

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE

4 FOR

5 SENATE BILL 1973

6 By: Coffee

7 COMMITTEE SUBSTITUTE

8 [workers' compensation - Workers' Compensation Court
9 and Administrator - Medical Director of Workers'
10 Compensation Court - codification - effective date]

11
12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 51-114 of Title 11, unless there
15 is created a duplication in numbering, reads as follows:

16 Any labor organization in this state shall be authorized to opt
17 out of the provisions of the Workers' Compensation Act pursuant to
18 Title 85 of the Oklahoma Statutes upon assurance by the organization
19 and approval of the Administrator of the Workers' Compensation Court
20 of a system within the organization for payment of benefits for
21 injuries to employees arising out of and in the course of
22 employment.
23
24

1 SECTION 2. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 608.1 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 Any insurer duly authorized to transact workers' compensation
5 insurance in Oklahoma shall maintain an insurance adjuster as
6 defined in Section 6202 of Title 36 of the Oklahoma Statutes, whose
7 principal place of residence is located within the state and who is
8 licensed pursuant to the Insurance Adjusters Licensing Act.

9 SECTION 3. AMENDATORY 85 O.S. 2001, Section 1.2, is
10 amended to read as follows:

11 Section 1.2. A. There is hereby created the Workers'
12 Compensation Court which shall consist of ~~ten (10)~~ eight (8) judges.
13 Each judge of the Court shall be appointed to a designated numbered
14 position on the Court. The positions shall be numbered one through
15 ~~ten~~ eight, five of which shall be permanently assigned to the
16 Oklahoma City Workers' Compensation Court and three of which shall
17 be permanently assigned to the Tulsa Workers' Compensation Court.

18 The initial terms of the judges by position number shall expire on
19 the following dates:

20 Position 1 shall expire 7-1-84.

21 Position 2 shall expire 7-1-84.

22 Position 3 shall expire 7-1-84.

23 Position 4 shall expire 7-1-82.

24 Position 5 shall expire 7-1-82.

1 Position 6 shall expire 7-1-80.

2 Position 7 shall expire 7-1-80.

3 Position 8 shall expire 7-1-88.

4 ~~Position 9 shall expire 7-1-88.~~

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

7 Thereafter, each position shall be filled by a judge appointed
8 to serve a ~~six year term~~ an eight-year term. A judge shall serve
9 only one eight-year term.

10 Provided the judges serving unexpired terms on the State
11 ~~Industrial Court shall serve on the Workers' Compensation Court~~
12 ~~until their terms expire only as provided herein. The judges of the~~
13 ~~State Industrial Court whose terms expire March 14, 1979, effective~~
14 ~~date of this act shall serve in Positions 6 and 7 until that date,~~
15 ~~and the judge whose term expires March 14, 1981, shall serve in~~
16 ~~Position 5 until that date. Upon expiration of these terms, the~~
17 ~~Governor shall appoint judges to serve the remainder of the initial~~
18 ~~terms designated in this section~~ be eligible upon expiration of such
19 terms for appointment to one term of eight years pursuant to this
20 section. When a vacancy on the Court occurs or is certain to occur
21 or for initial appointments to the Court, the Judicial Nominating
22 Commission shall choose and submit to the Governor and the Chief
23 Justice of the Supreme Court the names of three persons, ~~in addition~~
24 ~~to the name of the incumbent judge, if any, for each appointment,~~

1 each of whom has previously notified the Commission in writing that
2 he or she will serve as a judge if appointed. The Governor shall
3 appoint one of the nominees to fill the vacancy with the advice and
4 consent of the Senate, but if the Governor fails to do so within
5 sixty (60) days, the Chief Justice of the Supreme Court shall
6 appoint one of the nominees with the advice and consent of the
7 Senate, the appointment to be certified to the Secretary of State.

8 B. A judge of the Court shall have been licensed to practice
9 law in this state for a period of not less than five (5) years and
10 shall have not less than five (5) years of workers' compensation
11 experience prior to appointment. Each judge, before entering upon
12 the duties of office, shall take and subscribe to an oath of office
13 and file the same with the Secretary of State. Each judge shall
14 continue to serve until his or her successor has been appointed and
15 qualified. A judge ~~shall be eligible for reappointment, provided~~
16 ~~that the judge~~ may be removed for cause by the Court on the
17 Judiciary prior to the expiration of his or her term.

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

22 D. The Governor shall appoint from among the judges of the
23 Workers' Compensation Court a presiding judge of that Court who
24 shall serve for a two-year term commencing with the initial

1 appointment beginning January 1, 1987. Any judge so appointed shall
2 not serve more than two times in succession. The presiding judge
3 shall preside at all hearings held by the Court, preside at such
4 meetings of the judges of the Court as may be necessary and perform
5 such other supervisory duties as the needs of the Court may require.
6 The presiding judge may designate one of the other judges to act as
7 presiding judge in his or her place whenever necessary during the
8 disqualification, disability, or absence of the presiding judge.
9 During the disqualification, disability, or absence of the presiding
10 judge, the acting presiding judge shall exercise all of the powers
11 of the presiding judge.

12 E. The Court shall have the authority to adopt reasonable rules
13 within its respective areas of responsibility including the rules of
14 procedure for the ~~Court en banc~~ panel of Special Magistrates, after
15 notice and public hearing, for effecting the purposes of the
16 Workers' Compensation Act. All of the judges of the Court shall be
17 present at all meetings wherein rules are adopted or amended. All
18 rules, upon adoption, shall be submitted to the Supreme Court, which
19 shall either approve or disapprove them within thirty (30) days.
20 All rules, upon approval by the Supreme Court, shall be published
21 and be made available to the public and, if not inconsistent with
22 the law, shall be binding in the administration of the Workers'
23 Compensation Act.

24

1 F. The Court is hereby designated and confirmed as a court of
2 record, with respect to any matter within the limits of its
3 jurisdiction, and within such limits the judges thereof shall
4 possess the powers and prerogatives of the judges of the other
5 courts of record of this state, including the power to punish for
6 contempt those persons who disobey a subpoena, or refuse to be sworn
7 or to answer as a witness, when lawfully ordered to do so.

8 G. The principal office of the Court shall be situated in the
9 City of Oklahoma City in quarters assigned by the Department of
10 Central Services. The Court may hold hearings in any city of this
11 state.

12 H. All county commissioners and presiding district judges of
13 this state shall make quarters available for the conducting of
14 hearings by a judge of the Court upon request by the Court.

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

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

22 SECTION 4. AMENDATORY 85 O.S. 2001, Section 1.3, as
23 amended by Section 8, Chapter 1, 1st Extraordinary Session, O.S.L.

24

1 2005 (85 O.S. Supp. 2009, Section 1.3), is amended to read as
2 follows:

3 Section 1.3. A. The chief administrative officer of the
4 Workers' Compensation Court shall be the Administrator, who shall be
5 subject to the general supervision of the presiding judge of the
6 Court, subject to the general administrative authority of the Chief
7 Justice of the Supreme Court.

8 ~~B. The person serving as Administrator on the date of passage
9 and approval of this act shall continue to serve as Administrator of
10 the Court, provided said person is serving as Administrator on the
11 effective date of this act.~~

12 ~~C. Except as provided in subsection B of this section, On or
13 after the effective date of this act, the Administrator shall be
14 appointed by the Governor to a term of four (4) years, with the
15 advice and consent of the Senate.~~

16 D. The salary of the Administrator shall be ninety percent
17 (90%) of the authorized salary of a judge of the Court.

18 ~~E. The Administrator shall serve a six year term. During the
19 term, the Administrator may be removed from office only for cause,
20 as provided by law for the removal of officers not subject to
21 impeachment, pursuant to the provisions of Sections 1181 through
22 1197 of Title 22 of the Oklahoma Statutes.~~

23 F. An Administrator who otherwise qualifies to serve as a judge
24 of the Court shall not be eligible to serve as a judge of the Court

1 for a period of one (1) year from the last date served as
2 Administrator of the Court.

3 G. In addition to other duties set forth in Title 85 of the
4 Oklahoma Statutes, the Administrator, subject to approval of the
5 presiding judge, shall organize, direct and develop the
6 administrative work of the Court, including the docketing, clerical,
7 technical and financial work, establish hours of operation, and
8 perform such other duties relating to matters within the purview of
9 the Court as any judge of the Court may request.

10 H. The Administrator shall employ other employees of the Court,
11 within budgetary limitation, necessary to carry out the work and
12 orders of the Court in an efficient and expedient manner.

13 SECTION 5. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1.4 of Title 85, unless there is
15 created a duplication in numbering, reads as follows:

16 A. There is hereby created the position of Medical Director of
17 the Workers' Compensation Court. The director shall oversee the
18 medical maintenance of claimants, shall be subject to the general
19 supervision of the presiding judge of the Court, and shall be
20 subject to the general administrative authority of the Chief Justice
21 of the Supreme Court. The Medical Director shall be licensed to
22 practice medicine in the state pursuant to the provisions of Section
23 495 of Title 59 of the Oklahoma Statutes.

