

ESB 1973

THE HOUSE OF REPRESENTATIVES  
Thursday, April 8, 2010

ENGROSSED  
**Senate Bill No. 1973**  
**As Amended**

ENGROSSED SENATE BILL NO. 1973 - By: COFFEE AND JOLLEY of the Senate and SULLIVAN of the House.

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

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

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

4 Any labor organization in this state shall be authorized to opt out of the provisions  
5 of the Workers' Compensation Act pursuant to Title 85 of the Oklahoma Statutes upon  
6 assurance by the organization and approval of the Administrator of the Workers'  
7 Compensation Court of a system within the organization for payment of benefits for  
8 injuries to employees arising out of and in the course of employment.

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

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

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

7 Section 1.2. A. There is hereby created the Workers' Compensation Court which  
8 shall consist of ~~ten (10)~~ eight (8) judges. Each judge of the Court shall be appointed to a  
9 designated numbered position on the Court. The positions shall be numbered one  
10 through ~~ten~~ eight, five of which shall be permanently assigned to the Oklahoma City  
11 Workers' Compensation Court and three of which shall be permanently assigned to the  
12 Tulsa Workers' Compensation Court. The initial terms of the judges by position number  
13 shall expire on the following dates:

14 Position 1 shall expire 7-1-84.

15 Position 2 shall expire 7-1-84.

16 Position 3 shall expire 7-1-84.

17 Position 4 shall expire 7-1-82.

18 Position 5 shall expire 7-1-82.

19 Position 6 shall expire 7-1-80.

20 Position 7 shall expire 7-1-80.

21 Position 8 shall expire 7-1-88.

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

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

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

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

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

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

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

1 E. The Court shall have the authority to adopt reasonable rules within its  
2 respective areas of responsibility including the rules of procedure for the ~~Court en banc~~  
3 panel of Special Magistrates, after notice and public hearing, for effecting the purposes of  
4 the Workers' Compensation Act. All of the judges of the Court shall be present at all  
5 meetings wherein rules are adopted or amended. All rules, upon adoption, shall be  
6 submitted to the Supreme Court, which shall either approve or disapprove them within  
7 thirty (30) days. All rules, upon approval by the Supreme Court, shall be published and  
8 be made available to the public and, if not inconsistent with the law, shall be binding in  
9 the administration of the Workers' Compensation Act.

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

16 G. The principal office of the Court shall be situated in the City of Oklahoma City  
17 in quarters assigned by the Department of Central Services. The Court may hold  
18 hearings in any city of this state.

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

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

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

6 SECTION 4. AMENDATORY 85 O.S. 2001, Section 1.3, as amended by Section  
7 8, Chapter 1, 1st Extraordinary Session, O.S.L. 2005 (85 O.S. Supp. 2009, Section 1.3), is  
8 amended to read as follows:

9 Section 1.3. A. The chief administrative officer of the Workers' Compensation  
10 Court shall be the Administrator, who shall be subject to the general supervision of the  
11 presiding judge of the Court, subject to the general administrative authority of the Chief  
12 Justice of the Supreme Court.

13 ~~B. The person serving as Administrator on the date of passage and approval of this~~  
14 ~~act shall continue to serve as Administrator of the Court, provided said person is serving~~  
15 ~~as Administrator on the effective date of this act.~~

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

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

21 E. ~~The Administrator shall serve a six-year term. During the term, the~~  
22 Administrator may be removed from office only for cause, as provided by law for the

1 removal of officers not subject to impeachment, pursuant to the provisions of Sections  
2 1181 through 1197 of Title 22 of the Oklahoma Statutes.

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

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

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

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

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

- 1 B. The duties of the Medical Director shall include but not be limited to:
- 2 1. Institute administrative procedures that will enable the evaluation of medical
- 3 care to effect optimal treatment in workers' compensation cases;
- 4 2. Inquire into instances where the medical treatment or the physical
- 5 rehabilitation provided appears to be deficient or incomplete and recommend corrective
- 6 action when indicated;
- 7 3. Advise on the disposition of complaints of a physician's failure to furnish
- 8 adequate medical care as required by this law, the disposition of complaints concerning
- 9 other aspects of the medical management of a workers' compensation case, and the
- 10 disposition of complaints of any affected party as to unreasonable interference with the
- 11 medical management of a workers' compensation case;
- 12 4. Gather data and maintain records necessary to fulfill the medical director's
- 13 responsibilities;
- 14 5. Conduct studies and prepare and issue reports on the medical aspect of workers'
- 15 compensation cases;
- 16 6. Expedite the submission and processing of medical reports necessary to the
- 17 processing of claims; and
- 18 7. Undertake other functions that may be delegated to the Medical Director by the
- 19 Administrator.

20 SECTION 6. AMENDATORY 85 O.S. 2001, Section 3, as last amended by

21 Section 9, Chapter 1, 1st Extraordinary Session, O.S.L. 2005 (85 O.S. Supp. 2009, Section

22 3), is amended to read as follows:

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

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

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

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

- 14 a. systematically monitoring the treatment rendered and the medical  
15 progress of the injured or disabled worker,
- 16 b. ensuring that any treatment plan follows all appropriate treatment  
17 protocols, utilization controls and practice parameters,
- 18 c. assessing whether alternative health care services are appropriate and  
19 delivered in a cost-effective manner based upon acceptable medical  
20 standards, and
- 21 d. ensuring that the injured or disabled worker is following the  
22 prescribed health care plan;

1 4. “Case manager” means a person who:

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

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

8 (1) Certified Disability Management Specialist (CDMS),

9 (2) Certified Case Manager (CCM),

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

11 (4) Case Manager – Certified (CMC),

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

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

14 5. “Claimant” means a person who claims benefits for an injury pursuant to the  
15 provisions of the Workers’ Compensation Act;

16 6. “Court” means the Workers’ Compensation Court;

17 7. “Cumulative trauma” means a compensable injury, the major cause of which  
18 results from employment activities which are repetitive in nature and engaged in over a  
19 period of time and which is supported by objective medical evidence as defined in this  
20 section;

21 8. “Employer”, except when otherwise expressly stated, means a person,  
22 partnership, association, limited liability company, corporation, and the legal

1 representatives of a deceased employer, or the receiver or trustee of a person,  
2 partnership, association, corporation, or limited liability company, departments,  
3 instrumentalities and institutions of this state and divisions thereof, counties and  
4 divisions thereof, public trusts, boards of education and incorporated cities or towns and  
5 divisions thereof, employing a person included within the term “employee” as herein  
6 defined;

