

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2639

By: McCullough and Moore

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5
6 AS INTRODUCED

7 An Act relating to workers' compensation; amending 85
8 O.S. 2001, Section 1.1, as amended by Section 7,
9 Chapter 1, 1st Extraordinary Session, O.S.L. 2005 (85
10 O.S. Supp. 2009, Section 1.1), which relates to
11 Workers' Compensation Act applicability limitations;
12 modifying agency designation; amending 85 O.S. 2001,
13 Section 1.2, which relates to the creation and
14 content of the Workers' Compensation Court; creating
15 Workers' Compensation Court of Existing Claims;
16 providing for the appointment of four judges;
17 vacating all existing court positions; providing for
18 the selection of new judges; modifying agency
19 designation; requiring Senate confirmation of new
20 judges; providing for appointments to the court;
21 providing for selection of judges in certain
22 circumstances; requiring that judges have five years
23 of experience in workers' compensation matters;
24 requiring Senate confirmation of any reappointed
judge; specifying which claims the Workers'
Compensation Court of Existing Claims shall
adjudicate; amending 85 O.S. 2001, Section 1.2A,
which relates to compensation of certain judges;
modifying agency designation; amending 85 O.S. 2001,
Section 1.3, as amended by Section 8, Chapter 1, 1st
Extraordinary Session, O.S.L. 2005 (85 O.S. Supp.
2009, Section 1.3), which relates to the selection
and duties of the administrator of the Workers'
Compensation Court; modifying agency designations;
creating the Workers' Compensation Commission;
providing for appointment of three Commissioners;
specifying qualifications for Commission; specifying
Commission shall consist of at least one attorney and
one physician; providing for compensation of
Commissioners; establishing the position of
administrative law judge within the workers'

1 compensation system; specifying jurisdictional
2 regions for administrative law judges; providing for
3 venue of workers' compensation claims; requiring
4 administrative law judges be confirmed by the Senate;
5 allowing for hearings by videoconference in certain
6 circumstances; authorizing Governor to remove
7 Commissioners under certain circumstances;
8 establishing procedure for removal of Commissioners;
9 requiring Senate confirmation of removals; requiring
10 a representative of the Attorney General to attend
11 such removals and advise or assist the Senate;
12 providing for the subpoena of witnesses in removal
13 proceedings; requiring Governor to provide certain
14 information to the Secretary of State upon the
15 removal of a Commissioner; specifying that
16 Commissioners shall be officers of the state;
17 requiring Commission members to take an oath of
18 office; authorizing certain business be conducted
19 with a quorum of Commissioners; authorizing the use
20 of an office by the Commissioners; requiring
21 Commissioners to conduct hearings at certain career
22 or technology education centers; providing for the
23 creation and use of an official seal; authorizing
24 Commission to take certain administrative actions;
requiring Commission to give notice of certain
actions; specifying content of notice; providing that
notice be sent to certain interested persons;
requiring Commission compliance with the
Administrative Procedures Act; providing for the
payment of certain expenditures; authorizing the
appointment of certain staff; providing for the
compensation of certain rate experts; providing for
salaries of certain employees; specifying
administrative law judge duties; limiting
administrative law judge authority to issues of
compensability; providing for traveling expenses by
Commission and Commission's employees; specifying
Commission's power and duties; authorizing Commission
to hear and determine compensation claims;
authorizing Commission to hear appeals from certain
orders; authorizing Commission to hire a Chief
Medical Officer; authorizing Commission to approve
certain medical and legal claims; authorizing
Commission to excuse certain failures to provide
notice; authorizing Commission to determine awards;
authorizing Commission to make findings of fact;
authorizing Commission to make rulings of law;