24

1 B. The duties of the Medical Director shall include but not be
2 limited to:

3 1. Institute administrative procedures that will enable the
4 evaluation of medical care to effect optimal treatment in workers'
5 compensation cases;

6 2. Inquire into instances where the medical treatment or the
7 physical rehabilitation provided appears to be deficient or
8 incomplete and recommend corrective action when indicated;

9 3. Advise on the disposition of complaints of a physician's
10 failure to furnish adequate medical care as required by this law,
11 the disposition of complaints concerning other aspects of the
12 medical management of a workers' compensation case, and the
13 disposition of complaints of any affected party as to unreasonable
14 interference with the medical management of a workers' compensation
15 case;

16 4. Gather data and maintain records necessary to fulfill the
17 medical director's responsibilities;

18 5. Conduct studies and prepare and issue reports on the medical
19 aspect of workers' compensation cases;

20 6. Expedite the submission and processing of medical reports
21 necessary to the processing of claims; and

22 7. Undertake other functions that may be delegated to the
23 Medical Director by the Administrator.

24

1 SECTION 6. AMENDATORY 85 O.S. 2001, Section 3, as last
2 amended by Section 9, Chapter 1, 1st Extraordinary Session, O.S.L.
3 2005 (85 O.S. Supp. 2009, Section 3), is amended to read as follows:

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

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

7 2. "Amount in dispute" means the dollar value of any permanent
8 disability award granted to the employee by the Court for a
9 disability claim which is greater than the dollar amount offered by
10 the employer to the employee for such disability claim if the
11 employer admits compensability within twenty (20) days of the filing
12 of the Employee's First Notice of Accidental Injury and Claim for
13 Compensation, has not disputed medical treatment, and has made a
14 written settlement offer within fifteen (15) days of the employee
15 reaching maximum medical improvement;

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

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

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

- 1 c. assessing whether alternative health care services are
2 appropriate and delivered in a cost-effective manner
3 based upon acceptable medical standards, and
4 d. ensuring that the injured or disabled worker is
5 following the prescribed health care plan;

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

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

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

15 (1) Certified Disability Management Specialist
16 (CDMS),

17 (2) Certified Case Manager (CCM),

18 (3) Certified Rehabilitation Registered Nurse (CRRN),

19 (4) Case Manager - Certified (CMC),

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

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

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

1 6. "Court" means the Workers' Compensation Court;

2 7. "Cumulative trauma" means a compensable injury, the major
3 cause of which results from employment activities which are
4 repetitive in nature and engaged in over a period of time and which
5 is supported by objective medical evidence as defined in this
6 section;

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

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

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

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

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

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

23 11. "Employment" includes work or labor in a trade, business,
24 occupation or activity carried on by an employer or any authorized

1 voluntary or uncompensated worker rendering services as a
2 firefighter, peace officer or emergency management worker;

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

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

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

1 objective medical evidence, as defined in this
2 section.

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

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

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

20 15. "Insurance carrier" shall include stock corporations,
21 reciprocal or interinsurance associations, or mutual associations
22 with which employers have insured, and employers permitted to pay
23 compensation, directly under the provisions of paragraph 4 of
24 subsection A of Section 61 of this title;

1 16. "Major cause" means ~~the predominate cause of the resulting~~
2 ~~injury or illness~~ more than fifty percent (50%) of the cause. A
3 finding of major cause shall be established by a preponderance of
4 the evidence;

5 17. "Objective medical evidence" means evidence which meets the
6 criteria of Federal Rule of Evidence 702 and all U.S. Supreme Court
7 case law applicable thereto. Objective findings are those findings
8 which cannot come under the voluntary control of the patient. When
9 determining physical or anatomical impairment, neither a physician,
10 any other medical provider, a judge of the Workers' Compensation
11 Court, nor the courts may consider complaints of pain. For the
12 purpose of making physical or anatomical impairment ratings to the
13 spine, straight-leg-raising tests or range-of-motion tests shall not
14 be considered objective findings. Objective evidence necessary to
15 prove physical or anatomical impairment in occupational hearing loss
16 cases may be established by medically recognized and accepted
17 clinical diagnostic methodologies, including, but not limited to,
18 audiological tests that measure air and bone conduction thresholds
19 and speech discrimination ability. Any difference in the baseline
20 hearing levels must be confirmed with a subsequent test within the
21 next four (4) weeks but not before five (5) days and being adjusted
22 for presbycusis. Medical opinions addressing compensability and
23 permanent impairment must be stated within a reasonable degree of
24 medical certainty;

1 18. "Occupational disease" means only that disease or illness
2 which is due to causes and conditions characteristic of or peculiar
3 to the particular trade, occupation, process or employment in which
4 the employee is exposed to such disease. An occupational disease
5 arises out of the employment only if the employment was the major
6 cause of the resulting occupational disease and such is supported by
7 objective medical evidence, as defined in this section;

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

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

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

1 or loss; and impairment, including pain or loss of strength, may be
2 awarded with respect to those injuries or areas of the body not
3 specifically covered by said guides or alternative to said guides.
4 All evaluations of permanent impairment must be supported by
5 objective medical evidence;

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

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

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

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

22 24. "Certified workplace medical plan" means an organization of
23 health care providers or any other entity, certified by the State
24 Commissioner of Health pursuant to Section 14.3 of this title, that

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

12 25. "Treating physician" means the licensed physician selected
13 as provided in Section 14 of this title.

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

16 Section 3.6. A. All the evidence pertaining to each case,
17 except upon agreed orders, shall, insofar as may be possible, be
18 heard by the judge initially assigned to the case. Upon the
19 completion of such hearing or hearings, the judge hearing the cause
20 shall make such order, decision or award as is proper, just and
21 equitable in the matter. Either party feeling himself aggrieved by
22 such order, decision or award shall, within ten (10) days, have the
23 right to take an appeal from the order, decision or award of the
24 Judge to the Workers' Compensation ~~Court sitting en banc~~ Court's

1 panel of Special Magistrates. Such appeal shall be allowed as a
2 matter of right to either party upon filing with the Administrator a
3 notice of such appeal. Such ~~Court en banc~~ panel of Special
4 Magistrates shall consist of three (3) ~~Judges of the Court~~ judges
5 appointed by the Supreme Court, none of whom shall have ~~presided~~
6 ~~over any of the previous hearings on the claim~~ served as a judge on
7 the Workers' Compensation Court, but who shall have at least five
8 (5) years of workers' compensation experience. The ~~Court en banc~~
9 panel of Special Magistrates may reverse or modify the decision only
10 if it determines that such decision was against the clear weight of
11 the evidence or contrary to law. Upon completion of the appeal, the
12 members of the ~~Court sitting en banc~~ panel of Special Magistrates
13 shall issue such order, decision or award as is proper, just and
14 equitable. Only those members participating in the hearing on
15 appeal shall participate in the making of the order, decision or
16 award. All orders, decisions or awards shall be approved by a
17 majority of the members of the ~~Court sitting en banc~~ panel of
18 Special Magistrates. ~~Provided, there may be more than one Court en~~
19 ~~banc sitting at the same time for purposes of hearing the appeals~~
20 ~~provided for herein.~~ Appeals shall be allowed on a question of law
21 or a question of fact, or a mixed question of law and fact, and
22 shall be determined on the record made before the Judge. Provided,
23 when the order of the Judge of the Court making an award to a
24 claimant is appealed by the employer or the insurance carrier,

1 interest shall be allowed on the accrued amounts of the award due
2 from the date the award was filed, if the award is not modified or
3 vacated on appeal.

