of insurance covering the
2 liability of the employer for compensation issued by a stock company
3 or by a mutual association or other concern authorized to transact
4 workers' compensation insurance in this state shall contain a
5 provision setting forth the right of the Administrator to enforce in
6 the name of the state, for the benefit of the person entitled to the
7 compensation insured by the policy either by filing a separate
8 application or by making the insurance carrier a party to the
9 original application, the liability of the insurance carrier in
10 whole or in part for the payment of such compensation; provided,
11 however, that payment in whole or in part of the compensation by
12 either the employer or the insurance carrier shall, to the extent
13 thereof, be a bar to the recovery against the other of the amount so
14 paid.

15 B. Every such policy shall contain a provision that, as between
16 the employee and the insurance carrier, the notice to or knowledge
17 of the occurrence of the injury on the part of the employer shall be
18 deemed notice or knowledge, as the case may be on the part of the
19 insurance carrier, that jurisdiction of the employer shall, for the
20 purpose incorporated in this title, be jurisdiction of the insurance
21 carrier, and that the insurance carrier shall in all things be bound
22 by and subject to the orders, findings, decisions or awards rendered
23 against the employer for the payment of compensation under the
24 provisions incorporated in this title.

1 C. Every such policy shall contain a provision to the effect
2 that the insolvency or bankruptcy of the employer shall not relieve
3 the insurance carrier from the payment of compensation for injuries
4 sustained by an employee during the life of such policy.

5 D. 1. Every such policy issued to cover a risk in this state
6 shall include provisions giving the insured employer the option of
7 choosing a deductible amount for medical benefits in amounts ranging
8 from Five Hundred Dollars (\$500.00) to Two Thousand Five Hundred
9 Dollars (\$2,500.00) in increments of Five Hundred Dollars (\$500.00).
10 The policy issued may also include separate provisions giving the
11 insured employer the option of choosing a deductible amount for
12 indemnity benefits in amounts ranging from Five Hundred Dollars
13 (\$500.00) to Two Thousand Five Hundred Dollars (\$2,500.00) in
14 increments of Five Hundred Dollars (\$500.00). The insured employer,
15 if choosing to exercise the option, shall choose only one deductible
16 amount.

17 2. If an insured employer exercises the option and chooses a
18 medical benefits deductible or indemnity benefits deductible, the
19 insured employer shall be liable for the amount of the deductible or
20 deductibles for the medical or indemnity benefits paid for each
21 claim of work injury suffered by an injured employee.

22 3. The Insurance Commissioner, in exercising the authority to
23 approve the form of the policy to be issued, shall not approve any
24 policy form that permits, directly or indirectly, any part of the

1 deductible to be charged to or passed on to the injured worker or
2 insurer.

3 4. The insurer shall pay the entire cost of medical bills
4 directly to the provider of the services and then seek reimbursement
5 from the insured employer for the deductible amount. The insurer
6 shall pay the entire cost of the indemnity benefits as if no
7 deductible were in place and then seek reimbursement from the
8 insured employer for the deductible amount.

9 5. If the insured employer does not reimburse the deductible
10 amount directly to the insurer within sixty (60) days of a written
11 demand therefor, the insurer shall pay the compensable medical claim
12 or indemnity benefit and may seek to recover the full amount of such
13 claim from the insured employer.

14 6. Claim amounts up to Five Hundred Dollars (\$500.00) annually
15 which are paid under the medical benefits deductible or indemnity
16 benefits deductible pursuant to this subsection shall be excluded
17 from the calculation of the insured employer's experience modifier.

18 7. The provisions of this subsection shall be fully disclosed
19 to the prospective purchaser in writing.

20 E. Every such policy issued to a sole proprietor, partnership,
21 limited liability company, corporation, or other business entity
22 must disclose to the potential purchaser in writing the option to
23 elect to include the sole proprietors, any or all of the partnership
24 members, any or all of the limited liability company members, or any

1 or all stockholder-employees as employees for the purpose of
2 workers' compensation insurance coverage by endorsing the policy in
3 accordance with Section 3 of this title.

4 F. Every contract or agreement of an employer the purpose of
5 which is to indemnify the employer from loss or damage on account of
6 the injury of an employee by accidental means, or on account of the
7 negligence of such employer or the employer's officer, agent or
8 servant shall be absolutely void unless it shall also cover
9 liability for the payment of the compensation provided for in this
10 title.