7 9. “Employee” means any person engaged in the employment of any person, firm,  
8 limited liability company or corporation covered by the terms of the Workers’  
9 Compensation Act, and shall include workers associating themselves together under an  
10 agreement for the performance of a particular piece of work, in which event such persons  
11 so associating themselves together shall be deemed employees of the person having the  
12 work executed; provided, that if such associated workers shall employ a worker in the  
13 execution of such contract, then as to such employed worker, both the associated  
14 employees and the principal employer shall at once become subject to the provisions of  
15 the Workers’ Compensation Act relating to independent contractors. Sole proprietors,  
16 members of a partnership, members of a limited liability company who own at least ten  
17 percent (10%) of the capital of the limited liability company or any stockholder-employees  
18 of a corporation who own ten percent (10%) or more stock in the corporation are  
19 specifically excluded from the foregoing definition of “employee”, and shall not be deemed  
20 to be employees as respects the benefits of the Workers’ Compensation Act. Provided, a  
21 sole proprietor, member of a partnership, member of a limited liability company who  
22 owns at least ten percent (10%) of the capital of the limited liability company or any

1 stockholder-employee of a corporation who owns ten percent (10%) or more stock in the  
2 corporation who does not so elect to be covered by a policy of insurance covering benefits  
3 under the Workers' Compensation Act, when acting as a subcontractor, shall not be  
4 eligible to be covered under the prime contractor's policy of workers' compensation  
5 insurance; however, nothing herein shall relieve the entities enumerated from providing  
6 workers' compensation insurance coverage for their employees. Sole proprietors,  
7 members of a partnership, members of a limited liability company who own at least ten  
8 percent (10%) of the capital of the limited liability company or any stockholder-employees  
9 of a corporation who own ten percent (10%) or more stock in the corporation may elect to  
10 include the sole proprietors, any or all of the partnership members, any or all of the  
11 limited liability company members or any or all stockholder-employees as employees, if  
12 otherwise qualified, by endorsement to the policy specifically including them under any  
13 policy of insurance covering benefits under the Workers' Compensation Act. When so  
14 included, the sole proprietors, members of a partnership, members of a limited liability  
15 company or any or all stockholder-employees shall be deemed to be employees as respects  
16 the benefits of the Workers' Compensation Act. "Employee" shall also include any person  
17 who is employed by the departments, instrumentalities and institutions of this state and  
18 divisions thereof, counties and divisions thereof, public trusts, boards of education and  
19 incorporated cities or towns and divisions thereof. "Employee" shall also include a  
20 member of the Oklahoma National Guard while in the performance of duties only while  
21 in response to state orders and any authorized voluntary or uncompensated worker,  
22 rendering services as a firefighter, peace officer or emergency management worker.

1 Provided, “employee” shall not include any other person providing or performing  
2 voluntary service who receives no wages for the services other than meals, drug or  
3 alcohol rehabilitative therapy, transportation, lodging or reimbursement for incidental  
4 expenses. “Employee” shall also include a participant in a sheltered workshop program  
5 which is certified by the United States Department of Labor. “Employee” shall not  
6 include a person, commonly referred to as an owner-operator, who owns or leases a truck-  
7 tractor or truck for hire, if the owner-operator actually operates the truck-tractor or  
8 truck and if the person contracting with the owner-operator is not the lessor of the truck-  
9 tractor or truck. Provided, however, an owner-operator shall not be precluded from  
10 workers’ compensation coverage under the Workers’ Compensation Act if the owner-  
11 operator elects to participate as a sole proprietor. “Employee” shall not include a person  
12 referred to as a drive-away owner-operator who privately owns and utilizes a tow vehicle  
13 in drive-away operations and operates independently for hire, if the drive-away owner-  
14 operator actually utilizes the tow vehicle and if the person contracting with the drive-  
15 away owner-operator is not the lessor of the tow vehicle. Provided, however, a drive-  
16 away owner-operator shall not be precluded from workers’ compensation coverage under  
17 the Workers’ Compensation Act if the drive-away owner-operator elects to participate as  
18 a sole proprietor;

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

1           11. “Employment” includes work or labor in a trade, business, occupation or  
2 activity carried on by an employer or any authorized voluntary or uncompensated worker  
3 rendering services as a firefighter, peace officer or emergency management worker;

4           12. “Compensation” means the money allowance payable to an employee as  
5 provided for in the Workers’ Compensation Act;

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

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

- 1 c. "Injury" or "personal injury" shall not include mental injury that is  
2 unaccompanied by physical injury, except in the case of rape which  
3 arises out of and in the course of employment.
- 4 d. "Compensable injury" shall not include the ordinary, gradual  
5 deterioration or progressive degeneration caused by the aging process,  
6 unless the employment is a major cause of the deterioration or  
7 degeneration and is supported by objective medical evidence, as  
8 defined in this section; nor shall it include injury incurred while  
9 engaging in, performing or as the result of engaging in or performing  
10 any recreational or social activities;

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

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

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

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

**UNDERLINED** language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

20 19. "Permanent impairment" means any anatomical abnormality after maximum  
21 medical improvement has been achieved, which abnormality or loss the physician  
22 considers to be capable of being evaluated at the time the rating is made. Except as

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

1 shall include an apportionment of injury causation. However, revisions to the guides  
2 made by the American Medical Association which are published after January 1, 1989,  
3 and before January 1, 1995, shall be operative one hundred twenty (120) days after the  
4 last day of the month of publication. Revisions to the guides made by the American  
5 Medical Association which are published after December 31, 1994, may be adopted in  
6 whole or in part by the Administrator following recommendation by the Physician  
7 Advisory Committee. Revisions adopted by the Administrator shall be submitted by the  
8 Administrator to the Governor, the Speaker of the House of Representatives and the  
9 President Pro Tempore of the Senate within the first ten (10) legislative days of a regular  
10 session of the Legislature. Such revisions shall be subject to disapproval in whole or in  
11 part by joint or concurrent resolution of the Legislature during the legislative session in  
12 which submitted. Revisions shall be operative one hundred twenty (120) days after the  
13 last day of the month in which the Administrator submits the revisions to the Governor  
14 and the Legislature if the Legislature takes no action or one hundred twenty (120) days  
15 after the last day of the month in which the Legislature disapproves them in part. The  
16 examining physician shall not follow the guides based on race or ethnic origin. The  
17 examining physician shall not deviate from said guides or any alternative thereto except  
18 as may be specifically provided for in the guides or modifications to the guides or except  
19 as may be specifically provided for in any alternative or modifications thereto, adopted by  
20 the Administrator of the Workers' Compensation Court as provided for in Section 201.1  
21 of this title. These officially adopted guides or modifications thereto or alternative  
22 system or method of evaluating permanent impairment or modifications thereto shall be