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

19 C. The order, decision or award of the ~~Court~~ panel of Special
20 Magistrates shall be final and conclusive upon all questions within
21 its jurisdiction between the parties, unless, within twenty (20)
22 days after a copy of such order, decision or award has been sent by
23 the Administrator to the parties affected, an action is commenced in
24 the Supreme Court of the state, to review such order, decision or

1 award. Any order, decision or award made by a judge of the Court
2 shall be considered as final under the provisions of this section
3 unless appealed to the Workers' Compensation ~~Court sitting en banc~~
4 Court's panel of Special Magistrates as provided for in subsection A
5 of this section. The order, decision or award of a judge of the
6 Court shall be final and conclusive upon all questions within his
7 jurisdiction between the parties unless appealed directly to the
8 Supreme Court or to the Workers' Compensation ~~Court sitting en banc~~
9 Court's panel of Special Magistrates as hereinbefore provided. Any
10 party litigant desiring to appeal directly from such order, decision
11 or award to the Supreme Court, shall, within twenty (20) days after
12 a copy of the order, decision or award has been sent by the
13 Administrator to the parties affected, commence an action in the
14 Supreme Court of the state to review such order, decision or award.
15 The Supreme Court shall have original jurisdiction of such action,
16 and shall prescribe rules for the commencement and trial of the
17 same. Such action shall be commenced by filing with the Clerk of
18 the Supreme Court a certified copy of the order, decision or award
19 of the Workers' Compensation ~~Court sitting en banc~~ Court's panel of
20 Special Magistrates or the judge attached to the petition by the
21 complaint wherein the complainant or petitioner shall make his
22 assignments or specifications as to wherein said order, decision or
23 award is erroneous or illegal. Provided, however, no proceeding to
24 reverse, vacate or modify any order, decision or award of the

1 Workers' Compensation ~~Court sitting en banc~~ Court's panel of Special
2 Magistrates or judge of the Court wherein compensation has been
3 awarded an injured employee shall be entertained by the Supreme
4 Court unless the Administrator shall take a written undertaking to
5 the claimant executed on the part of the respondent or insurance
6 carrier, or both, with one or more sureties to be approved by the
7 Administrator, to the effect that the appellant will pay the amount
8 of the award rendered therein, together with interest thereon from
9 the date of the award by the judge of the Court and all costs of the
10 proceeding, or on the further order of the Workers' Compensation
11 ~~Court sitting en banc~~ Court's panel of Special Magistrates or judge
12 of the Court after the appeal has been decided by the Supreme Court,
13 except that municipalities and other political subdivisions of the
14 State of Oklahoma are exempt from making such written undertakings.
15 Before the Clerk of the Supreme Court shall accept the action for
16 filing, a certificate from the Administrator shall be required,
17 showing that this provision has been complied with. Said
18 proceedings shall be heard in a summary manner and shall have
19 precedence over all other civil cases in the Supreme Court, except
20 preferred Corporation Commission appeals. The Supreme Court shall
21 require the appealing party to file within forty-five (45) days from
22 the date of the filing of an appeal or an order appealed from, a
23 transcript of the record of the proceedings before the Workers'
24 Compensation Court, or upon application and for good cause shown,

1 the Supreme Court may extend the time for filing said transcript of
2 the record for a period of time not to exceed ninety (90) days from
3 said date, and such action shall be subject to the law and practice
4 applicable to other civil actions cognizable in said Supreme Court.
5 The Court whose action was appealed shall enter any order directed
6 by the Supreme Court under the final determination.

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

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

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

24

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

3 SECTION 8. AMENDATORY 85 O.S. 2001, Section 3.10, as
4 amended by Section 12, Chapter 1, 1st Extraordinary Session, O.S.L.
5 2005 (85 O.S. Supp. 2009, Section 3.10), is amended to read as
6 follows:

7 Section 3.10. A. ~~Mediation shall be available to any party to~~
8 mandatory for a claim arising pursuant to the provisions of the
9 Workers' Compensation Act, subject to the limitation provisions of
10 Section 14.3 of this title and except for claims against the
11 Multiple Injury Trust Fund.

12 B. ~~Unless ordered by the Workers' Compensation Court, mediation~~
13 ~~shall be voluntary, and shall not be conducted without the consent~~
14 ~~of both parties~~

15 1. ~~Mediation is not a prerequisite to the commencement of a~~
16 ~~claim for benefits, pursuant to the provisions of the Workers'~~
17 ~~Compensation Act.~~

18 2. ~~A request for mediation or consent to mediate does not~~
19 ~~invoke the jurisdiction of the Court.~~

20 C. ~~The Court may order mediation upon request of either party~~
21 ~~or in any case in which the Court believes that mediation may be~~
22 ~~beneficial to a prompt and efficient resolution of the claim.~~

23 D. 1. ~~A request for mediation shall be made in writing to the~~
24 ~~Administrator.~~

1 ~~2. The party requesting mediation~~ Either party feeling himself
2 aggrieved shall inform the Administrator of a dispute. The
3 initiating party shall provide ~~of~~ the issues in dispute, and the
4 name, address, and telephone number of the ~~opposing~~ responding party
5 ~~or~~. The employer shall provide the name of the employer's workers'
6 compensation insurance company, if known. If the claim involves a
7 certified workplace medical plan, the ~~requesting party~~ employer
8 shall provide the name and phone number of the contact person for
9 the plan. The Administrator shall notify the responding party of a
10 dispute within ten (10) days of receipt of the information from the
11 initiating party. The responding party shall have twenty (20) days
12 to reply.

13 ~~E. Once a request has been made, the Administrator shall~~
14 ~~contact the opposing party. Upon order of the Court, the~~ The
15 parties shall complete mediation within thirty (30) days of the
16 ~~notification~~ reply from the responding party.

17 ~~F. If both parties agree to mediation, they shall enter into a~~
18 ~~written consent to mediate on a form provided by the Administrator.~~
19 ~~The form shall contain a statement informing the parties of their~~
20 ~~rights and obligations and of the confidentiality of the~~
21 ~~proceedings. This written consent shall be signed by both parties~~
22 ~~to the claim and shall be submitted to the Administrator before the~~
23 ~~selection of a mediator is made.~~

24

1 ~~G.~~ C. Mediation is confidential and no part of the proceeding
2 shall be considered a matter of public record. Recommendations of
3 the mediator are not binding unless the parties enter into a
4 settlement agreement. If an agreement is not reached, the results
5 and statements made during the mediation are not admissible in any
6 following proceeding.

7 ~~H.~~ ~~Upon receipt of the consent form or upon order of the Court,~~
8 ~~the~~ D. The Administrator shall provide the parties with a list of
9 certified mediators. Both parties shall agree to a mediator. If
10 the parties are unable to agree, the Administrator shall assign a
11 certified mediator.

12 ~~I.~~ E. The Workers' Compensation Court shall be responsible for
13 certifying those persons who are eligible and qualified to serve as
14 mediators. An individual may be certified as a mediator if; the
15 applicant meets the qualifications as required by the Court.

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

1 ~~K.~~ G. Mediators shall be compensated at the rate or fee as
2 determined by the mediator; provided, however, the rate or fee shall
3 not exceed a maximum rate to be established by the Administrator by
4 rule. The cost of mediation shall be paid by the respondent or its
5 insurance carrier.

6 ~~L.~~ H. If the mediated claim is resolved, any final settlement
7 of the action ~~shall include a consent to mediation form or court~~
8 ~~order to complete mediation, as applicable, and shall be completed~~
9 upon the filing of a Joint Petition or an Agreement Between Employer
10 and Employee as to Fact with Relation to an Injury and Payment of
11 Compensation.

12 I. Mediation completed pursuant to the dispute resolution
13 procedures of a certified workplace medical plan shall satisfy the
14 requirements of this section.

15 SECTION 9. AMENDATORY 85 O.S. 2001, Section 11, as
16 amended by Section 77, Chapter 264, O.S.L. 2006 (85 O.S. Supp. 2009,
17 Section 11), is amended to read as follows:

18 Section 11. A. Every employer subject to the provisions of the
19 Workers' Compensation Act shall pay, or provide as required by the
20 Workers' Compensation Act, compensation according to the schedules
21 of the Workers' Compensation Act for the disability or death of an
22 employee resulting from an accidental personal injury sustained by
23 the employee arising out of and in the course of employment, without
24

1 regard to fault as a cause of such injury, and in the event of
2 disability only, except as follows:

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

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

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

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

20 5. An injury which occurs outside the course of employment.
21 Employment shall be deemed to commence when an employee arrives at
22 the employer's place of employment to report for work and shall
23 terminate when the employee leaves the employer's place of
24 employment, excluding areas not under the control of the employer;

1 provided, however, when the employee is required by the employer to
2 be away from the employer's place of employment, the employee shall
3 be deemed to be in the course of employment when the employee is
4 engaged in the direct performance of duties assigned or directed by
5 the employer; but the employment of employee paid travel time by an
6 employer for time spent traveling to and from a job site or of any
7 employee who utilizes an employer-authorized vehicle shall commence
8 and terminate with the time spent traveling to and from a job site
9 or the authorized operation of a vehicle on business authorized by
10 the employer. Travel by a policeman, fireman, or a member of a
11 first aid or rescue squad, in responding to and returning from an
12 emergency, shall be deemed to be in the course of employment.

13 Employment shall also be deemed to commence when an employee is
14 traveling in a ridesharing arrangement between his or her place of
15 residence or terminal near such place and his or her place of
16 employment, if one of the following conditions is satisfied: the
17 vehicle used in the ridesharing arrangement is owned, leased or
18 contracted for by the employer, or the employee is required by the
19 employer to travel in a ridesharing arrangement as a condition of
20 employment.

21 "Ridesharing" means the transportation of persons in a motor
22 vehicle, with a maximum carrying capacity of not more than fifteen
23 (15) passengers, including the driver, where such transportation is

24

1 incidental to the purpose of the driver. This term shall include
2 such ridesharing arrangements known as carpools and vanpools.

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

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

1 exist by the Workers' Compensation Court despite the execution of an
2 Affidavit of Exempt Status Under the Workers' Compensation Act.