1 authorizing Commission to enter orders in appealed
2 cases; authorizing Commission to specify terms of
3 payment and order certain reimbursements; authorizing
4 Commission to assess penalties; authorizing
5 Commission to prescribe certain rules and
6 regulations; authorizing Commission to issue
7 subpoenas, administer oaths and take testimony;
8 authorizing Commission to transfer certain excess
9 income to certain charitable organizations;
10 authorizing Commission to establish and impose
11 certain fees; providing for the deposit of certain
12 fees; requiring Commission to provide an annual
13 report to the Legislature; amending 85 O.S. 2001,
14 Section 3, as last amended by Section 9, Chapter 1,
15 1st Extraordinary Session, O.S.L. 2005 (85 O.S. Supp.
16 2009, Section 3), which relates to definitions;
17 modifying definitions; amending 85 O.S. 2001, Section
18 3.1, which relates to death benefit definitions;
19 modifying definitions; providing for compensation of
20 certain alien nonresident dependents; limiting
21 certain benefits to nonresident dependents; amending
22 85 O.S. 2001, Section 3.4, which relates to procedure
23 for commencing workers' compensation claims;
24 requiring certain employees to report injuries to
employer in writing within a certain period;
providing that failure to timely report injuries
shall relieve employer of duty to compensate
employee; requiring employers to develop certain
reporting procedures; providing that certain signed
statements exculpating employer shall bar employee
from compensation; prohibiting employee remedies in
certain circumstances; authorizing Commission to
develop preliminary conferences procedures for
workers' compensation claims; providing that
claimants be advised of their rights; specifying that
claimants may be advised of rights at certain Career
Tech centers; authorizing Commission to facilitate
settlement of claims; modifying agency designation;
specifying that certain hearings shall be subject to
certain rules of evidence; specifying burden of
proof; providing that claim hearings shall be open to
the public; providing that all hearings shall be
documented by certain means; requiring that all
evidence be presented at initial hearing; requiring
that certain written reports be provided to opposing
parties; requiring notification of opposing parties
of intent to cross-examine certain physicians;

1 allowing hearing officer or Commissioner discretion
2 in admitting certain evidence; specifying the use of
3 certain reports and depositions by administrative law
4 judges; amending 85 O.S. 2001, Section 3.6, which
5 relates to appellate procedures for workers'
6 compensation claims; modifying agency designation;
7 providing that Commission shall hear certain appeals;
8 authorizing Commission to reverse or modify certain
9 decisions; providing that certain decisions of the
10 Commission shall be final; restricting Supreme Court
11 authority to reverse Workers' Compensation Commission
12 decisions to certain issues or grounds; authorizing
13 Supreme Court to require a bond in certain cases;
14 amending 85 O.S. 2001, Section 3.7, which relates to
15 powers and duties of the Workers' Compensation
16 Administrator; authorizing Administrator to accept
17 and record certain settlements; modifying agency
18 designations; deleting obsolete language; removing
19 authority of Administrator to adopt certain rules and
20 impose certain penalties; amending 85 O.S. 2001,
21 Sections 3.8, 3.10, as amended by Section 12, Chapter
22 1, 1st Extraordinary Session, O.S.L. 2005, and 4 (85
23 O.S. Supp. 2009, Section 3.10), which relate to
24 workers' compensation general provisions; modifying
agency designations; amending 85 O.S. 2001, Section
11, as last amended by Section 77, Chapter 264,
O.S.L. 2006 (85 O.S. Supp. 2009, Section 11), which
relates to employer payment of certain compensation;
deleting reference to certain injuries; updating
statutory reference; amending 85 O.S. 2001, Section
12, as amended by Section 14, Chapter 1, 1st
Extraordinary Session, O.S.L. 2005 (85 O.S. Supp.
2009, Section 12), which relates to certain employer
liability; specifying applicability to certain
employers; deleting reference to certain rights
arising under the Oklahoma Constitution; providing
penalty for failure to secure compensation;
authorizing Commission to serve certain orders for
certain violations; providing employers opportunity
to contest certain Commission orders; allowing for
hearings to contest certain orders; specifying burden
of employer to overturn certain orders; providing for
hearings in certain disputes between employers and
insurers; requiring Commission to notify insurer of
certain hearings; requiring insurer to respond to
certain notice of hearing within a certain period;
authorizing Commission to assess certain fines for

1 certain violations; providing Commission authority to
2 petition district court in certain circumstances;
3 authorizing Commission to seek certain injunction;
4 requiring employers to post certain notices;
5 specifying certain notice requirements; specifying
6 that employers shall not be liable for certain
7 injuries; authorizing Commission to establish certain
8 rules and regulations concerning medical service
9 fees; allowing Commission to establish maximum
10 allowable fees; amending 85 O.S. 2001, Section 14, as
11 last amended by Section 15, Chapter 1, 1st
12 Extraordinary Session, O.S.L. 2005 (85 O.S. Supp.
13 2009, Section 14), which relates to the provision of
14 medical services after an injury; specifying that
15 injured employees may seek hearing at the Commission
16 or the Court of Existing Claims depending upon the
17 date of injury; modifying agency designations;
18 providing for the limitation of certain medical
19 treatments; providing for the ongoing service and
20 replacement of certain medical devices; amending 85
21 O.S. 2001, Section 14.2, as amended by Section 16,
22 Chapter 1, 1st Extraordinary Session, O.S.L. 2005 (85
23 O.S. Supp. 2009, Section 14.2), which relates to the
24 selection of treating physicians under certified
workplace plans; modifying agency designations;
amending 85 O.S. 2001, Section 14.3, as amended by
Section 17, Chapter 1, 1st Extraordinary Session,
O.S.L. 2005 (85 O.S. Supp. 2009, Section 14.3), which
relates to certified workplace medical plans;
modifying agency designation; extending period an
insured may contract with an independent insurer in
certain circumstances; requiring employees to obtain
written confirmation that dispute resolution has
failed and been exhausted; specifying that certain
medical evaluations shall not be admissible if
certain conditions have not been met; authorizing
Commission to alter the course of certain medical
treatments under certain conditions; requiring all
state agencies to adopt and implement certain
certified workplace plan; amending 85 O.S. 2001,
Section 15, which relates to employer requirement of
providing prosthetic devices in certain
circumstances; modifying agency designation; amending
85 O.S. 2001, Section 16, as amended by Section 18,
Chapter 1, 1st Extraordinary Session, O.S.L. 2005 (85
O.S. Supp. 2009, Section 16), which relates to
vocational rehabilitation and job placement services;