1 the exclusive basis for testimony and conclusions with regard to permanent impairment  
2 with the exception of paragraph 3 of Section 22 of this title, relating to scheduled  
3 member injury or loss; and impairment, including pain or loss of strength, may be  
4 awarded with respect to those injuries or areas of the body not specifically covered by  
5 said guides or alternative to said guides. All evaluations of permanent impairment must  
6 be supported by objective medical evidence;

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

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

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

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

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

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1 approved group self-insured association, policyholder or public entity, regardless of  
2 whether such entity is insured by CompSource Oklahoma, to provide medical care under  
3 the Workers' Compensation Act. Certified plans shall only include such plans which  
4 provide medical services and payment for services on a fee-for-service basis to medical  
5 providers and shall not include other plans which contract in some other manner, such as  
6 capitated or pre-paid plans; and

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

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

11 Section 3.6. A. All the evidence pertaining to each case, except upon agreed orders,  
12 shall, insofar as may be possible, be heard by the judge initially assigned to the case.  
13 Upon the completion of such hearing or hearings, the judge hearing the cause shall make  
14 such order, decision or award as is proper, just and equitable in the matter. Either party  
15 feeling himself aggrieved by such order, decision or award shall, within ten (10) days,  
16 have the right to take an appeal from the order, decision or award of the Judge to the  
17 Workers' Compensation ~~Court sitting en banc~~ Court's panel of Special Magistrates. Such  
18 appeal shall be allowed as a matter of right to either party upon filing with the  
19 Administrator a notice of such appeal. Such ~~Court en banc~~ panel of Special Magistrates  
20 shall consist of three (3) ~~Judges of the Court~~ judges appointed by the Supreme Court,  
21 none of whom shall have ~~presided over any of the previous hearings on the claim served~~  
22 as a judge on the Workers' Compensation Court, but who shall have at least five (5) years

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

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

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

5 C. The order, decision or award of the ~~Court~~ panel of Special Magistrates shall be  
6 final and conclusive upon all questions within its jurisdiction between the parties, unless,  
7 within twenty (20) days after a copy of such order, decision or award has been sent by the  
8 Administrator to the parties affected, an action is commenced in the Supreme Court of  
9 the state, to review such order, decision or award. Any order, decision or award made by  
10 a judge of the Court shall be considered as final under the provisions of this section  
11 unless appealed to the Workers' Compensation ~~Court sitting en banc~~ Court's panel of  
12 Special Magistrates as provided for in subsection A of this section. The order, decision or  
13 award of a judge of the Court shall be final and conclusive upon all questions within his  
14 jurisdiction between the parties unless appealed directly to the Supreme Court or to the  
15 Workers' Compensation ~~Court sitting en banc~~ Court's panel of Special Magistrates as  
16 hereinbefore provided. Any party litigant desiring to appeal directly from such order,  
17 decision or award to the Supreme Court, shall, within twenty (20) days after a copy of the  
18 order, decision or award has been sent by the Administrator to the parties affected,  
19 commence an action in the Supreme Court of the state to review such order, decision or  
20 award. The Supreme Court shall have original jurisdiction of such action, and shall  
21 prescribe rules for the commencement and trial of the same. Such action shall be  
22 commenced by filing with the Clerk of the Supreme Court a certified copy of the order,

1 decision or award of the Workers' Compensation ~~Court sitting en banc~~ Court's panel of  
2 Special Magistrates or the judge attached to the petition by the complaint wherein the  
3 complainant or petitioner shall make his assignments or specifications as to wherein said  
4 order, decision or award is erroneous or illegal. Provided, however, no proceeding to  
5 reverse, vacate or modify any order, decision or award of the Workers' Compensation  
6 ~~Court sitting en banc~~ Court's panel of Special Magistrates or judge of the Court wherein  
7 compensation has been awarded an injured employee shall be entertained by the  
8 Supreme Court unless the Administrator shall take a written undertaking to the  
9 claimant executed on the part of the respondent or insurance carrier, or both, with one or  
10 more sureties to be approved by the Administrator, to the effect that the appellant will  
11 pay the amount of the award rendered therein, together with interest thereon from the  
12 date of the award by the judge of the Court and all costs of the proceeding, or on the  
13 further order of the Workers' Compensation ~~Court sitting en banc~~ Court's panel of  
14 Special Magistrates or judge of the Court after the appeal has been decided by the  
15 Supreme Court, except that municipalities and other political subdivisions of the State of  
16 Oklahoma are exempt from making such written undertakings. Before the Clerk of the  
17 Supreme Court shall accept the action for filing, a certificate from the Administrator  
18 shall be required, showing that this provision has been complied with. Said proceedings  
19 shall be heard in a summary manner and shall have precedence over all other civil cases  
20 in the Supreme Court, except preferred Corporation Commission appeals. The Supreme  
21 Court shall require the appealing party to file within forty-five (45) days from the date of  
22 the filing of an appeal or an order appealed from, a transcript of the record of the

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

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

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

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

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

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

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

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

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

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

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

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

18 2. ~~The party requesting mediation~~ Either party feeling himself aggrieved shall  
19 inform the Administrator of a dispute. The initiating party shall provide ~~of~~ the issues in  
20 dispute, and the name, address, and telephone number of the ~~opposing~~ responding party  
21 ~~or.~~ The employer shall provide the name of the employer's workers' compensation  
22 insurance company, if known. If the claim involves a certified workplace medical plan,

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

1 the ~~requesting party~~ employer shall provide the name and phone number of the contact  
2 person for the plan. The Administrator shall notify the responding party of a dispute  
3 within ten (10) days of receipt of the information from the initiating party. The  
4 responding party shall have twenty (20) days to reply.

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

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

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

18 ~~H. Upon receipt of the consent form or upon order of the Court, the~~ D. The  
19 Administrator shall provide the parties with a list of certified mediators. Both parties  
20 shall agree to a mediator. If the parties are unable to agree, the Administrator shall  
21 assign a certified mediator.