3 2. The person entitled to such compensation shall have the
4 right to recover the same directly from the person's immediate
5 employer, the independent contractor or intermediate contractor, and
6 such claims may be presented against all such persons in one
7 proceeding. If it appears in such proceeding that the principal
8 employer has failed to require a compliance with the Workers'
9 Compensation Act of this state, by the independent contractor, then
10 such employee may proceed against such principal employer without
11 regard to liability of any independent, intermediate or other
12 contractor; provided, however, if a principal employer relies in
13 good faith on proof of a valid workers' compensation insurance
14 policy issued to an independent contractor of the employer or to a
15 subcontractor of the independent contractor or on proof of an
16 Affidavit of Exempt Status Under the Workers' Compensation Act
17 properly executed by the independent contractor or subcontractor
18 under Section ~~75~~ 924.4 of ~~this act~~ Title 36 of the Oklahoma
19 Statutes, then the principal employer shall not be liable for
20 injuries of any employees of the independent contractor or
21 subcontractor. Provided further, such principal employer shall not
22 be liable for injuries of any independent contractor of the employer
23 or of any subcontractor of the independent contractor unless an
24 employer-employee relationship is found to exist by the Workers'

1 Compensation Court despite the execution of an Affidavit of Exempt
2 Status Under the Workers' Compensation Act. Provided, however, in
3 any proceeding where compensation is awarded against the principal
4 employer under the provisions hereof, such award shall not preclude
5 the principal employer from recovering the same, and all expense in
6 connection with said proceeding from any independent contractor,
7 intermediate contractor or subcontractor whose duty it was to
8 provide security for the payment of such compensation, and such
9 recovery may be had by supplemental proceedings in the cause before
10 the Court or by an independent action in any court of competent
11 jurisdiction to enforce liability of contracts.

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

21 4. Where compensation is payable for an occupational disease,
22 the employer in whose employment the employee was last injuriously
23 exposed to the hazards of such disease and the insurance carrier, if
24 any, on the risk when such employee was last so exposed under such

1 employer, shall alone be liable therefor, without right to
2 contribution from any prior employer or insurance carrier; provided,
3 however, that in the case of silicosis or asbestosis, the only
4 employer and insurance carrier liable shall be the last employer in
5 whose employment the employee was last exposed to harmful quantities
6 of silicon dioxide (SiO₂) dust on each of at least sixty (60) days
7 or more, and the insurance carrier, if any, on the risk when the
8 employee was last so exposed under such employer.

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

23 SECTION 10. AMENDATORY 85 O.S. 2001, Section 12, as
24 amended by Section 14, Chapter 1, 1st Extraordinary Session, O.S.L.

1 2005 (85 O.S. Supp. 2009, Section 12), is amended to read as
2 follows:

3 Section 12. The liability prescribed in Section 11 of this
4 title shall be exclusive and in place of all other liability of the
5 employer and any of his employees, any architect, professional
6 engineer, or land surveyor retained to perform professional services
7 on a construction project, at common law or otherwise, for such
8 injury, loss of services, or death, to the employee, or the spouse,
9 personal representative, parents, or dependents of the employee, or
10 any other person, except in the case of an intentional tort, or
11 where the employer has failed to secure the payment of compensation
12 for the injured employee as provided for in this title. An
13 intentional tort shall exist only when the employee is injured as a
14 result of willful, deliberate, specific intent of the employer to
15 cause such injury. The issue of whether an act is an intentional
16 tort shall be a question of law for the court. If an employer has
17 failed to secure the payment of compensation for his injured
18 employee, as provided for in this title, an injured employee, or his
19 legal representatives if death results from the injury, may maintain
20 an action in the courts for damages on account of such injury, and
21 in such action the defendant may not plead or prove as a defense
22 that the injury was caused by the negligence of a fellow servant, or
23 that the employee assumed the risk of his employment, or that the

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1 injury was due to the contributory negligence of the employee;
2 provided:

3 (i) The immunity created by the provisions of this section shall
4 not extend to action by an employee, or the spouse, personal
5 representative, parents, or dependents of the employee, or any other
6 person against another employer, or its employees, on the same job
7 as the injured or deceased worker where such other employer does not
8 stand in the position of an intermediate or principal employer to
9 the immediate employer of the injured or deceased worker;

10 (ii) The immunity created by the provisions of this section
11 shall not extend to action against another employer, or its
12 employees, on the same job as the injured or deceased worker even
13 though such other employer may be considered as standing in the
14 position of a special master of a loaned servant where such special
15 master neither is the immediate employer of the injured or deceased
16 worker nor stands in the position of an intermediate or principal
17 employer to the immediate employer of the injured or deceased
18 worker; and

19 (iii) This provision shall not be construed to abrogate the
20 loaned servant doctrine in any respect other than that described in
21 paragraph (ii) of this section. This section shall not be construed
22 to relieve the employer from any other penalty provided for in this
23 title for failure to secure the payment of compensation provided for
24 in this title.

1 (iv) For the purpose of extending the immunity of this section,
2 any architect, professional engineer, or land surveyor shall be
3 deemed an intermediate or principal employer for services performed
4 at or on the site of a construction project, but this immunity shall
5 not extend to the negligent preparation of design plans and
6 specifications.

7 (v) Nothing contained herein shall abrogate any rights arising
8 under the Oklahoma Constitution.

9 SECTION 11. AMENDATORY 85 O.S. 2001, Section 14, as last
10 amended by Section 15, Chapter 1, 1st Extraordinary Session, O.S.L.
11 2005 (85 O.S. Supp. 2009, Section 14), is amended to read as
12 follows:

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

23 2. The treating physician who renders treatment to the employee
24 at any time shall promptly notify the employee and employer or the

1 employer's insurer in writing after the employee has reached maximum
2 medical improvement and is released from active medical care. If
3 the employee is capable of returning to modified light duty work,
4 the treating physician shall promptly notify the employee and the
5 employer or the employer's insurer thereof in writing ~~and shall also~~
6 ~~specify what restrictions, if any, must be followed by the employer~~
7 ~~in order to return the employee to work. In the event the treating~~
8 ~~physician provides such notification to the employer's insurer, the~~
9 ~~insurer shall promptly notify the employer.~~ If the employer refuses
10 to make a good faith effort to provide light duty work upon receipt
11 of a written report from the treating physician that releases the
12 claimant for light duty work and provides restrictions from normal
13 work duties, the insurance carrier is entitled to make a motion with
14 the Court to collect from the employer fifty percent (50%) of any
15 temporary total disability payment paid during a time in which the
16 claimant was determined by the treating physician to be capable of
17 light duty work with restrictions. ~~If an injured employee, only~~
18 ~~partially disabled, refuses employment consistent with any~~
19 ~~restrictions ordered by the treating physician, the employee shall~~
20 ~~not be entitled to temporary benefits during the continuance of such~~
21 ~~refusal unless in the opinion of the treating physician such refusal~~
22 ~~was justifiable~~ In the event that the treating physician releases a
23 claimant for light duty work and provides written restrictions from
24 normal work duties, the employer shall make a good faith effort to

1 provide a light duty position at the same rate of pay that the
2 claimant was receiving on the date of the injury. If such light
3 duty is offered to the claimant, and the claimant refuses to accept
4 the light duty assignment, the claimant is not entitled to temporary
5 total disability; provided, before compensation may be denied, the
6 employee shall be served with a notice setting forth the
7 consequences of the refusal of employment and that temporary
8 benefits will be discontinued fifteen (15) days after the date of
9 such notice. The employee, upon receipt of such notice, may seek a
10 hearing before the Workers' Compensation Court. The Court shall
11 grant an expedited hearing within five (5) days of any such
12 application by the employee. At such hearing, the Court may enter
13 an order allowing the discontinuation of such benefits, denying the
14 discontinuance of such benefits or temporarily denying the
15 discontinuance of such benefits pending further hearing. An order
16 denying or temporarily denying the discontinuation of temporary
17 benefits shall be based on a finding by the Court that probable
18 cause exists to believe the work does not meet the conditions of the
19 treating physician's restrictions or that the restrictions are
20 unreasonable. The good faith requirement set forth herein shall not
21 constitute an independent cause of action.

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

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

17 D. 1. If a self-insured employer, group self-insurance
18 association plan, an employer's workers' compensation insurance
19 carrier or an insured, which shall include any member of an approved
20 group self-insured association, policyholder or public entity,
21 regardless of whether such entity is insured by CompSource Oklahoma,
22 has previously contracted with a certified workplace medical plan,
23 the employer shall select for the injured employee a treating
24

1 physician from the physicians listed within the network of the
2 certified workplace medical plan.

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

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

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

20 2. Such charges and duration of treatment shall be limited to
21 the usual, customary and reasonable payments and duration of
22 treatment as prescribed and limited by a schedule of fees and
23 treatment for all medical providers to be adopted, after notice and
24 public hearing, by the Administrator. Beginning January 1, 2006,

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

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

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

21 4. An invoice for the actual cost to the hospital of an
22 implantable device shall be adjusted by the hospital to reflect all
23 applicable discounts, rebates, considerations and product
24

1 replacement programs and must be provided to the payor by the
2 hospital as a condition of payment for the implantable device.