11 G. No contract of insurance issued by a stock company or mutual
12 association or other concern against the liability arising under
13 this title shall be canceled within the time limited in such
14 contract for its expiration until at least ten (10) days after
15 notice of intention to cancel such contract, on a date specified in
16 such notice, shall be filed in the office of the Administrator and
17 also served on the employer. Such notice shall be served on the
18 employer by delivering it to the employer or by sending it by mail,
19 by registered letter, addressed to the employer at the employer's
20 last-known place of residence; provided, that if the employer be a
21 partnership, then such notice may be so given to any one of the
22 partners, and if the employer be a corporation, then the notice may
23 be given to any agent or officer of the corporation upon whom legal
24 process may be served. Provided, however, if a contract of

1 insurance has been terminated by an employer insured thereunder who
2 has obtained other compensation insurance, as evidenced by filing in
3 compliance with Section 61 of this title, and no intervening rights
4 of any employee are involved, omission of a predecessor insurer to
5 file notice of time of termination of liability shall not constitute
6 basis for imposition of liability against such predecessor insurer.

7 H. An insurance carrier or its representative commits an
8 administrative violation under Title 36 of the Oklahoma Statutes if
9 the representative attends a workers' compensation dispute
10 resolution proceeding without complete settlement authority or fails
11 to exercise authority to effectuate agreement or settlement.

12 SECTION 29. AMENDATORY 85 O.S. 2001, Section 110, as
13 amended by Section 1, Chapter 338, O.S.L. 2002 (85 O.S. Supp. 2009,
14 Section 110), is amended to read as follows:

15 Section 110. A. Except as otherwise provided by state or
16 federal law and subject to the provisions of this section, an
17 employer may inquire about previous workers' compensation claims
18 paid to an employee while the employee was employed by a previous
19 employer. If the employee fails to answer truthfully about any
20 previous ~~permanent partial disability awards made pursuant to~~
21 workers' compensation claims, the employee shall be subject to
22 discharge by the employer.

23 B. 1. All requests made to the Workers' Compensation Court for
24 information on prior workers' compensation claims involving a

1 worker, including written inquiries about prior claims and requests
2 to access a worker's compensation claim file, must be in writing, on
3 a form prescribed by the Administrator, and accompanied by a fee of
4 One Dollar (\$1.00) per search request, not to exceed One Dollar
5 (\$1.00) per claims record of a particular worker. The fee shall be
6 deposited to the credit of the Administrator of Workers'
7 Compensation Revolving Fund created by Section 95 of this title.
8 The form shall require identification of the person requesting the
9 information, and the person for whom a search is being made if
10 different from the requester. The form must contain an affidavit
11 signed by the requester under penalty of perjury that the
12 information sought is not requested for a purpose in violation of
13 state or federal law. The form must be used by all repositories of
14 archived Workers' Compensation Court claim files. All request forms
15 shall be maintained by the Administrator as a public record,
16 together with a record of a worker's written authorization
17 permitting a search indexed by the worker's social security number
18 as required by Section 3113 of Title 74 of the Oklahoma Statutes.
19 The request forms and authorizations shall be indexed alphabetically
20 by the last name of the worker.

21 2. This subsection shall not apply:

- 22 a. to requests for claims information made by a public
23 officer or by a public employee in the performance of
24

1 his or her duties on behalf of a governmental entity
2 or as may be allowed by law,

3 b. to requests for claims information made by an insurer,
4 self-insured employer, third-party claims
5 administrator, or a legal representative thereof, when
6 necessary to process or defend a worker's compensation
7 claim,

8 c. when a worker or the worker's representative requests
9 review of the worker's claims information,

10 d. when the disclosure is made for educational or
11 research purposes and in such a manner that the
12 disclosed information cannot be used to identify any
13 worker who is the subject of a claim,

14 e. to requests for claims information made by a health
15 care or rehabilitation provider or the provider's
16 legal representative when necessary to process payment
17 of health care or rehabilitation services rendered to
18 a worker, and

19 f. to requests for claim information made by an employer
20 or personnel service company (including but not
21 limited to an individual or entity) where the worker
22 executes a written authorization permitting the search
23 and designating the employer or personnel service
24 company as the worker's representative for that

1 purpose; however, nothing in this subparagraph shall
2 relieve the employer or personnel service company from
3 complying with the requirements of utilizing the form
4 set forth in paragraph 1 of this subsection.