1 requiring Commission to hire a Vocational
2 Rehabilitation Director; establishing qualifications
3 of Vocational Rehabilitation Director; specifying
4 duties of Vocational Rehabilitation Director;
5 authorizing the request of vocational rehabilitation
6 services by parties to a compensation claim under
7 certain circumstances; authorizing Vocational
8 Rehabilitation Director to issue certain
9 administrative orders; providing that such
10 administrative orders are appealable to Commission;
11 authorizing Director to assign certain vocational
12 rehabilitation counselors in certain circumstances;
13 providing certain services to be paid by employer;
14 authorizing concurrent medical treatment and
15 vocational rehabilitation services; modifying agency
16 designation; specifying that vocational
17 rehabilitation services shall be payable only to
18 rehabilitating provider; extending time frame for
19 certain vocational rehabilitation services;
20 prohibiting the payment for vocational rehabilitation
21 to be a separate item in a settlement or included in
22 a calculation of legal fees; amending 85 O.S. 2001,
23 Section 17, as last amended by Section 19, Chapter 1,
24 1st Extraordinary Session, O.S.L. 2005 (85 O.S. Supp.
2009, Section 17), which relates to the determination
of disability; modifying agency designations;
providing that determination of disability shall be
the responsibility of the Chief Medical Officer;
requiring all claims for disability be supported by
certain testimony and include certain evaluations;
requiring evaluation be sent to parties within seven
days; requiring medical opinions be stated within a
reasonable degree of medical certainty; defining
terms; stating purpose of program; specifying scope
of program; establishing qualifications of physicians
seeking appointment to Medical Impairment Rating
Registry; specifying application procedure for
physicians seeking appointment to Medical Impairment
Rating Registry; specifying appointment and retention
requirements of certain physicians; providing appeal
procedure for physicians denied appointment on
Registry; specifying circumstances wherein a Medical
Impairment Rating Registry physician shall be
appointed; providing for the selection of a Registry
physician; providing procedure for certain
disagreements between the parties; providing for the
selection of a Registry physician; establishing that

1 the impairment rating determined by the Medical
2 Impairment Rating Registry physician shall be
3 presumed accurate; authorizing the Program
4 Coordinator to select a Registry physician under
5 certain circumstances; requiring Program Coordinator
6 to contact a selected Registry physician within three
7 days after selection; requiring parties to submit
8 copies of all pertinent medical records to the
9 Registry physician; authorizing Program Coordinator
10 certain discretion in accepting certain untimely
11 submitted records; specifying how medical records
12 shall be organized; prohibiting the submission of
13 certain types of evidence to the Registry physician;
14 requiring that claimants complete all forms;
15 providing for assistance to claimants in completing
16 forms; authorizing the use of a translator in certain
17 circumstances; providing for reimbursement of
18 claimant travel under certain circumstances;
19 providing for the payment of a Registry physician;
20 specifying fee amounts based upon the length of time
21 taken to complete the report; specifying what the
22 Registry physician fee includes; providing for late
23 fees and penalties under certain circumstances;
24 providing procedure for cancellation of evaluation
appointments; allowing evaluations of multiple
impairments by different Registry physicians in
certain circumstances; prohibiting certain physicians
from rendering certain opinions; requiring disclosure
by physicians in certain potential conflict of
interest circumstances; providing penalties for
failure to comply with conflict of interest
requirements; prohibiting certain physicians from
communicating with parties except under certain
circumstances; requiring the requesting party to
compensate certain physicians if physician is a
witness at any proceeding; establishing requirements
for physicians conducting certain evaluations;
specifying certain requirements physicians must
follow prior to certain evaluations; specifying
certain requirements physicians must follow upon the
completion of certain evaluations; specifying that
completed reports shall be sent to the Program
Coordinator; specifying that evaluations do not
create a doctor-patient relationship between
claimants and physicians; providing that certain
physicians shall only evaluate impairment and not
offer medical advice or a diagnosis; prohibiting