3 5. The Administrator's review of medical and treatment charges
4 pursuant to this section shall be conducted pursuant to the fee and
5 treatment schedule in existence at the time the medical care or
6 treatment was provided. The order of the approving medical and
7 treatment charges pursuant to this section shall be enforceable by
8 the Court in the same manner as provided in the Workers'
9 Compensation Act for the enforcement of other compensation payments.
10 Any party feeling aggrieved by the order, decision or award of the
11 Administrator shall, within ten (10) days, have the right to request
12 a hearing on such medical and treatment charges by a judge of the
13 Workers' Compensation Court. The judge of the Court may affirm the
14 decision of the Administrator, or reverse or modify said decision
15 only if it is found to be contrary to the fee and treatment schedule
16 existing at the time the said medical care or treatment was
17 provided. The order of the judge shall be subject to the same
18 appellate procedure set forth in Section 3.6 of this title for all
19 other orders of the Court. The right to recover charges for every
20 type of medical care for personal injuries arising out of and in the
21 course of covered employment as herein defined, shall lie solely
22 with the Workers' Compensation Court, and all jurisdiction of the
23 other trial courts of this state over such action is hereby
24 abolished. The foregoing provision, relating to approval and

1 enforcement of such charges and duration of treatment, shall not
2 apply where a written contract exists between the employer or
3 insurance carrier and the person who renders such medical, surgical
4 or other attendance or treatment, nurse and hospital service, or
5 furnishes medicine, crutches or apparatus. When a medical care
6 provider has brought a claim in the Workers' Compensation Court to
7 obtain payment for services, a party who prevails in full on the
8 claim shall be entitled to a reasonable attorney fee.

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

21 G. Where the employee is not covered by a certified workplace
22 medical plan, the employer shall select the treating physician. The
23 Court on application of the employee shall order one change of
24 treating physician. In the event the employee makes application for

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

13 H. 1. For cases not covered by a certified workplace medical
14 plan, and where the insurance company does not provide case
15 management, case management may be granted by the Workers'
16 Compensation Court on the request of any party, or when the Court
17 determines that case management is appropriate. The Court shall
18 appoint a case manager from a list of qualified case managers
19 developed, maintained and periodically reviewed by the Court.

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

22 3. Except in cases covered by a certified workplace medical
23 plan, upon application of the employee, the Court may order the
24

1 employer to provide one change of case manager if the employee did
2 not make the initial selection of the case manager.

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

6 J. The Administrator shall impose administrative penalties for
7 abusive practices and shall waive payment for medical services to
8 any treating physician who is not in compliance with the provisions
9 of this section. Noncompliance with the provisions of this section
10 by an employee and without good cause shall cause the employee to
11 forfeit his or her permanent award.

12 SECTION 12. AMENDATORY 85 O.S. 2001, Section 22, as last
13 amended by Section 1, Chapter 172, O.S.L. 2009 (85 O.S. Supp. 2009,
14 Section 22), is amended to read as follows:

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

17 1. Permanent Total Disability. In case of total disability
18 adjudged to be permanent, seventy percent (70%) of the employee's
19 average weekly wages shall be paid to the employee ~~during the~~
20 ~~continuance of such total disability~~ until such time as the employee
21 becomes eligible for Medicare.

22 2. Temporary Total Disability. (a) With respect to injuries
23 occurring before November 4, 1994, in cases of temporary total
24 disability, seventy percent (70%) of the employee's average weekly

1 wages shall be paid to the employee during the continuance thereof,
2 but not in excess of one hundred fifty (150) weeks, except as
3 otherwise provided in the Workers' Compensation Act. Provided,
4 after compensation has been paid for a period of one hundred forty
5 (140) weeks, the employee may request a review of the case by a
6 judge of the Workers' Compensation Court for continued temporary
7 total disability benefits provided by the Workers' Compensation Act.
8 Upon a finding that benefits should be extended beyond the initial
9 one-hundred-fifty-week period, compensation may be continued for an
10 additional one hundred fifty (150) weeks.

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

1 payments of compensation for temporary total disability may not
2 exceed a maximum of three hundred (300) weeks in the aggregate.

3 (c) With respect to injuries occurring on or after November 1,
4 1997, total payments of compensation for temporary total disability
5 may not exceed a maximum of one hundred fifty-six (156) weeks in the
6 aggregate except for good cause shown, as determined by the Court.
7 Total payments of compensation for temporary total disability,
8 inclusive of consequential injuries, may not exceed a maximum of
9 three hundred (300) weeks in the aggregate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 Deafness: Deafness from industrial cause, including occupations
22 which are hazardous to hearing, accident or sudden trauma, three
23 hundred (300) weeks, and total deafness of one ear from industrial
24 cause, including occupations which are hazardous to hearing,

1 accident or sudden trauma, one hundred (100) weeks. Except as
2 otherwise provided herein, any examining physician shall only
3 evaluate deafness or hearing impairment in accordance with the
4 latest publication of the American Medical Association's "Guides to
5 the Evaluation of Permanent Impairment" in effect at the time of the
6 injury. The Physician Advisory Committee may, pursuant to Section
7 201.1 of this title, recommend the adoption of a method or system to
8 evaluate permanent impairment that shall be used in place of or in
9 combination with the American Medical Association's "Guides to the
10 Evaluation of Permanent Impairment". Such recommendation shall be
11 made to the Administrator of the Workers' Compensation Court who may
12 adopt the recommendation in part or in whole. The adopted method or
13 system shall be submitted by the Administrator to the Governor, the
14 Speaker of the House of Representatives and President Pro Tempore of
15 the Senate within the first ten (10) legislative days of a regular
16 session of the Legislature. Such method or system to evaluate
17 permanent impairment that shall be used in place of or in
18 combination with the American Medical Association's "Guides to the
19 Evaluation of Permanent Impairment" shall be subject to disapproval
20 in whole or in part by joint or concurrent resolution of the
21 Legislature during the legislative session in which submitted. Such
22 method or system shall be operative one hundred twenty (120) days
23 after the last day of the month in which the Administrator submits
24 the adopted method or system to the Legislature if the Legislature

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

1 (120) days after the last day of the month in which the Legislature
2 disapproves them in part. The examining physician shall not follow
3 the guides based on race or ethnic origin. The examining physician
4 shall not deviate from said guides or any alternative thereof except
5 as may be specifically provided for in the guides or modifications
6 to the guides or except as may be specifically provided for in any
7 alternative or modifications thereto adopted by the Administrator of
8 the Workers' Compensation Court as provided for in Section 201.1 of
9 this title. The guides or modifications thereto or alternative
10 system or method of evaluating permanent impairment or modifications
11 thereto shall be the exclusive basis for testimony and conclusions
12 with regard to deafness or hearing impairment.

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

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

22 Amputations: Amputation between the elbow and the wrist shall be
23 considered as the equivalent of the loss of a hand. Amputation
24 between the knee and the ankle shall be considered as the loss of a

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

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

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

14 Hernia: In case of an injury resulting in hernia, temporary
15 total compensation for fourteen (14) weeks, and the cost of an
16 operation shall be payable; provided, in any case where the injured
17 employee has been twice previously operated for hernia in the same
18 area and it is established by opinion of a competent surgeon that
19 further surgery in the same area will not result in full relief of
20 the condition, the Court may then award compensation for disability
21 resulting therefrom under paragraph 1 of this section, or, if not
22 totally and permanently disabled, then under the "Other Cases"
23 subdivision following, and, after a second surgical attempt to
24 repair hernia, the injured may not be required to submit to further

1 surgery in an effort to relieve the disability thereafter existing;
2 provided, further, the use of any artificial reinforcement or
3 device, with or without surgery, shall not be the basis of reducing
4 extent of disability to be awarded.

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

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

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

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

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

7 (4) For each remaining percent of disability, the identical
8 number of weeks of compensation provided by law prior to November 4,
9 1994.