5 SECTION 30. AMENDATORY 85 O.S. 2001, Section 112, is
6 amended to read as follows:

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

9 B. The voting membership of the Advisory Council shall consist
10 of ~~nine (9)~~ seven (7) members. The Administrator and Presiding
11 Judge of the Court shall be ex officio nonvoting members.

12 1. The Governor shall appoint ~~three (3)~~ two (2) members, one
13 representing employers in this state, ~~one of whom shall be from a~~
14 ~~list of nominees provided by the predominant statewide broad based~~
15 ~~business organization;~~ and one representing employees in this state.

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

21 3. The President Pro Tempore of the Senate shall appoint ~~three~~
22 ~~(3)~~ two (2) members, one representing employers in this state and
23 one representing employees in this state ~~who are attorneys~~
24 ~~representing the legal profession in this state, one of whom shall~~

1 ~~be an attorney who practices primarily in the area of defense of~~
2 ~~workers' compensation claims.~~

3 4. The six members of the Advisory Council so appointed shall
4 select a seventh member who shall serve as Chair.

5 5. No attorneys, employees of law firms or insurance companies,
6 physicians, or employees of workers' compensation medical providers
7 shall be appointed or selected to serve on the Advisory Council.

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

10 a. ~~the term of office for three positions, one each~~
11 ~~appointed by the Governor, the President Pro Tempore~~
12 ~~of the Senate and the Speaker of the House of~~
13 ~~Representatives shall expire on March 1, 1992,~~

14 b. ~~the term of office for three positions, one each~~
15 ~~appointed by the Governor, the President Pro Tempore~~
16 ~~of the Senate and the Speaker of the House of~~
17 ~~Representatives shall expire on March 1, 1993, and~~

18 c. ~~the term of office for three positions, one each~~
19 ~~appointed by the Governor, the President Pro Tempore~~
20 ~~of the Senate and the Speaker of the House of~~
21 ~~Representatives shall expire on March 1, 1994,~~

22 2. Thereafter, All members of the Advisory Council and their
23 successors in office shall be appointed for a three-year term.

24 Members shall be eligible to succeed themselves in office, and.

1 ~~3.~~ 2. Any person appointed to fill a vacancy shall be appointed
2 for the unexpired portion of the term.

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

7 E. Members shall receive their traveling and other necessary
8 expenses incurred in the performance of their duties as provided in
9 the State Travel Reimbursement Act, Section 500.1 et seq. of Title
10 74 of the Oklahoma Statutes.

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

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

19 ~~H.~~ G. The Advisory Council shall analyze and review the
20 workers' compensation system, the reports of the Administrator of
21 the Workers' Compensation Court, and trends in the field of workers'
22 compensation. The Council may recommend improvements and proper
23 responses to developing trends. The Council shall report its
24 findings annually to the Governor, the Chief Justice of the Supreme

1 Court, the President Pro Tempore of the Senate, and the Speaker of
2 the House of Representatives.

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

7 SECTION 31. AMENDATORY 85 O.S. 2001, Section 201.1, as
8 last amended by Section 31, Chapter 1, 1st Extraordinary Session,
9 O.S.L. 2005 (85 O.S. Supp. 2009, Section 201.1), is amended to read
10 as follows:

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

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

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

1 engaged in the practice of occupational medicine, and
2 one of whom shall be licensed in this state as a
3 podiatric physician,

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

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

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

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

6 d. Thereafter, appointments shall be made from the
7 Congressional District numbered the same as the
8 district from which the original appointment was made
9 pursuant to this paragraph, if a Congressional
10 District so numbered exists. When congressional
11 districts are redrawn, each member appointed prior to
12 July 1 of the year in which such modification becomes
13 effective shall complete the current term of office
14 and appointments made after July 1 of the year in
15 which such modification becomes effective shall be
16 based on the redrawn districts. Appointments that
17 were to be made from a numbered Congressional District
18 which no longer exists shall be appointed from the
19 state at large.

20 e. Effective July 1, 2005, all members of the Physicians
21 Advisory Committee shall be subject to reappointment
22 regardless of their appointment date, with any new
23 appointee to serve out the remainder of the unexpired
24 term of the committee member so replaced.