1 certain physicians from recommending treatment in
2 evaluation assessments; establishing reporting
3 requirements of the Medical Impairment Rating report;
4 requiring that Medical Impairment Rating physicians
5 review attending physician evaluations; providing
6 reporting procedure if the Medical Impairment Rating
7 physician agrees with evaluation of attending
8 physician; providing reporting requirements if the
9 Impairment Rating is consistent with American Medical
10 Association guidelines; providing reporting
11 requirements if the Impairment Rating is not
12 consistent with certain guidelines; requiring certain
13 physicians explain rationale for certain ratings;
14 requiring certain physicians sign reports; providing
15 statement required on certain reports; providing
16 procedure if the Medical Impairment Rating physician
17 disagrees with attending physician determinations;
18 providing that certain physician services conclude
19 upon the issuance of certain report; providing that
20 Medical Impairment Ratings shall be subject to
21 certain review; providing for the removal of Medical
22 Impairment Rating physicians in certain
23 circumstances; providing grounds for removal of
24 Medical Impairment Rating physician from listing;
establishing procedure for complaints regarding
Medical Impairment Rating physicians; allowing
Medical Impairment Rating physicians opportunity to
respond to certain complaints; authorizing Chief
Medical Officer to make determinations concerning
certain complaints; providing procedure for
physicians to request reconsideration of certain
Chief Medical Officer decisions; providing procedure
for reinstatement of certain physicians to Medical
Impairment Rating Registry; providing Chief Medical
Officer authority to impose certain penalties;
providing discretion to the Chief Medical Officer
with respect to certain time limitations; requiring
parties to cooperate in the scheduling of certain
evaluations; prohibiting parties from seeking a
second opinion in certain circumstances; providing
for issuance of final determination of disability by
Chief Medical Officer; providing limitations for
appeal of certain Chief Medical Officer rulings;
authorizing Commission to select a Chief Medical
Officer; requiring confirmation of Chief Medical
Officer by Senate; providing for review by the
Commission of Chief Medical Officer's performance;

1 specifying circumstances and procedure for
2 reappointment of Chief Medical Officer; providing for
3 compensation of Chief Medical Officer; establishing
4 duties of Chief Medical Officer; providing Commission
5 authority to review certain administrative orders
6 issued by the Chief Medical Officer; amending 85 O.S.
7 2001, Section 22, as last amended by Section 1,
8 Chapter 172, O.S.L. 2009 (85 O.S. Supp. 2009, Section
9 22), which relates to compensation schedules for
10 specific injuries; providing that the loss of certain
11 body parts shall constitute total disability;
12 prohibiting the receipt of both permanent total
13 disability and any other benefit simultaneously;
14 authorizing annual certification of continuing
15 disability; providing authority to Commission to
16 refer certain cases to fraud unit; establishing
17 partial disability rates for injuries incurred on or
18 after the effective date of act; specifying that the
19 odd lot doctrine shall not apply in permanent
20 disability cases; providing for the receipt of
21 certain benefits for injuries incurred prior to
22 effective date of act; providing the maximum amount
23 of compensation to be paid for certain disabilities;
24 modifying agency designation; amending 85 O.S. 2001,
Section 24.1, as amended by Section 21, Chapter 1,
1st Extraordinary Session, O.S.L. 2005 (85 O.S. Supp.
2009, Section 24.1), which relates to record keeping
requirements; modifying agency designations; amending
85 O.S. 2001, Section 24.2, which relates to notice
requirements for certain injuries; modifying notice
requirements for certain injuries; modifying agency
designation; amending 85 O.S. 2001, Section 25, which
relates to the examination of injured employees;
modifying agency designation; amending 85 O.S. 2001,
Section 26, as amended by Section 22, Chapter 1, 1st
Extraordinary Session, O.S.L. 2005 (85 O.S. Supp.
2009, Section 26), which relates to specific notice
requirements; removing requirement that Administrator
or certain judges approve certain settlements;
removing requirement that Court promulgate certain
rules with respect to compromise settlements;
removing authority of Court to make certain rulings
with respect to payment of certain compromise
settlements; removing authority of Court to make
certain final decisions; modifying agency
designation; amending 85 O.S. 2001, Section 27.1,
which relates to cumulative medical testimony in