10 (c) With respect to injuries occurring on or after January 1,
11 2002, through December 31, 2002, in case of disability, partial in
12 character but permanent in quality, the compensation shall be
13 seventy percent (70%) of the employee's average weekly wages, and
14 shall be paid to the employee for the period prescribed by the
15 following schedule:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 Deafness: Deafness from industrial cause, including occupations
24 which are hazardous to hearing, accident or sudden trauma, three

1 hundred fifteen (315) weeks, and total deafness of one ear from
2 industrial cause, including occupations which are hazardous to
3 hearing, accident or sudden trauma, one hundred five (105) weeks.
4 Except as otherwise provided herein, any examining physician shall
5 only evaluate deafness or hearing impairment in accordance with the
6 latest publication of the American Medical Association's "Guides to
7 the Evaluation of Permanent Impairment" in effect at the time of the
8 injury. The Physician Advisory Committee may, pursuant to Section
9 201.1 of this title, recommend the adoption of a method or system to
10 evaluate 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". Such recommendation shall be
13 made to the Administrator of the Workers' Compensation Court who may
14 adopt the recommendation in part or in whole. The adopted method or
15 system shall be submitted by the Administrator to the Governor, the
16 Speaker of the House of Representatives and President Pro Tempore of
17 the Senate within the first ten (10) legislative days of a regular
18 session of the Legislature. Such method or system to evaluate
19 permanent impairment that shall be used in place of or in
20 combination with the American Medical Association's "Guides to the
21 Evaluation of Permanent Impairment" shall be subject to disapproval
22 in whole or in part by joint or concurrent resolution of the
23 Legislature during the legislative session in which submitted. Such
24 method or system shall be operative one hundred twenty (120) days

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 In case of an injury resulting in serious and permanent
20 disfigurement, compensation shall be payable in an amount to be
21 determined by the Court, but not in excess of Twenty Thousand
22 Dollars (\$20,000.00) for an injury occurring before November 1,
23 2005, and not in excess of Fifty Thousand Dollars (\$50,000.00) for
24 an injury occurring on or after November 1, 2005; provided, that

1 compensation for permanent disfigurement shall not be in addition to
2 the other compensation provided for in this section but shall be
3 taken into consideration in fixing the compensation otherwise
4 provided.

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

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

1 to: sprains, strains, contusions, tendonitis, and muscle tears.

2 Cumulative trauma is to be considered a soft tissue injury. "Soft
3 tissue injury" does not include any of the following:

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

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

7 a. sensory or motor disturbances,

8 b. communication disturbances,

9 c. complex integrated disturbances of cerebral function,

10 d. episodic neurological disorders, or

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

12 as severe in nature as any condition provided in

13 subdivisions a through d of this division; or

14 (3) Total knee replacement.

15 In all cases of soft tissue injury, the employee shall only be
16 entitled to appropriate and necessary medical care and temporary
17 total disability as set out in paragraph 2 of this section, unless
18 there is objective medical evidence of a permanent anatomical
19 abnormality. In determining the existence of such an abnormality,
20 the Court may consider if there is credible medical evidence that
21 the ability of the employee to earn wages at the same level as
22 before the injury has been permanently impaired.

23 Other Cases: In all other classes of disabilities, excluding
24 only those heretofore referred to in this paragraph, which

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

14 (e) With respect to injuries occurring on or after the effective
15 date of this act, in case of disability, partial in character but
16 permanent in quality, the compensation shall be seventy percent
17 (70%) of the employee's average weekly wages, but not to exceed
18 fifty percent (50%) of the state's average weekly wage in effect
19 October 2008, paid to the employee for the period prescribed by the
20 following schedule:

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

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

24

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

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

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

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

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

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

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

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

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

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

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

3 weeks.

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

5 weeks.

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

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

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

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

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

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

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

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

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

1 taken into consideration in fixing the compensation otherwise
2 provided.

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

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

24

1 Cumulative trauma is to be considered a soft tissue injury. "Soft
2 tissue injury" does not include any of the following:

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

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

6 a. sensory or motor disturbances,

7 b. communication disturbances,

8 c. complex integrated disturbances of cerebral function,

9 d. episodic neurological disorders, or

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

11 as severe in nature as any condition provided in

12 subdivisions a through d of this division; or

13 (3) Total knee replacement.

14 In all cases of soft tissue injury, the employee shall only be

15 entitled to appropriate and necessary medical care and temporary

16 total disability as set out in paragraph 2 of this section, unless

17 there is objective medical evidence of a permanent anatomical

18 abnormality. In determining the existence of such an abnormality,

19 the Court may consider if there is credible medical evidence that

20 the ability of the employee to earn wages at the same level as

21 before the injury has been permanently impaired.

22 Other Cases: In all other classes of disabilities, excluding

23 only those heretofore referred to in this paragraph, which

24 disabilities result in loss of use of any portion of an employee's

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

13 4. Temporary Partial Disability. (a) With respect to injuries
14 occurring before November 4, 1994, in case of temporary partial
15 disability, except the particular cases mentioned in paragraph 3 of
16 this section, an injured employee shall receive seventy percent
17 (70%) of the difference between the employee's average weekly wages
18 and the employee's wage-earning capacity thereafter in the same
19 employment or otherwise, if less than before the injury, during
20 continuance of such partial disability, but not to exceed one
21 hundred fifty (150) weeks. Provided, after compensation has been
22 paid for a period of one hundred forty (140) weeks, the employee may
23 request a review of the case by a judge of the Court for continued
24 temporary partial disability benefits provided by the Workers'

1 Compensation Act. Upon a finding that benefits should be extended
2 beyond the initial one-hundred-fifty-week period, compensation may
3 be continued for an additional one hundred fifty (150) weeks.

4 (b) With respect to injuries occurring on or after November 4,
5 1994, in case of temporary partial disability, except the particular
6 cases mentioned in paragraph 3 of this section, an injured employee
7 shall receive seventy percent (70%) of the difference between the
8 employee's average weekly wages and the employee's wage-earning
9 capacity thereafter in the same employment or otherwise, if less
10 than before the injury, during continuance of such partial
11 disability, but not to exceed fifty-two (52) weeks. Provided, after
12 compensation has been paid for a period of forty-two (42) weeks, the
13 employee may request a review of the case by a judge of the Court
14 for continued temporary partial disability benefits provided by the
15 Workers' Compensation Act. Upon a finding that benefits should be
16 extended beyond the initial fifty-two-week period, compensation may
17 be continued for additional successive fifty-two-week periods
18 provided the employee has requested review of the case at forty-two
19 (42) weeks during each period involved, and upon a finding by the
20 Court that benefits should be extended. Total payments of
21 compensation for temporary partial disability may not exceed a
22 maximum of three hundred (300) weeks in the aggregate.

23 (c) With respect to injuries occurring on or after November 1,
24 1997, total payments of compensation for temporary partial

1 disability may not exceed a maximum of one hundred fifty-six (156)
2 weeks in the aggregate except for good cause shown, as determined by
3 the Court. Total payments of compensation for temporary partial
4 disability, inclusive of consequential injuries, may not exceed a
5 maximum of three hundred (300) weeks in the aggregate.

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

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

23 6. Limitation. The compensation payments under the provisions
24 of the Workers' Compensation Act shall not exceed the sum of

1 seventy-five percent (75%) of the state's average weekly wage as
2 determined by the Oklahoma Employment Security Commission, the sum
3 of ninety percent (90%) of the state's average weekly wage beginning
4 January 1, 1995, for injuries occurring after December 31, 1994, and
5 the sum of one hundred percent (100%) of the state's average weekly
6 wage beginning January 1, 1996, for injuries occurring after
7 December 31, 1995, for temporary disability; Sixty Dollars (\$60.00)
8 per week beginning as of the effective date of the Workers'
9 Compensation Act, and Seventy Dollars (\$70.00) per week beginning
10 January 1, 1979, and Eighty Dollars (\$80.00) per week beginning
11 January 1, 1980, and Ninety Dollars (\$90.00) per week beginning
12 January 1, 1981, and to fifty percent (50%) of the state's average
13 weekly wage beginning January 1, 1982, for permanent partial
14 disability; Seventy-five Dollars (\$75.00) per week beginning as of
15 the effective date of the Workers' Compensation Act, and Ninety
16 Dollars (\$90.00) per week beginning January 1, 1979, and One Hundred
17 Ten Dollars (\$110.00) per week beginning January 1, 1980, to sixty-
18 six and two-thirds percent (66 2/3%) of the state's average weekly
19 wage beginning January 1, 1981, to seventy-five percent (75%) of the
20 state's average weekly wage beginning September 1, 1992, to ninety
21 percent (90%) of the state's average weekly wage beginning January
22 1, 1995, for injuries occurring after December 31, 1994, and to one
23 hundred percent (100%) of the state's average weekly wage beginning
24 January 1, 1996, for injuries occurring after December 31, 1995, for

1 permanent total disability, or at any time be less than Thirty
2 Dollars (\$30.00) per week; provided, however, that if the employee's
3 wages at the time of the injury are less than Thirty Dollars
4 (\$30.00) per week, the employee shall receive the employee's full
5 weekly wages; provided further, that the compensation received, as
6 provided for temporary partial disability, shall not, when added to
7 the wages received by such employee after such injury, amount to a
8 greater sum than eighty percent (80%) of the average weekly wages of
9 the employee received prior to said injury.

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

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

24

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

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

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

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

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

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

20 (4) To the children, if there is no surviving spouse, fifty
21 percent (50%) of the average weekly wages the deceased was earning
22 for one child, and twenty percent (20%) of such wage for each
23 additional child, divided among all children, to share and share
24

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

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

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

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

10 c. when the actually dependent child ceases to be
11 actually dependent, or

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

1 educational institution or being educated by other
2 means, including education at home pursuant to Section
3 4 of Article XIII of the Oklahoma Constitution.