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

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

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

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

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

1 SECTION 9. AMENDATORY 85 O.S. 2001, Section 11, as amended by Section  
2 77, Chapter 264, O.S.L. 2006 (85 O.S. Supp. 2009, Section 11), is amended to read as  
3 follows:

4 Section 11. A. Every employer subject to the provisions of the Workers'  
5 Compensation Act shall pay, or provide as required by the Workers' Compensation Act,  
6 compensation according to the schedules of the Workers' Compensation Act for the  
7 disability or death of an employee resulting from an accidental personal injury sustained  
8 by the employee arising out of and in the course of employment, without regard to fault  
9 as a cause of such injury, and in the event of disability only, except as follows:

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

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

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

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

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

3 5. An injury which occurs outside the course of employment. Employment shall be  
4 deemed to commence when an employee arrives at the employer's place of employment to  
5 report for work and shall terminate when the employee leaves the employer's place of  
6 employment, excluding areas not under the control of the employer; provided, however,  
7 when the employee is required by the employer to be away from the employer's place of  
8 employment, the employee shall be deemed to be in the course of employment when the  
9 employee is engaged in the direct performance of duties assigned or directed by the  
10 employer; but the employment of employee paid travel time by an employer for time  
11 spent traveling to and from a job site or of an employee who utilizes an employer-  
12 authorized vehicle shall commence and terminate with the time spent traveling to and  
13 from a job site or the authorized operation of a vehicle on business authorized by the  
14 employer. Travel by a policeman, fireman, or a member of a first aid or rescue squad, in  
15 responding to and returning from an emergency, shall be deemed to be in the course of  
16 employment.

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

1 "Ridesharing" means the transportation of persons in a motor vehicle, with a  
2 maximum carrying capacity of not more than fifteen (15) passengers, including the  
3 driver, where such transportation is incidental to the purpose of the driver. This term  
4 shall include such ridesharing arrangements known as carpools and vanpools.

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

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

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

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

21 Provided, however, in any proceeding where compensation is awarded against the  
22 principal employer under the provisions hereof, such award shall not preclude the

1 principal employer from recovering the same, and all expense in connection with said  
2 proceeding from any independent contractor, intermediate contractor or subcontractor  
3 whose duty it was to provide security for the payment of such compensation, and such  
4 recovery may be had by supplemental proceedings in the cause before the Court or by an  
5 independent action in any court of competent jurisdiction to enforce liability of contracts.

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

13 4. Where compensation is payable for an occupational disease, the employer in  
14 whose employment the employee was last injuriously exposed to the hazards of such  
15 disease and the insurance carrier, if any, on the risk when such employee was last so  
16 exposed under such employer, shall alone be liable therefor, without right to contribution  
17 from any prior employer or insurance carrier; provided, however, that in the case of  
18 silicosis or asbestosis, the only employer and insurance carrier liable shall be the last  
19 employer in whose employment the employee was last exposed to harmful quantities of  
20 silicon dioxide (SiO 2) dust on each of at least sixty (60) days or more, and the insurance  
21 carrier, if any, on the risk when the employee was last so exposed under such employer.

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

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

15           Section 12. The liability prescribed in Section 11 of this title shall be exclusive and  
16 in place of all other liability of the employer and any of his employees, any architect,  
17 professional engineer, or land surveyor retained to perform professional services on a  
18 construction project, at common law or otherwise, for such injury, loss of services, or  
19 death, to the employee, or the spouse, personal representative, parents, or dependents of  
20 the employee, or any other person, except in the case of an intentional tort, or where the  
21 employer has failed to secure the payment of compensation for the injured employee as  
22 provided for in this title. An intentional tort shall exist only when the employee is

1 injured as a result of willful, deliberate, specific intent of the employer to cause such  
2 injury. The issue of whether an act is an intentional tort shall be a question of law for  
3 the court. If an employer has failed to secure the payment of compensation for his  
4 injured employee, as provided for in this title, an injured employee, or his legal  
5 representatives if death results from the injury, may maintain an action in the courts for  
6 damages on account of such injury, and in such action the defendant may not plead or  
7 prove as a defense that the injury was caused by the negligence of a fellow servant, or  
8 that the employee assumed the risk of his employment, or that the injury was due to the  
9 contributory negligence of the employee; provided:

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

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

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

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

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

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

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

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

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

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

18 C. If the employer fails or neglects to provide medical treatment within three (3)  
19 days after actual knowledge of the injury is received by the employer, the injured  
20 employee, during the period of such neglect or failure, may select a physician to provide  
21 medical treatment at the expense of the employer; provided, however, that the injured  
22 employee, or another in the employee's behalf, may obtain emergency treatment at the

1 expense of the employer where such emergency treatment is not provided by the  
2 employer. The attending physician so selected by the employee shall notify the employer  
3 and the insurance carrier within seven (7) days after examination or treatment was first  
4 rendered. Once the employer has selected a treating physician and has offered the  
5 employee treatment, the physician selected by the employer shall become the treating  
6 physician.

7 D. 1. If a self-insured employer, group self-insurance association plan, an  
8 employer's workers' compensation insurance carrier or an insured, which shall include  
9 any member of an approved group self-insured association, policyholder or public entity,  
10 regardless of whether such entity is insured by CompSource Oklahoma, has previously  
11 contracted with a certified workplace medical plan, the employer shall select for the  
12 injured employee a treating physician from the physicians listed within the network of  
13 the certified workplace medical plan.

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

17 E. The term "physician" as used in this section shall mean any person licensed in  
18 this state as a medical doctor, chiropractor, podiatrist, dentist, osteopathic physician or  
19 optometrist. The Court may accept testimony from a psychologist if the testimony is  
20 requested by the Court. If an injured employee should die, whether or not the employee  
21 has filed a claim, that fact shall not affect liability for medical attention previously

1 rendered, and any person entitled to such benefits may enforce charges therefor as  
2 though the employee had survived.

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

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

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

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

1 not exceed Two Hundred Dollars (\$200.00) per hour and for work-related or medical  
2 disability evaluation services.

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

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

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

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

17         G. Where the employee is not covered by a certified workplace medical plan, the  
18 employer shall select the treating physician. The Court on application of the employee  
19 shall order one change of treating physician. In the event the employee makes  
20 application for such a change, the employee shall list on such application three (3)  
21 proposed physicians who are qualified to treat the body part affected. The employer may  
22 agree to one of the physicians listed by the employee or submit its own list of three (3)

1 physicians. If the employee and employer do not agree on the physician, the Court shall  
2 select from the list of independent medical examiners maintained by the Court a treating  
3 physician who is qualified to treat the body part affected and who can see the employee  
4 within a reasonable time. Additionally, a change of physician shall be allowed for each  
5 individual body part injured if the treating physician determines that the employee's  
6 injured body parts cannot be treated by the same physician.

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

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

15 3. Except in cases covered by a certified workplace medical plan, upon application  
16 of the employee, the Court may order the employer to provide one change of case  
17 manager if the employee did not make the initial selection of the case manager.

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

20 J. The Administrator shall impose administrative penalties for abusive practices  
21 and shall waive payment for medical services to any treating physician who is not in  
22 compliance with the provisions of this section. Noncompliance with the provisions of this

1 section by an employee and without good cause shall cause the employee to forfeit his or  
2 her permanent award.