1 certain cases; modifying agency designation;
2 authorizing Commission to review any compensation
3 order, decision or award; providing for the review by
4 an administrative law judge or the Commission of
5 certain terminated benefits for certain reasons;
6 authorizing Commission to make certain determinations
7 upon review of certain compensation orders;
8 authorizing Commission to correct certain clerical
9 errors; amending 85 O.S. 2001, Section 30, as amended
10 by Section 23, Chapter 1, 1st Extraordinary Session,
11 O.S.L. 2005 (85 O.S. Supp. 2009, Section 30), which
12 relates to certain costs and penalties; modifying
13 agency designation; modifying certain settlement
14 offer requirements; extending certain settlement
15 deadlines; limiting amount claimant's attorney may be
16 compensated in certain settlement agreements;
17 prohibiting claimant attorney from deducting or
18 withholding certain portions of settlement proceeds
19 from claimant for certain uses; amending 85 O.S.
20 2001, Section 41, which relates to the payment of
21 certain permanent partial or permanent total awards;
22 modifying agency designation; amending 85 O.S. 2001,
23 Section 41.1, which relates to whether certain
24 payments may be credited to employer or insurer;
authorizing employers or insurers to deduct certain
payments made from certain permanent disability
awards; removing authority of certain self-insured
employers to take credit for certain overpayments;
amending 85 O.S. 2001, Section 42, which relates to
the nonpayment or failure to pay awards under certain
circumstances; modifying agency designation;
modifying applicable interest rate to that of average
Treasury Bills from preceding year; amending 85 O.S.
2001, Section 43, as amended by Section 24, Chapter
1, 1st Extraordinary Session, O.S.L. 2005 (85 O.S.
Supp. 2009, Section 43), which relates to time
limitations of injury or death claims; reducing
amount of time a claimant may claim compensation
after injury; restricting the filing of certain
claims after last medical treatment; reducing amount
of time a claimant may seek compensation for repeated
trauma injuries; reducing amount of time a claimant
may make certain claims after termination of
employment; reducing amount of time a claimant may
pursue a hearing on certain claims; reducing amount
of time claims may be heard after termination of
payments; modifying agency designation; authorizing

1 Court to reopen certain claims; amending 85 O.S.
2 2001, Section 44, as amended by Section 25, Chapter
3 1, 1st Extraordinary Session, O.S.L. 2005 (85 O.S.
4 Supp. 2009, Section 44), which relates to certain
5 claims against third-party insurers; modifying agency
6 designation; removing prohibition against employer or
7 insurer pursuing the right of subrogation in certain
8 circumstances; removing provision allowing employers
9 to have a cause of action against third parties in
10 certain circumstances; amending 85 O.S. 2001, Section
11 45, which relates to certain benefits or assets of a
12 claimant being exempt in the determination of certain
13 benefits; providing that the unemployment laws of any
14 other state shall not result in duplicative payment
15 of certain benefits; amending 85 O.S. 2001, Section
16 47.1, which relates to waiver of compensation by
17 employees in certain circumstances; updating agency
18 designation; amending 85 O.S. 2001, Section 48.1,
19 which relates to certain liens for the payment of
20 child support; modifying agency designation; amending
21 85 O.S. 2001, Section 61, as amended by Section 78,
22 Chapter 264, O.S.L. 2006 (85 O.S. Supp. 2009, Section
23 61), which relates to means by which an employer may
24 secure compensation to injured employees; modifying
agency designation; amending 85 O.S. 2001, Section
61.2, which relates to workplace safety plans;
modifying agency designation; amending 85 O.S. 2001,
Section 64, as last amended by Section 79, Chapter
264, O.S.L. 2006 (85 O.S. Supp. 2009, Section 64),
which relates to insurance policy requirements;
requiring that insurers have complete settlement
authority to attend certain dispute resolution
proceedings; specifying that certain violations shall
be subject to certain penalties in dispute resolution
proceedings; amending 85 O.S. 2001, Sections 66.1 and
66.2, which relate to the Individual Self-Insured
Guaranty Fund Board and the Group Self-Insurance
Association Guaranty Fund Board; modifying agency
designations; amending 85 O.S. 2001, Sections 80, 81,
84, 85 and 104, which relate to the Workers'
Compensation Act; modifying agency designation;
amending 85 O.S. 2001, Section 110, as amended by
Section 1, Chapter 338, O.S.L. 2002 (85 O.S. Supp.
2009, Section 110), which relates to inquiry into an
employee's prior claims; providing that an employee's
failure to answer truthfully certain inquiries into
past injuries shall subject the employee to