4 (6) To each parent, if actually dependent, twenty-five percent
5 (25%) of the average weekly wages the deceased was earning subject
6 to the provisions of subparagraphs (c) and (d) of this paragraph.

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

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

21 (9) A person ceases to be actually dependent when the person's
22 income from all sources exclusive of workers' compensation income
23 benefits is such that, if it had existed at the time the original
24 determination of actual dependency was made, it would not have

1 supported a finding of dependency. If the present annual income of
2 an actually dependent person including workers' compensation income
3 benefits at any time exceeds the total annual support received by
4 the person from the deceased employee, the workers' compensation
5 benefits shall be reduced so that the total annual income is no
6 greater than such amount of annual support received from the
7 deceased employee. In all cases, a person found to be actually
8 dependent shall be presumed to be no longer actually dependent three
9 (3) years after the time as of which the person was found to be
10 actually dependent. This presumption may be overcome by proof of
11 continued actual dependency as defined in this paragraph and
12 paragraph (1) of Section 3.1 of this title.

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

20 (c) Maximum income benefits for death. For the purposes of this
21 section, the average weekly wage of the employee shall be taken as
22 not more than the average weekly wage of the state. If the average
23 weekly wages of the employee are equal to or greater than the
24 average weekly wage of the state, then the aggregate weekly income

1 benefits payable to all beneficiaries under this section shall not
2 exceed the average weekly wage of the state. If the average weekly
3 wages of the employee are less than the average weekly wage of the
4 state, the aggregate weekly income benefits payable to all
5 beneficiaries under this section shall not exceed one hundred
6 percent (100%) of the average weekly wages of the employee.

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

1 provided for by this section, the gross remaining amount of income
2 benefits payable to such other beneficiaries shall be apportioned by
3 class, proportionate to the interest of each class in the remaining
4 amount. Parents shall be considered to be in one class and those
5 specified in division (7) of subparagraph (a) of this paragraph in a
6 separate class.

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

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

22 11. (a) For deaths occurring before January 1, 1995, if there
23 is a surviving spouse and surviving children entitled to receive
24 death benefits herein, such survivors shall be entitled to an

1 immediate lump-sum payment of Ten Thousand Dollars (\$10,000.00) to
2 the spouse and Two Thousand Five Hundred Dollars (\$2,500.00) to each
3 surviving child not to exceed two children. For deaths occurring
4 after December 31, 1994, if there is a surviving spouse and
5 surviving children entitled to receive death benefits herein, such
6 survivors shall be entitled to an immediate lump-sum payment of
7 Twenty Thousand Dollars (\$20,000.00) to the spouse and Five Thousand
8 Dollars (\$5,000.00) to each surviving child not to exceed two
9 children. For deaths occurring on or after November 1, 2005, if
10 there is a surviving spouse and surviving children entitled to
11 receive death benefits herein, such survivors shall be entitled to
12 an immediate lump-sum payment of One Hundred Thousand Dollars
13 (\$100,000.00) to the spouse and Twenty-five Thousand Dollars
14 (\$25,000.00) to each surviving child not to exceed two children. In
15 addition, the survivors shall be entitled to receive funeral
16 benefits in an amount not to exceed Ten Thousand Dollars
17 (\$10,000.00).

18 (b) For deaths occurring before November 1, 2005, if there is no
19 surviving spouse but there are surviving children entitled to
20 receive death benefits herein, such surviving children shall be
21 entitled to a lump-sum payment of Ten Thousand Dollars (\$10,000.00)
22 to be divided among all the children to share and share alike. For
23 deaths occurring on or after November 1, 2005, if there is no
24 surviving spouse but there are surviving children entitled to

1 receive death benefits herein, each surviving child shall be
2 entitled to a lump-sum payment of Twenty-five Thousand Dollars
3 (\$25,000.00), provided the total amount of lump-sum payments shall
4 not exceed One Hundred Fifty Thousand Dollars (\$150,000.00), to be
5 divided among all the children to share and share alike. The
6 survivors shall also be entitled to receive funeral benefits in an
7 amount not to exceed Ten Thousand Dollars (\$10,000.00).

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

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

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

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

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

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

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

19 SECTION 13. AMENDATORY 85 O.S. 2001, Section 201, is
20 amended to read as follows:

21 Section 201. A. A health care provider who knowingly charges
22 more for treatment under workers' compensation than that normally
23 charged for similar treatment to a payor outside the workers'
24

1 compensation system, except for mandated or negotiated charges,
2 shall be subject to penalties prescribed in this section.

3 B. The Administrator shall adopt rules to establish a system of
4 review of medical practices of health care providers through the
5 workers' compensation system to evaluate on an aggregate basis the
6 quantity and quality of treatment, charges and evaluations of
7 permanent impairment by such providers. The Administrator may refer
8 charges of abusive practices by health care providers under the
9 workers' compensation system to the Physician Advisory Committee for
10 review and recommendation. The findings and recommendation of the
11 Committee shall be only advisory to the Administrator and shall not
12 be binding or conclusive upon him. If the Administrator determines
13 that a health care provider has, on an aggregate basis, established
14 a pattern of over or under treating, failing to adhere to the
15 current edition of the AMA Guides ~~or modifications thereto~~ when
16 evaluating permanent impairment, or overcharging, the Administrator
17 shall impose administrative penalties for abusive practices and ~~may~~
18 shall waive payment for medical services or evaluations of permanent
19 impairment of the health care provider rendered under the Workers'
20 Compensation Act, Section 1 et seq. of this title, for a period not
21 to exceed five (5) years. A pattern of abusive practices shall
22 include, but not be limited to, a pattern of referral to a medical
23 facility for treatment found to be in excess of treatment guidelines
24 ~~adopted by the Administrator under Section 201.1 of this title~~ in

1 the current edition of the AMA Guides. Physicians providing
2 treatment under the Workers' Compensation Act shall disclose to the
3 Administrator of the Workers' Compensation Court, on a form
4 prescribed by the Administrator, any ownership or interest in any
5 health care facility that is not the physician's primary place of
6 business. Such disclosure shall include, but not be limited to, any
7 employee leasing arrangement between the physician and any health
8 care facility that is not the physician's primary place of business.

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

- 14 1. The substance of the alleged violation;
- 15 2. The amount of any fees, fines, penalties and costs which may
16 be imposed if the provider is found guilty or fails to respond; and
- 17 3. The date that a response must be made or a hearing
18 requested.

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

22 E. Upon receipt of the response or request for hearing, the
23 Administrator shall set a date, time and place for hearing which
24 shall be not less than ten (10) nor more than thirty (30) days after

1 receipt of the request for hearing. The Administrator shall notify
2 all interested parties of the hearing by first-class mail. This
3 notice shall include the following:

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

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

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

- 20 2. Directions for remitting the penalty, if any.

21 SECTION 14. AMENDATORY 85 O.S. 2001, Section 201.1, as
22 last amended by Section 31, Chapter 1, 1st Extraordinary Session,
23 O.S.L. 2005 (85 O.S. Supp. 2009, Section 201.1), is amended to read
24 as follows:

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

4 a. the Governor shall appoint three members, one of whom
5 shall be licensed in this state as a doctor of
6 medicine and surgery, one of whom shall be engaged in
7 the practice of family medicine in a rural community
8 of the state, and one of whom shall be an osteopathic
9 physician,

10 b. the President Pro Tempore of the Senate shall appoint
11 three members, one of whom shall be licensed in this
12 state as a doctor of medicine and surgery, one of whom
13 shall be licensed in this state either as a doctor of
14 medicine or a doctor of osteopathy and shall be
15 engaged in the practice of occupational medicine, and
16 one of whom shall be licensed in this state as a
17 podiatric physician,

18 c. the Speaker of the House of Representatives shall
19 appoint three members, one of whom shall be licensed
20 in this state as an osteopathic physician, one of whom
21 shall be licensed in this state either as a doctor of
22 medicine or a doctor of osteopathy, and one of whom
23 shall be licensed in this state as a chiropractic
24 physician.

1 districts are redrawn, each member appointed prior to
2 July 1 of the year in which such modification becomes
3 effective shall complete the current term of office
4 and appointments made after July 1 of the year in
5 which such modification becomes effective shall be
6 based on the redrawn districts. Appointments that
7 were to be made from a numbered Congressional District
8 which no longer exists shall be appointed from the
9 state at large.

10 e. Effective July 1, 2005, all members of the Physicians
11 Advisory Committee shall be subject to reappointment
12 regardless of their appointment date, with any new
13 appointee to serve out the remainder of the unexpired
14 term of the committee member so replaced.