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

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

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

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

21 (b) With respect to injuries occurring on or after November 4, 1994, in cases of  
22 temporary total disability, seventy percent (70%) of the employee's average weekly wages

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1 shall be paid to the employee during the continuance thereof, but not in excess of fifty-  
2 two (52) weeks, except as otherwise provided in the Workers' Compensation Act.  
3 Provided, after compensation has been paid for a period of forty-two (42) weeks, the  
4 employee may request a review of the case by a judge of the Court for continued  
5 temporary total disability benefits provided by the Workers' Compensation Act. Upon a  
6 finding that benefits should be extended beyond the initial fifty-two-week period,  
7 compensation may be continued for additional successive fifty-two-week periods,  
8 provided the employee has requested review of the case at forty-two (42) weeks during  
9 each period involved, and upon a finding by the Court that benefits should be extended.  
10 Total payments of compensation for temporary total disability may not exceed a  
11 maximum of three hundred (300) weeks in the aggregate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Deafness: Deafness from industrial cause, including occupations which are  
2 hazardous to hearing, accident or sudden trauma, three hundred (300) weeks, and total  
3 deafness of one ear from industrial cause, including occupations which are hazardous to  
4 hearing, accident or sudden trauma, one hundred (100) weeks. Except as otherwise  
5 provided herein, any examining physician shall only evaluate deafness or hearing  
6 impairment in accordance with the latest publication of the American Medical  
7 Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time  
8 of the injury. The Physician Advisory Committee may, pursuant to Section 201.1 of this  
9 title, recommend the adoption of a method or system to evaluate permanent impairment  
10 that shall be used in place of or in combination with the American Medical Association's  
11 "Guides to the Evaluation of Permanent Impairment". Such recommendation shall be  
12 made to the Administrator of the Workers' Compensation Court who may adopt the  
13 recommendation in part or in whole. The adopted method or system shall be submitted  
14 by the Administrator to the Governor, the Speaker of the House of Representatives and  
15 President Pro Tempore of the Senate within the first ten (10) legislative days of a regular  
16 session of the Legislature. Such method or system to evaluate permanent impairment  
17 that shall be used in place of or in combination with the American Medical Association's  
18 "Guides to the Evaluation of Permanent Impairment" shall be subject to disapproval in  
19 whole or in part by joint or concurrent resolution of the Legislature during the legislative  
20 session in which submitted. Such method or system shall be operative one hundred  
21 twenty (120) days after the last day of the month in which the Administrator submits the  
22 adopted method or system to the Legislature if the Legislature takes no action or one

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

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

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

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

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

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

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

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

18 Other Cases: In all other classes of disabilities, excluding only those heretofore  
19 referred to in paragraph 3 of this section, which disabilities result in loss of use of any  
20 portion of an employee's body, and which disabilities are permanent in quality but  
21 partial in character, disability shall mean the percentage of permanent impairment. The  
22 compensation ordered paid shall be seventy percent (70%) of the employee's average

1 weekly wage for the number of weeks which the partial disability of the employee bears  
2 to five hundred (500) weeks.

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

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

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

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

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

16 (c) With respect to injuries occurring on or after January 1, 2002, through December  
17 31, 2002, in case of disability, partial in character but permanent in quality, the  
18 compensation shall be seventy percent (70%) of the employee's average weekly wages,  
19 and shall be paid to the employee for the period prescribed by the following schedule:

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

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

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

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

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

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

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

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

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

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

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

1           Deafness: Deafness from industrial cause, including occupations which are  
2 hazardous to hearing, accident or sudden trauma, three hundred fifteen (315) weeks, and  
3 total deafness of one ear from industrial cause, including occupations which are  
4 hazardous to hearing, accident or sudden trauma, one hundred five (105) weeks. Except  
5 as otherwise provided herein, any examining physician shall only evaluate deafness or  
6 hearing impairment in accordance with the latest publication of the American Medical  
7 Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time  
8 of the injury. The Physician Advisory Committee may, pursuant to Section 201.1 of this  
9 title, recommend the adoption of a method or system to evaluate permanent impairment  
10 that shall be used in place of or in combination with the American Medical Association's  
11 "Guides to the Evaluation of Permanent Impairment". Such recommendation shall be  
12 made to the Administrator of the Workers' Compensation Court who may adopt the  
13 recommendation in part or in whole. The adopted method or system shall be submitted  
14 by the Administrator to the Governor, the Speaker of the House of Representatives and  
15 President Pro Tempore of the Senate within the first ten (10) legislative days of a regular  
16 session of the Legislature. Such method or system to evaluate permanent impairment  
17 that shall be used in place of or in combination with the American Medical Association's  
18 "Guides to the Evaluation of Permanent Impairment" shall be subject to disapproval in  
19 whole or in part by joint or concurrent resolution of the Legislature during the legislative  
20 session in which submitted. Such method or system shall be operative one hundred  
21 twenty (120) days after the last day of the month in which the Administrator submits the  
22 adopted method or system to the Legislature if the Legislature takes no action or one

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 Deafness: Deafness from industrial cause, including occupations which are  
12 hazardous to hearing, accident or sudden trauma, three hundred thirty (330) weeks, and  
13 total deafness of one ear from industrial cause, including occupations which are  
14 hazardous to hearing, accident or sudden trauma, one hundred ten (110) weeks. Except  
15 as otherwise provided herein, any examining physician shall only evaluate deafness or  
16 hearing impairment in accordance with the latest publication of the American Medical  
17 Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time  
18 of the injury. The Physician Advisory Committee may, pursuant to Section 201.1 of this  
19 title, recommend the adoption of a method or system to evaluate permanent impairment  
20 that shall be used in place of or in combination with the American Medical Association's  
21 "Guides to the Evaluation of Permanent Impairment". Such recommendation shall be  
22 made to the Administrator of the Workers' Compensation Court who may adopt the

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

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

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

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

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

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

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

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

18 Hernia: In case of an injury resulting in hernia, temporary total compensation for  
19 six (6) weeks, and all necessary medical costs including, but not limited to, the cost of an  
20 operation shall be payable. A claimant who has had surgery for a hernia may petition  
21 the court for one extension of temporary total compensation and the court may order

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1 such an extension, not to exceed six (6) additional weeks, if the treating physician  
2 indicates such an extension is appropriate, or as agreed to by all parties.

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

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

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

- 17           a.       sensory or motor disturbances,  
18           b.       communication disturbances,  
19           c.       complex integrated disturbances of cerebral function,  
20           d.       episodic neurological disorders, or

1 e. other brain and closed-head injury conditions at least as severe in  
2 nature as any condition provided in subdivisions a through d of this  
3 division; or

4 (3) Total knee replacement.