1 discharge; modifying agency designation; amending 85
2 O.S. 2001, Section 112, which relates to the Advisory
3 Council on Workers' Compensation; reducing membership
4 from nine to seven members; authorizing the Chairman
5 of the Commission to act as ex officio nonvoting
6 member; specifying Governor appointments; specifying
7 Speaker of the House of Representatives appointments;
8 specifying President Pro Tempore appointments;
9 providing for selection of an additional member;
10 prohibiting certain professionals from serving on the
11 Advisory Council; providing for three-year terms;
12 specifying quorum requirement of the Advisory
13 Council; modifying agency designations; specifying
14 that Council shall consult with the Commission and
15 Chief Medical Officer regarding oversight; amending
16 85 O.S. 2001, Sections 149.1 and 149.2, which relate
17 to rules for certain employer self-insured pools;
18 modifying agency designation; amending 85 O.S. 2001,
19 Section 171, as amended by Section 27, Chapter 1, 1st
20 Extraordinary Session, O.S.L. 2005 (85 O.S. Supp.
21 2009, Section 171), which relates to certain
22 definition; modifying agency designation; amending 85
23 O.S. 2001, Section 173, as last amended by Section
24 29, Chapter 1, 1st Extraordinary Session, O.S.L. 2005
(85 O.S. Supp. 2009, Section 173), which relates to
the creation of the Multiple Injury Trust Fund;
modifying agency designations; amending 85 O.S. 2001,
Section 175, as last amended by Section 30, Chapter
1, 1st Extraordinary Session, O.S.L. 2005 (85 O.S.
Supp. 2009, Section 175), which relates to the
administration of the Multiple Injury Trust Fund by
CompSource Oklahoma; modifying agency designation;
amending 85 O.S. 2001, Section 177, which relates to
the creation of an administration fund; modifying
agency designations; amending 85 O.S. 2001, Section
201, which relates to authority of the Administrator
to impose certain penalties on health care providers
for certain violations; modifying agency designation;
amending 85 O.S. 2001, Section 201.1, as last amended
by Section 31, Chapter 1, 1st Extraordinary Session,
O.S.L. 2005 (85 O.S. Supp. 2009, Section 201.1),
which relates to the creation of a Physician Advisory
Committee; modifying agency designation; providing
that recommendations made by the committee concerning
acceptable deviations from certain guidelines shall
be reviewed and adopted by the Chief Medical Officer;
removing authority of Committee to make certain

1 determinations with respect to permanent impairment;
2 requiring treatment guidelines be recommended to
3 Chief Medical Officer for use in all workers'
4 compensation claims; defining medical treatment for
5 certain purposes; requiring that recommended
6 guidelines reflect evidence and scientifically
7 approved standards of medical treatment; providing
8 that certain treatments which are outside of the
9 scope of treatment guidelines may be approved in
10 certain circumstances; requiring Chief Medical
11 Officer to explain in order why treatment is
12 appropriately outside of medical guidelines; removing
13 provisions establishing treatment guidelines;
14 modifying agency designation; defining terms;
15 amending 85 O.S. 2001, Section 203, which relates to
16 disputes between carriers or employers; modifying
17 agency designation; amending 85 O.S. 2001, Section
18 211, which relates to authorization to inspect or
19 examine certain records; modifying agency
20 designation; repealing 85 O.S. 2001, Section 3.5, as
21 amended by Section 10, Chapter 1, 1st Extraordinary
22 Session, O.S.L. 2005 (85 O.S. Supp. 2009, Section
23 3.5), which relates to venue of workers' compensation
24 claims; repealing 85 O.S. 2001, Section 21, which
relates to the computation of average weekly wages;
repealing 85 O.S. 2001, Section 28, which relates to
the review of awards by the Court; repealing 85 O.S.
2001, Section 69.5, which relates to powers and
duties of the Workers' Compensation Court Presiding
Judge; repealing 85 O.S. 2001, Section 122, which
relates to the abrogation of the right to recover
damages in certain circumstances; repealing 85 O.S.
2001, Section 201.2, which relates to requiring the
Physician Advisory Committee to develop certain
recommendations; providing for codification; and
providing an effective date.

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

SECTION 1. AMENDATORY 85 O.S. 2001, Section 1.1, as
amended by Section 7, Chapter 1, 1st Extraordinary Session, O.S.L.

1 2005 (85 O.S. Supp. 2009, Section 1.1), is amended to read as
2 follows:

3 Section 1.1 A. The Workers' Compensation Act shall not apply
4 to cases of occupational disease in which the last injurious
5 exposure to the hazards of such disease occurred before June 6,
6 1953.

7 B. The burden of proof, by a preponderance of the evidence,
8 shall be on the party requesting benefits or relief pursuant to the
9 provisions of the Workers' Compensation Act unless otherwise
10 specifically provided for by law.

11 C. The provisions of the Workers' Compensation Act shall be
12 strictly construed by the Workers' Compensation Court or Commission
13 and any appellate court reviewing a decision of the Workers'
14 Compensation Court or Commission.