1 B. The Committee shall:

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

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

22 3. After public hearing, review and make recommendations for
23 acceptable deviations from the American Medical Association's
24 "Guides to the Evaluation of Permanent Impairment" using appropriate

1 and scientifically valid data. Those recommendations ~~may~~ shall be
2 reviewed and adopted, in part or in whole, by the Administrator to
3 be used as provided for in ~~paragraph 11 of Section 3 and Section 22~~
4 ~~of this title;~~

5 4. ~~After public hearing, review and make recommendations for an~~
6 ~~alternative method or system to evaluate permanent impairment that~~
7 ~~shall be used in place of or in combination with the American~~
8 ~~Medical Association's "Guides to the Evaluation of Permanent~~
9 ~~Impairment". Appropriate and scientific data shall be considered.~~
10 ~~The alternative method or system to evaluate permanent impairment~~
11 ~~may be adopted, in part or in whole, by the Administrator to be used~~
12 ~~as provided for in paragraph 11 of Section 3 and Section 22 of this~~
13 ~~title. Revisions, deviations and alternatives to the American~~
14 ~~Medical Association's "Guides to the Evaluation of Permanent~~
15 ~~Impairment" shall become effective as provided in paragraph 11 of~~
16 ~~Section 3 and Section 22 of this title~~ Ensure that appropriate
17 medical treatment guidelines are recommended to the Administrator
18 for adoption and use in all workers' compensation claims.

19 a. As used in this section, and notwithstanding any other
20 provision of law, medical treatment that is reasonably
21 required to be proper and necessary for the injured
22 worker from the effects of the worker's injury means
23 treatment that is based upon the guidelines adopted by
24 the Administrator. For all injuries not covered by

1 the Administrator's medical treatment guidelines,
2 authorized treatment shall be in accordance with other
3 evidence-based medical treatment guidelines that are
4 recognized generally by the national medical community
5 and scientifically based, as noted in this section.

6 b. The recommended guidelines pursuant to subparagraph a
7 of this paragraph shall reflect practices that are
8 evidence and scientifically based, nationally
9 recognized, or state developed. The guidelines shall
10 be designed to assist providers by offering an
11 analytical framework for the evaluation and treatment
12 of injured workers, and shall constitute care for all
13 injured workers diagnosed with work-related injuries
14 or illnesses.

15 c. A treating doctor may provide medical treatment that
16 is outside of the treatment recommended by the
17 treatment guidelines if the medical treatment is
18 reasonably required and necessary to relieve or cure
19 the individual patient. Prior authorization from the
20 insurer shall be required in order to be reimbursed
21 for treatment outside of that which is recommended by
22 the treatment guidelines.

23 d. If the Administrator awards payment of medical
24 treatment outside that which is recommended by the

1 treatment guidelines then the order must explain why
2 the medical treatment was reasonably required and
3 necessary to relieve or cure the individual patient;

4 5. ~~After public hearing, adopt treatment guidelines and~~
5 ~~protocols for treatment of injuries, including, but not limited to,~~
6 ~~injuries to the hand, wrist, back, knee, neck and shoulder and~~
7 ~~utilization controls for all treatments, including, but not limited~~
8 ~~to, x ray and imaging technology for diagnostic purposes, for~~
9 ~~adoption by the Administrator. Treatment guidelines and protocols~~
10 ~~shall be based upon nationally accepted practice standards and shall~~
11 ~~indicate when surgery is indicated and the appropriate surgical~~
12 ~~procedure for the condition. Among the standards that must be~~
13 ~~considered are the Occupational Medicine Practice Guidelines~~
14 ~~promulgated by the American College of Occupational and~~
15 ~~Environmental Medicine. Compliance with treatment guidelines shall~~
16 ~~be mandatory and an employer or insurer for an employer shall not be~~
17 ~~required to pay for treatment which is not in compliance with the~~
18 ~~guidelines, unless prior authorization is received. If an employer~~
19 ~~or insurer for an employer refuses to give such prior authorization,~~
20 ~~the employee may request the case be reviewed by an independent~~
21 ~~medical examiner pursuant to the provisions of subsection B of~~
22 ~~Section 17 of this title. Provided, however, if the employer and~~
23 ~~employee are unable to agree on the appointment of an independent~~
24 ~~medical examiner for prior authorization purposes, the Court shall~~