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

11 Other Cases: In all other classes of disabilities, excluding only those heretofore  
12 referred to in this paragraph, which disabilities result in loss of use of any portion of an  
13 employee's body, and which disabilities are partial in character but permanent in  
14 quality, disability shall mean the percentage of permanent impairment. The  
15 compensation ordered paid shall be seventy percent (70%) of the employee's average  
16 weekly wage for the number of weeks which the partial disability of the employee bears  
17 to five hundred (500) weeks. No permanent disability shall be awarded unless there is  
18 objective medical evidence, as defined in Section 3 of this title, of a permanent  
19 anatomical abnormality. In determining the existence of such an abnormality, the Court  
20 may consider if there is credible medical evidence that the ability of the employee to earn  
21 wages at the same level as before the injury has been permanently impaired.

UNDERLINED language denotes Amendments to present Statutes.  
**BOLD FACE CAPITALIZED** language denotes Committee Amendments.  
~~Strike thru~~ language denotes deletion from present Statutes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9        Deafness: Deafness from industrial cause, including occupations which are  
10 hazardous to hearing, accident or sudden trauma, three hundred thirty (330) weeks, and  
11 total deafness of one ear from industrial cause, including occupations which are  
12 hazardous to hearing, accident or sudden trauma, one hundred ten (110) weeks. Except  
13 as otherwise provided herein, any examining physician shall only evaluate deafness or  
14 hearing impairment in accordance with the latest publication of the American Medical  
15 Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time  
16 of the injury. The Physician Advisory Committee may, pursuant to Section 201.1 of this  
17 title, recommend the adoption of a method or system to evaluate permanent impairment  
18 that shall be used in place of or in combination with the American Medical Association's  
19 "Guides to the Evaluation of Permanent Impairment". Such recommendation shall be  
20 made to the Administrator of the Workers' Compensation Court who may adopt the  
21 recommendation in part or in whole. The adopted method or system shall be submitted  
22 by the Administrator to the Governor, the Speaker of the House of Representatives and

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

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

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

17 For the permanent partial loss of use of a member, loss of hearing or sight of an eye,  
18 seventy percent (70%) of the employee's average weekly wage during that portion of the  
19 number of weeks in 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 loss of use of such  
21 member, loss of hearing or sight of an eye.

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

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

9        In case of an injury resulting in serious and permanent disfigurement,  
10 compensation shall be payable in an amount to be determined by the Court, but not in  
11 excess of Twenty Thousand Dollars (\$20,000.00) for an injury occurring before November  
12 1, 2005, and not in excess of Fifty Thousand Dollars (\$50,000.00) for an injury occurring  
13 on or after November 1, 2005; provided, that compensation for permanent disfigurement  
14 shall not be in addition to the other compensation provided for in this section but shall be  
15 taken into consideration in fixing the compensation otherwise provided.

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

1           Soft Tissue Injury: In case of a nonsurgical soft tissue injury, temporary total  
2 compensation shall not exceed eight (8) weeks. A claimant who has been recommended  
3 by a treating physician for surgery for a soft tissue injury may petition the Court for one  
4 extension of temporary total compensation and the court may order such an extension,  
5 not to exceed sixteen (16) additional weeks, if the treating physician indicates that such  
6 an extension is appropriate or as agreed to by all parties. In the event the surgery is not  
7 performed, the benefits for the extension period shall be terminated. For purposes of this  
8 section, "soft tissue injury" means damage to one or more of the tissues that surround  
9 bones and joints. "Soft tissue injury" includes, but is not limited to: sprains, strains,  
10 contusions, tendonitis, and muscle tears. Cumulative trauma is to be considered a soft  
11 tissue injury. "Soft tissue injury" does not include any of the following:

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

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

15                   a. sensory or motor disturbances,

16                   b. communication disturbances,

17                   c. complex integrated disturbances of cerebral function,

18                   d. episodic neurological disorders, or

19                   e. other brain and closed-head injury conditions at least as severe in

20                           nature as any condition provided in subdivisions a through d of this

21                           division; or

22           (3) Total knee replacement.

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

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

18 4. Temporary Partial Disability. (a) With respect to injuries occurring before  
19 November 4, 1994, in case of temporary partial disability, except the particular cases  
20 mentioned in paragraph 3 of this section, an injured employee shall receive seventy  
21 percent (70%) of the difference between the employee's average weekly wages and the  
22 employee's wage-earning capacity thereafter in the same employment or otherwise, if

1 less than before the injury, during continuance of such partial disability, but not to  
2 exceed one hundred fifty (150) weeks. Provided, after compensation has been paid for a  
3 period of one hundred forty (140) weeks, the employee may request a review of the case  
4 by a judge of the Court for continued temporary partial disability benefits provided by  
5 the Workers' Compensation Act. Upon a finding that benefits should be extended beyond  
6 the initial one-hundred-fifty-week period, compensation may be continued for an  
7 additional one hundred fifty (150) weeks.

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

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

7 5. Notwithstanding any other section of the Workers' Compensation Act, temporary  
8 disability shall be payable without an award by the Court. The first payment of  
9 temporary disability 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 title. All compensation  
11 owed on that date shall be paid and thereafter payments shall be made weekly except  
12 when otherwise ordered by the Court.

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

20 6. Limitation. The compensation payments under the provisions of the Workers'  
21 Compensation Act shall not exceed the sum of seventy-five percent (75%) of the state's  
22 average weekly wage as determined by the Oklahoma Employment Security

1 Commission, the sum of ninety percent (90%) of the state's average weekly wage  
2 beginning January 1, 1995, for injuries occurring after December 31, 1994, and the sum  
3 of one hundred percent (100%) of the state's average weekly wage beginning January 1,  
4 1996, for injuries occurring after December 31, 1995, for temporary disability; Sixty  
5 Dollars (\$60.00) per week beginning as of the effective date of the Workers'  
6 Compensation Act, and Seventy Dollars (\$70.00) per week beginning January 1, 1979,  
7 and Eighty Dollars (\$80.00) per week beginning January 1, 1980, and Ninety Dollars  
8 (\$90.00) per week beginning January 1, 1981, and to fifty percent (50%) of the state's  
9 average weekly wage beginning January 1, 1982, for permanent partial disability;  
10 Seventy-five Dollars (\$75.00) per week beginning as of the effective date of the Workers'  
11 Compensation Act, and Ninety Dollars (\$90.00) per week beginning January 1, 1979, and  
12 One Hundred Ten Dollars (\$110.00) per week beginning January 1, 1980, to sixty-six and  
13 two-thirds percent (66 2/3%) of the state's average weekly wage beginning January 1,  
14 1981, to seventy-five percent (75%) of the state's average weekly wage beginning  
15 September 1, 1992, to ninety percent (90%) of the state's average weekly wage beginning  
16 January 1, 1995, for injuries occurring after December 31, 1994, and to one hundred  
17 percent (100%) of the state's average weekly wage beginning January 1, 1996, for injuries  
18 occurring after December 31, 1995, for permanent total disability, or at any time be less  
19 than Thirty Dollars (\$30.00) per week; provided, however, that if the employee's wages at  
20 the time of the injury are less than Thirty Dollars (\$30.00) per week, the employee shall  
21 receive the employee's full weekly wages; provided further, that the compensation  
22 received, as provided for temporary partial disability, shall not, when added to the wages

1 received by such employee after such injury, amount to a greater sum than eighty  
2 percent (80%) of the average weekly wages of the employee received prior to said injury.