15 SECTION 2. AMENDATORY 85 O.S. 2001, Section 1.2, is
16 amended to read as follows:

17 Section 1.2 A. There is hereby created the Workers'
18 Compensation Court of Existing Claims which shall consist of ~~ten~~
19 ~~(10)~~ four (4) judges. Each judge of the Court shall be appointed to
20 a ~~designated numbered position on the Court.~~ The positions shall be
21 numbered one through ten. The initial terms of the judges by
22 position number shall expire on the following dates:

23 Position 1 shall expire 7-1-84.

24 Position 2 shall expire 7-1-84.

1 ~~Position 3 shall expire 7-1-84.~~

2 ~~Position 4 shall expire 7-1-82.~~

3 ~~Position 5 shall expire 7-1-82.~~

4 ~~Position 6 shall expire 7-1-80.~~

5 ~~Position 7 shall expire 7-1-80.~~

6 ~~Position 8 shall expire 7-1-88.~~

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

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

10 ~~Thereafter, each position shall be filled by a judge appointed~~
11 ~~to serve a six-year term.~~

12 ~~Provided the judges serving unexpired terms on the State~~
13 ~~Industrial Court shall serve on the Workers' Compensation Court~~
14 ~~until their terms expire only as provided herein. The judges of the~~
15 ~~State Industrial Court whose terms expire March 14, 1979, shall~~
16 ~~serve in Positions 6 and 7 until that date, and the judge whose term~~
17 ~~expires March 14, 1981, shall serve in Position 5 until that date.~~

18 ~~Upon expiration of these terms, the Governor shall appoint judges to~~
19 ~~serve the remainder of the initial terms designated in this section.~~

20 Upon the effective date of this act, all existing positions of the
21 Workers' Compensation Court shall become vacant. The Governor shall
22 appoint four new judges from a list of nominees provided by the
23 Judicial Nominating Commission who shall be subject to confirmation
24 by a majority of the Senate. When a vacancy on the Court of

1 Existing Claims occurs ~~or is certain to occur or for initial~~
2 ~~appointments to the Court~~, the Judicial Nominating Commission shall
3 choose and submit to the Governor and the Chief Justice of the
4 Supreme Court the names of three persons, in addition to the name of
5 the incumbent judge, if any, for each appointment, each of whom has
6 previously notified the Commission in writing that he or she will
7 serve as a judge if appointed. The Governor shall appoint one of
8 the nominees to fill the vacancy who shall be subject to
9 confirmation by a majority of the Senate, but if the Governor fails
10 to do so within sixty (60) days, the Chief Justice of the Supreme
11 Court shall appoint one of the nominees who shall be subject to
12 confirmation by a majority of the Senate, the appointment to be
13 certified to the Secretary of State. If the Senate is not in
14 session when the appointment is made, the Senate must confirm such
15 appointment during its next regular session. If the Senate fails to
16 confirm such appointment, the Governor shall ask the Judicial
17 Nominating Commission for the names of three persons, which shall
18 not include the name of the candidate not confirmed, and shall
19 submit a new candidate to the Senate for confirmation within thirty
20 (30) days of receipt of such nominees.

21 B. A judge of the Court of Existing Claims shall have been
22 licensed to practice law in this state for a period of not less than
23 five (5) years prior to appointment and shall have at least five (5)
24 years of experience in workers' compensation matters in Oklahoma.

1 Each judge, before entering upon the duties of office, shall take
2 and subscribe to an oath of office and file the same with the
3 Secretary of State. Each judge shall continue to serve until his or
4 her successor has been appointed and qualified. A judge shall be
5 eligible for reappointment, provided that the judge may be removed
6 for cause by the Court on the Judiciary prior to the expiration of
7 his or her term. Any such judge reappointed shall be subject to
8 confirmation by a majority of the Senate.

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

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

1 judge. During the disqualification, disability, or absence of the
2 presiding judge, the acting presiding judge shall exercise all of
3 the powers of the presiding judge.

4 E. The Court of Existing Claims and the Workers' Compensation
5 Commission as defined in this act shall have the authority to adopt
6 reasonable rules within its respective areas of responsibility
7 including the rules of procedure for the Court en banc, after notice
8 and public hearing, for effecting the purposes of the Workers'
9 Compensation Act. All of the judges of the Court of Existing Claims
10 and Commissioners for the Workers' Compensation Commission shall be
11 present at all meetings wherein their respective rules are adopted
12 or amended. All rules, upon adoption, shall be submitted to the
13 Supreme Court, which shall either approve or disapprove them within
14 thirty (30) days. All rules, upon approval by the Supreme Court,
15 shall be published and be made available to the public and, if not
16 inconsistent with the law, shall be binding in the administration of
17 the Workers' Compensation Act.