15 B. The Committee shall:

16 1. Assist and advise the Administrator of the Workers'
17 Compensation Court regarding utilization review as it relates to the
18 medical practice and treatment of work-related injuries. Such
19 utilization review shall include a review of reasonable and
20 necessary treatment; abusive practices; needless treatments,
21 testing, or procedures; or a pattern of billing in excess of or in
22 violation of the Schedule of Medical Fees. The Physician Advisory
23 Committee shall review and make findings and recommendations to the
24 Administrator of the Workers' Compensation Court with respect to

1 charges of inappropriate or unnecessary treatment or procedures,
2 abusive practices, or excessive billing disclosed through
3 utilization review. All findings of the Administrator shall be
4 based upon the most recent edition of the American Medical
5 Association's "Guides to the Evaluation of Permanent Impairment";

6 2. Assist the Administrator of the Workers' Compensation Court
7 in reviewing medical practices of health care providers, including
8 evaluations of permanent impairment provided by health care
9 providers, as provided for in Section 201 of this title. The
10 Committee shall review and make findings and recommendations to the
11 Administrator with respect to charges of abusive practices by health
12 care providers providing medical services or evaluations of
13 permanent impairment through the workers' compensation system. All
14 findings of the Administrator shall be based upon the most recent
15 edition of the American Medical Association's "Guides to the
16 Evaluation of Permanent Impairment";

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

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

13 5. ~~After public hearing, adopt treatment~~ Treatment guidelines
14 and protocols for treatment of injuries, including, but not limited
15 to, injuries to the hand, wrist, back, knee, neck and shoulder and
16 utilization controls for all treatments, including, but not limited
17 to, x-ray and imaging technology for diagnostic purposes, ~~for~~
18 ~~adoption by the Administrator. Treatment guidelines and protocols~~
19 shall be based upon ~~nationally accepted practice standards~~ the
20 Official Disability Guidelines promulgated by the Work Loss Data
21 Institute and shall indicate when surgery is indicated and the
22 appropriate surgical procedure for the condition. ~~Among the~~
23 ~~standards that must be considered are the Occupational Medicine~~
24 ~~Practice Guidelines promulgated by the American College of~~

1 ~~Occupational and Environmental Medicine.~~ Compliance with treatment
2 guidelines shall be mandatory and an employer or insurer for an
3 employer shall not be required to pay for treatment which is not in
4 compliance with the guidelines, unless prior authorization is
5 received. If an employer or insurer for an employer refuses to give
6 such prior authorization, the employee may request the case be
7 reviewed by an independent medical examiner pursuant to the
8 provisions of subsection B of Section 17 of this title. Provided,
9 however, if the employer and employee are unable to agree on the
10 appointment of an independent medical examiner for prior
11 authorization purposes, the Court shall randomly select an
12 independent medical examiner within seven (7) days of receipt of a
13 written request by the employee. The independent medical examiner
14 shall review the medical records of the employee, examine the
15 employee, or both, as necessary to render an opinion as to whether
16 prior authorization should be given. If prior authorization is
17 granted, the employer shall pay the costs of the independent medical
18 examiner subject to limits established by the Administrator. If
19 prior authorization is denied, the employee shall pay the costs of
20 the independent medical examiner subject to the limits established
21 by the Administrator;

22 ~~6.~~ 4. After public hearing, adopt guidelines for the
23 prescription and dispensing of any controlled substance included in
24 Schedule II of the Uniform Controlled Dangerous Substances Act;

1 ~~7.~~ 5. Review utilization on cases or of providers when
2 requested by any employer, injured employee or insurer. The
3 Committee may issue a public or private censure to any provider for
4 utilization which is excessive or inadequate, or recommend the Court
5 order treatment within the treatment guidelines;

6 ~~8.~~ 6. Provide general recommendations to the judges of the
7 Workers' Compensation Court on the issues of injury causation and
8 apportionment;

9 ~~9.~~ 7. Conduct educational seminars for the judges of the
10 Workers' Compensation Court, employers, employees, and other
11 interested parties;

12 ~~10.~~ 8. Assist the judges of the Workers' Compensation Court in
13 accessing medical information from scientific literature; and

14 ~~11.~~ 9. Report its progress annually to the Governor, the
15 President Pro Tempore of the Senate, and the Speaker of the House of
16 Representatives.

17 C. The term of office for initial appointees shall expire March
18 1, 1994. Thereafter, successors in office shall serve as follows:

19 1. The term of office for three positions, one each appointed
20 by the Governor, the President Pro Tempore of the Senate and the
21 Speaker of the House of Representatives, shall expire on January 1,
22 1996;

23 2. The term of office for three positions, one each appointed
24 by the Governor, the President Pro Tempore of the Senate and the

1 Speaker of the House of Representatives, shall expire on January 1,
2 1997;

3 3. The term of office for three positions, one each appointed
4 by the Governor, the President Pro Tempore of the Senate and the
5 Speaker of the House of Representatives, shall expire on January 1,
6 1998;

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

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

12 D. Members of the Physician Advisory Committee shall receive no
13 compensation for serving on the Committee but shall be reimbursed by
14 the Workers' Compensation Court for their necessary travel expenses
15 incurred in the performance of their duties in accordance with the
16 State Travel Reimbursement Act.

17 E. Meetings of the Physician Advisory Committee shall be called
18 by the Administrator but held at least quarterly. The presence of a
19 simple majority of the members constitutes a quorum. No action
20 shall be taken by the Physician Advisory Committee without the
21 affirmative vote of at least a simple majority of the members.

22 F. The Administrator shall provide office supplies and
23 personnel of the Workers' Compensation Court to assist the Committee
24 in the performance of its duties.

1 G. Upon written request, the State Insurance Commissioner,
2 CompSource Oklahoma, and every approved self-insured employer in
3 Oklahoma shall provide the Committee with data necessary to the
4 performance of its duties.

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

13 SECTION 15. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 201.1a of Title 85, unless there
15 is created a duplication in numbering, reads as follows:

16 A. Notwithstanding any other section of law, the Court shall
17 adopt rules requiring express written prior authorization from the
18 employer's insurer to the treating physician forty-eight (48) hours
19 prior to the recommended treatment or services for an employee's
20 injuries including, but not limited to:

- 21 1. Spinal surgery;
- 22 2. Work-hardening or work-conditioning services;
- 23 3. Inpatient, nonemergency hospitalization, including any
24 procedure and length of stay;

- 1 4. Transfers between facilities;
- 2 5. Physical and occupational therapy;
- 3 6. Outpatient services expected to exceed One Thousand Dollars
- 4 (\$1,000.00) in billed charges for a single date of service or
- 5 ambulatory surgical services, as defined by Court rule; and
- 6 7. Any investigational or experimental services or devices.
- 7 B. Treatment and service for a medical emergency do not require
- 8 express written prior authorization. Upon emergency hospital
- 9 admission, notice must be given to the insurer within twenty-four
- 10 (24) hours or the next business day.
- 11 C. The procedures for requesting prior authorization shall be
- 12 as follows:
- 13 1. Within three (3) working days of the treating physician's
- 14 request for prior authorization, the insurer's designee shall give
- 15 notification to the physician, by telephone or transmission of a
- 16 facsimile, of the decision to grant or deny prior authorization.
- 17 When the insurer approves prior authorization, the insurer shall
- 18 send written approval, or if denying prior authorization, shall send
- 19 written documentation identifying the reasons for denial to the
- 20 injured employee, the injured employee's representative if known,
- 21 and the treating physician, or the treating physician's designee,
- 22 within twenty-four (24) hours after notification of denial or
- 23 approval;
- 24

1 2. Prior to the date of proposed treatment or services, the
2 treating physician, or his or her designee, shall give notification
3 to the insurer, by telephone or transmission of a facsimile, of the
4 recommended treatment or service. Notification shall include the
5 medical information to substantiate the need for the treatment or
6 service recommended. If requested to do so by the insurer, the
7 treating physician shall also give notification of the location and
8 estimated date of the recommended treatment or service, and the name
9 of the health care provider performing the treatment or service, if
10 other than the treating physician. Designee includes, but is not
11 limited to, office staff and hospital staff; and

12 3. The Workers' Compensation Court shall promulgate rules for
13 an insurer's failure to respond to a prior authorization request.

14 D. If a dispute arises over denial of prior authorization by
15 the insurer, the treating physician or the injured employee may
16 proceed to the Administrator. An insurer is not liable for payment
17 for treatments and services requiring express written prior
18 authorization, unless prior authorization is sought by the claimant
19 or treating physician and either obtained from the insurer or
20 ordered by the Court.

21 If a specified treatment or service has prior authorization as
22 provided by this section, that treatment or service is not subject
23 to retrospective review of the medical necessity of the treatment or
24 service.

1 The Court may not prohibit an insurer and a treating physician
2 from voluntarily discussing treatment and services, either
3 prospectively or concurrently, and may not prohibit an insurer from
4 certifying or agreeing to pay for health care consistent with those
5 agreements. The insurer is liable for treatment and services that
6 are voluntarily given prior authorization and may not dispute the
7 certified or agreed authorized treatment and services at a later
8 date.

9 SECTION 16. This act shall become effective November 1, 2010.

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