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

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

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

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

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

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

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

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

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

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

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

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

1                   other means, including education at home pursuant to Section 4 of  
2                   Article XIII of the Oklahoma Constitution.

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

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

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

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

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

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

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

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

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

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

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

8           11. (a) For deaths occurring before January 1, 1995, if there is a surviving spouse  
9 and surviving children entitled to receive death benefits herein, such survivors shall be  
10 entitled to an immediate lump-sum payment of Ten Thousand Dollars (\$10,000.00) to the  
11 spouse and Two Thousand Five Hundred Dollars (\$2,500.00) to each surviving child not  
12 to exceed two children. For deaths occurring after December 31, 1994, if there is a  
13 surviving spouse and surviving children entitled to receive death benefits herein, such  
14 survivors shall be entitled to an immediate lump-sum payment of Twenty Thousand  
15 Dollars (\$20,000.00) to the spouse and Five Thousand Dollars (\$5,000.00) to each  
16 surviving child not to exceed two children. For deaths occurring on or after November 1,  
17 2005, if there is a surviving spouse and surviving children entitled to receive death  
18 benefits herein, such survivors shall be entitled to an immediate lump-sum payment of  
19 One Hundred Thousand Dollars (\$100,000.00) to the spouse and Twenty-five Thousand  
20 Dollars (\$25,000.00) to each surviving child not to exceed two children. In addition, the  
21 survivors shall be entitled to receive funeral benefits in an amount not to exceed Ten  
22 Thousand Dollars (\$10,000.00).

1 (b) For deaths occurring before November 1, 2005, if there is no surviving spouse  
2 but there are surviving children entitled to receive death benefits herein, such surviving  
3 children shall be entitled to a lump-sum payment of Ten Thousand Dollars (\$10,000.00)  
4 to be divided among all the children to share and share alike. For deaths occurring on or  
5 after November 1, 2005, if there is no surviving spouse but there are surviving children  
6 entitled to receive death benefits herein, each surviving child shall be entitled to a lump-  
7 sum payment of Twenty-five Thousand Dollars (\$25,000.00), provided the total amount of  
8 lump-sum payments shall not exceed One Hundred Fifty Thousand Dollars  
9 (\$150,000.00), to be divided among all the children to share and share alike. The  
10 survivors shall also be entitled to receive funeral benefits in an amount not to exceed Ten  
11 Thousand Dollars (\$10,000.00).

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

19 Provided, that all judgments rendered awarding lump-sum death benefits, except  
20 lump-sum attorney fee awards, may, at the discretion of the Court, provide that said  
21 benefits be paid in trust to an interest-bearing account in a federally insured banking  
22 institution in the county wherein the judgment was rendered. The banking institution

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

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

14 13. (a) Any employee convicted of a misdemeanor or felony and sentenced to a term  
15 of incarceration of at least ninety (90) days in this state or in any other jurisdiction shall  
16 have all benefits for temporary total disability awarded by the Workers' Compensation  
17 Court forfeited by order of the Court on motion of the employer or the employer's insurer  
18 after confirmation of the employee's incarceration. The Court also may order the  
19 forfeiture of such benefits on its own motion upon receipt of notice from the Director of  
20 the Department of Corrections that the person awarded the benefits is incarcerated as an  
21 inmate in a facility operated by or under contract with the Department. The provisions  
22 of this subparagraph shall not apply to any benefits awarded to an inmate for

1 compensable injuries sustained by the inmate while in the employ of a private for-profit  
2 employer or while employed in private prison industries, involving a for-profit employer,  
3 which deal in interstate commerce or which sell products or services to the federal  
4 government.

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

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

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

20 B. The Administrator shall adopt rules to establish a system of review of medical  
21 practices of health care providers through the workers' compensation system to evaluate  
22 on an aggregate basis the quantity and quality of treatment, charges and evaluations of

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1 permanent impairment by such providers. The Administrator may refer charges of  
2 abusive practices by health care providers under the workers' compensation system to  
3 the Physician Advisory Committee for review and recommendation. The findings and  
4 recommendation of the Committee shall be only advisory to the Administrator and shall  
5 not be binding or conclusive upon him. If the Administrator determines that a health  
6 care provider has, on an aggregate basis, established a pattern of over or under treating,  
7 failing to adhere to the current edition of the AMA Guides ~~or modifications thereto~~ when  
8 evaluating permanent impairment, or overcharging, the Administrator shall impose  
9 administrative penalties for abusive practices and ~~may~~ shall waive payment for medical  
10 services or evaluations of permanent impairment of the health care provider rendered  
11 under the Workers' Compensation Act, Section 1 et seq. of this title, for a period not to  
12 exceed five (5) years. A pattern of abusive practices shall include, but not be limited to, a  
13 pattern of referral to a medical facility for treatment found to be in excess of treatment  
14 guidelines ~~adopted by the Administrator under Section 201.1 of this title~~ in the current  
15 edition of the AMA Guides. Physicians providing treatment under the Workers'  
16 Compensation Act shall disclose to the Administrator of the Workers' Compensation  
17 Court, on a form prescribed by the Administrator, any ownership or interest in any  
18 health care facility that is not the physician's primary place of business. Such disclosure  
19 shall include, but not be limited to, any employee leasing arrangement between the  
20 physician and any health care facility that is not the physician's primary place of  
21 business.

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

5 1. The substance of the alleged violation;

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

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

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

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

16 1. The date, time and place for such hearing;

17 2. A brief description of the procedures to be followed; and

18 3. A statement that the health care provider may appear, may be represented by  
19 counsel, and may present witnesses and testimony.

20 F. The Administrator shall, within thirty (30) days after completion of the  
21 proceedings, make written findings of fact and conclusions of law which shall be sent to

1 the health care provider by first-class mail together with a notice which shall contain the  
2 following:

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

9 2. Directions for remitting the penalty, if any.