1 ~~randomly select an independent medical examiner within seven (7)~~
2 ~~days of receipt of a written request by the employee. The~~
3 ~~independent medical examiner shall review the medical records of the~~
4 ~~employee, examine the employee, or both, as necessary to render an~~
5 ~~opinion as to whether prior authorization should be given. If prior~~
6 ~~authorization is granted, the employer shall pay the costs of the~~
7 ~~independent medical examiner subject to limits established by the~~
8 ~~Administrator. If prior authorization is denied, the employee shall~~
9 ~~pay the costs of the independent medical examiner subject to the~~
10 ~~limits established by the Administrator;~~

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

14 ~~7.~~ 6. Review utilization on cases or of providers when
15 requested by any employer, injured employee or insurer. The
16 Committee may issue a public or private censure to any provider for
17 utilization which is excessive or inadequate, or recommend the Court
18 order treatment within the treatment guidelines;

19 ~~8.~~ 7. Provide general recommendations to the judges of the
20 Workers' Compensation Court on the issues of injury causation and
21 apportionment;

22 ~~9.~~ 8. Conduct educational seminars for the judges of the
23 Workers' Compensation Court, employers, employees, and other
24 interested parties;

1 ~~10.~~ 9. Assist the judges of the Workers' Compensation Court in
2 accessing medical information from scientific literature; and
3 ~~11.~~ 10. Report its progress annually to the Governor, the
4 President Pro Tempore of the Senate, and the Speaker of the House of
5 Representatives.

6 C. As used in this section:

7 1. "Evidence-based" means expert-based, literature-supported
8 and outcomes validated by well-designed randomized trials when such
9 information is available and which uses the best available evidence
10 to support medical decision making;

11 2. "Nationally recognized" includes but is not limited to
12 syntheses of clinical issues that may take the form of published
13 reports in the scientific literature, national consensus documents,
14 formalized documents addressing standards of practice, practice
15 parameters from professional societies or commissions, and
16 technology assessments produced by independent evidence-based
17 practice centers;

18 3. "Scientifically based" involves the application of rigorous,
19 systematic, and objective procedures to obtain reliable and valid
20 knowledge relevant to medical testing, diagnoses and treatment; is
21 adequate to justify the general conclusions drawn; and has been
22 accepted by a peer-reviewed journal or approved by a panel of
23 independent experts through a comparably rigorous, objective, and
24 scientific review;

1 4. "Peer review" means the process of subjecting submitted
2 manuscripts, guidelines, or other clinical or scholarly work to the
3 scrutiny of others who are experts in the same field; and

4 5. "State-developed" includes formalized treatment guidelines
5 developed and adopted by state governments.

6 D. The term of office for initial appointees shall expire March
7 1, 1994. Thereafter, successors in office shall serve as follows:

8 1. The term of office for three positions, one each appointed
9 by the Governor, the President Pro Tempore of the Senate and the
10 Speaker of the House of Representatives, shall expire on January 1,
11 1996;

12 2. The term of office for three positions, one each appointed
13 by the Governor, the President Pro Tempore of the Senate and the
14 Speaker of the House of Representatives, shall expire on January 1,
15 1997;

16 3. The term of office for three positions, one each appointed
17 by the Governor, the President Pro Tempore of the Senate and the
18 Speaker of the House of Representatives, shall expire on January 1,
19 1998;

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

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

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

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

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

18 ~~H.~~ I. Any health care provider acting in good faith and within
19 the scope of the provider's duties as a member of the Physician
20 Advisory Committee shall be immune from civil liability for making
21 any report or other information available to the judges of the
22 Workers' Compensation Court or to the Administrator of the Workers'
23 Compensation Court or for assisting in the origination,
24

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

3 SECTION 32. REPEALER 85 O.S. 2001, Section 21, is hereby
4 repealed.

5 SECTION 33. REPEALER 85 O.S. 2001, Section 28, is hereby
6 repealed.

7 SECTION 34. REPEALER 85 O.S. 2001, Section 122, is
8 hereby repealed.

9 SECTION 35. REPEALER 85 O.S. 2001, Section 201.2, is
10 hereby repealed.

11 SECTION 36. This act shall become effective November 1, 2010.

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