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

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

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

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

1 medicine or a doctor of osteopathy and shall be engaged in the practice  
2 of occupational medicine, and one of whom shall be licensed in this  
3 state as a podiatric physician,  
4 c. the Speaker of the House of Representatives shall appoint three  
5 members, one of whom shall be licensed in this state as an osteopathic  
6 physician, one of whom shall be licensed in this state either as a doctor  
7 of medicine or a doctor of osteopathy, and one of whom shall be  
8 licensed in this state as a chiropractic physician.  
9 2. a. To fill the positions for which the term of office expires on January 1,  
10 1996, the Governor shall appoint a resident of the Fifth Congressional  
11 District, the President Pro Tempore of the Senate shall appoint a  
12 resident of the First Congressional District and the Speaker of the  
13 House of Representatives shall appoint a resident of the Second  
14 Congressional District.  
15 b. To fill the positions for which the term of office expires on January 1,  
16 1997, the Governor shall appoint a resident of the Sixth Congressional  
17 District, the President Pro Tempore of the Senate shall appoint a  
18 resident of the Third Congressional District and the Speaker of the  
19 House of Representatives shall appoint a resident of the Fourth  
20 Congressional District.  
21 c. To fill the positions for which the term of office expires on January 1,  
22 1998, the Governor, the President Pro Tempore of the Senate and the

1 Speaker of the House of Representatives shall appoint residents of the  
2 state at large.

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

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

18 B. The Committee shall:

19 1. Assist and advise the Administrator of the Workers' Compensation Court  
20 regarding utilization review as it relates to the medical practice and treatment of work-  
21 related injuries. Such utilization review shall include a review of reasonable and  
22 necessary treatment; abusive practices; needless treatments, testing, or procedures; or a

1 pattern of billing in excess of or in violation of the Schedule of Medical Fees. The  
2 Physician Advisory Committee shall review and make findings and recommendations to  
3 the Administrator of the Workers' Compensation Court with respect to charges of  
4 inappropriate or unnecessary treatment or procedures, abusive practices, or excessive  
5 billing disclosed through utilization review. All findings of the Administrator shall be  
6 based upon the most recent edition of the American Medical Association's "Guides to the  
7 Evaluation of Permanent Impairment";

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

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

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

10       5. ~~After public hearing, adopt treatment~~ Treatment guidelines and protocols for  
11 treatment of injuries, including, but not limited to, injuries to the hand, wrist, back,  
12 knee, neck and shoulder and utilization controls for all treatments, including, but not  
13 limited to, x-ray and imaging technology for diagnostic purposes, ~~for adoption by the~~  
14 ~~Administrator. Treatment guidelines and protocols shall be based upon nationally~~  
15 ~~accepted practice standards~~ the Official Disability Guidelines promulgated by the Work  
16 Loss Data Institute and shall indicate when surgery is indicated and the appropriate  
17 surgical procedure for the condition. ~~Among the standards that must be considered are~~  
18 ~~the Occupational Medicine Practice Guidelines promulgated by the American College of~~  
19 ~~Occupational and Environmental Medicine. Compliance with treatment guidelines shall~~  
20 be mandatory and an employer or insurer for an employer shall not be required to pay for  
21 treatment which is not in compliance with the guidelines, unless prior authorization is  
22 received. If an employer or insurer for an employer refuses to give such prior

1 authorization, the employee may request the case be reviewed by an independent  
2 medical examiner pursuant to the provisions of subsection B of Section 17 of this title.  
3 Provided, however, if the employer and employee are unable to agree on the appointment  
4 of an independent medical examiner for prior authorization purposes, the Court shall  
5 randomly select an independent medical examiner within seven (7) days of receipt of a  
6 written request by the employee. The independent medical examiner shall review the  
7 medical records of the employee, examine the employee, or both, as necessary to render  
8 an opinion as to whether prior authorization should be given. If prior authorization is  
9 granted, the employer shall pay the costs of the independent medical examiner subject to  
10 limits established by the Administrator. If prior authorization is denied, the employee  
11 shall pay the costs of the independent medical examiner subject to the limits established  
12 by the Administrator;

13 ~~6.~~ 4. After public hearing, adopt guidelines for the prescription and dispensing of  
14 any controlled substance included in Schedule II of the Uniform Controlled Dangerous  
15 Substances Act;

16 ~~7.~~ 5. Review utilization on cases or of providers when requested by any employer,  
17 injured employee or insurer. The Committee may issue a public or private censure to  
18 any provider for utilization which is excessive or inadequate, or recommend the Court  
19 order treatment within the treatment guidelines;

20 ~~8.~~ 6. Provide general recommendations to the judges of the Workers' Compensation  
21 Court on the issues of injury causation and apportionment;

1           ~~9.~~ 7. Conduct educational seminars for the judges of the Workers' Compensation  
2 Court, employers, employees, and other interested parties;

3           ~~10.~~ 8. Assist the judges of the Workers' Compensation Court in accessing medical  
4 information from scientific literature; and

5           ~~11.~~ 9. Report its progress annually to the Governor, the President Pro Tempore of  
6 the Senate, and the Speaker of the House of Representatives.

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

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

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

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

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

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

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

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

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

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

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

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

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

5 1. Spinal surgery;

6 2. Work-hardening or work-conditioning services;

7 3. Inpatient, nonemergency hospitalization, including any procedure and length of  
8 stay;

9 4. Transfers between facilities;

10 5. Physical and occupational therapy;

11 6. Outpatient services expected to exceed One Thousand Dollars (\$1,000.00) in  
12 billed charges for a single date of service or ambulatory surgical services, as defined by  
13 Court rule; and

14 7. Any investigational or experimental services or devices.

15 B. Treatment and service for a medical emergency do not require express written  
16 prior authorization. Upon emergency hospital admission, notice must be given to the  
17 insurer within twenty-four (24) hours or the next business day.

18 C. The procedures for requesting prior authorization shall be as follows:

19 1. Within three (3) working days of the treating physician's request for prior  
20 authorization, the insurer's designee shall give notification to the physician, by telephone  
21 or transmission of a facsimile, of the decision to grant or deny prior authorization. When  
22 the insurer approves prior authorization, the insurer shall send written approval, or if

1 denying prior authorization, shall send written documentation identifying the reasons for  
2 denial to the injured employee, the injured employee's representative if known, and the  
3 treating physician, or the treating physician's designee, within twenty-four (24) hours  
4 after notification of denial or approval;

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

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

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

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

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

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

8           COMMITTEE REPORT BY: COMMITTEE ON ECONOMIC DEVELOPMENT AND  
9 FINANCIAL SERVICES, dated 04-07-10 - DO PASS, As Amended.