18 F. The Court of Existing Claims is hereby designated and
19 confirmed as a court of record, ~~with~~ for all workers' compensation
20 claims for which the date of injury was prior to November 1, 2010.
21 With respect to any matter within the limits of ~~its jurisdiction~~
22 their respective jurisdictions, and within such limits the judges or
23 Commissioners thereof shall possess the powers and prerogatives of
24 the judges of the other courts of record of this state, including

1 the power to punish for contempt those persons who disobey a
2 subpoena, or refuse to be sworn or to answer as a witness, when
3 lawfully ordered to do so.

4 G. The principal office of the Court of Existing Claims shall
5 be situated in the City of Oklahoma City in quarters assigned by the
6 Department of Central Services. The Court of Existing Claims may
7 hold hearings in any city of this state.

8 H. All county commissioners and presiding district judges of
9 this state shall make quarters available for the conducting of
10 hearings by a judge of the Court of Existing Claims upon request by
11 the Court of Existing Claims.

12 I. The judges of the Court of Existing Claims shall determine
13 the qualifications necessary for the job of Administrator. Said
14 qualifications shall be submitted to the Chief Justice of the
15 Supreme Court for approval, disapproval or modification.

16 J. Judges of the Workers' Compensation Court of Existing Claims
17 or Commissioners for the Workers' Compensation Commission may punish
18 for direct contempt pursuant to Sections 565, 565.1 and 566 of Title
19 21 of the Oklahoma Statutes.

20 SECTION 3. AMENDATORY 85 O.S. 2001, Section 1.2A, is
21 amended to read as follows:

22 Section 1.2A Notwithstanding other limits established by law,
23 beginning January 1, 1998, the following judicial officers shall
24 receive compensation for their services, payable monthly as follows:

1 A judge of the Workers' Compensation Court of Existing Claims or
2 Commissioner of the Workers' Compensation Commission shall receive a
3 salary as prescribed by Section 1.2 of ~~Title 85 of the Oklahoma~~
4 ~~Statutes~~ this title.

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

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

15 B. The person serving as Administrator on the date of passage
16 and approval of this act shall continue to serve as Administrator of
17 the Court of Existing Claims, provided said person is serving as
18 Administrator on the effective date of this act.

19 C. Except as provided in subsection B of this section, the
20 Administrator shall be appointed by the Governor.

21 D. The salary of the Administrator shall be ninety percent
22 (90%) of the authorized salary of a judge of the Court of Existing
23 Claims.

24

1 E. The Administrator shall serve a six-year term. During the
2 term, the Administrator may be removed from office only for cause,
3 as provided by law for the removal of officers not subject to
4 impeachment, pursuant to the provisions of Sections 1181 through
5 1197 of Title 22 of the Oklahoma Statutes.

6 F. An Administrator who otherwise qualifies to serve as a judge
7 of the Court of Existing Claims shall not be eligible to serve as a
8 judge of the Court of Existing Claims for a period of one (1) year
9 from the last date served as Administrator of the Court.

10 G. In addition to other duties set forth in ~~Title 85 of the~~
11 ~~Oklahoma Statutes~~ this title, the Administrator, subject to approval
12 of the presiding judge, shall organize, direct and develop the
13 administrative work of the Court of Existing Claims, including the
14 docketing, clerical, technical and financial work, establish hours
15 of operation, and perform such other duties relating to matters
16 within the purview of the Court of Existing Claims as any judge of
17 the Court of Existing Claims may request.

18 H. The Administrator shall employ other employees of the Court
19 of Existing Claims, within budgetary limitation, necessary to carry
20 out the work and orders of the Court of Existing Claims in an
21 efficient and expedient manner.

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

1 A. There is hereby created the Workers' Compensation
2 Commission. The Workers' Compensation Commission shall consist of
3 three (3) members appointed by the Governor who shall be confirmed
4 by the State Senate for terms of six (6) years who shall devote
5 their entire time to the duties of the Commission and shall
6 administer the provisions of this act.

7 One member shall be an attorney, who shall be Chair of the
8 Commission and who shall have been engaged in active practice of law
9 in the State of Oklahoma for not less than five (5) years next
10 preceding the date of appointment and who shall have at least five
11 (5) years of experience in workers' compensation matters in
12 Oklahoma. Two members shall be individuals who shall each have at
13 least five (5) years of experience and expertise in the field of
14 workers' compensation in Oklahoma. These two members shall not be
15 required to be attorneys; however, one of these two members shall be
16 a physician as defined in Section 14 of Title 85 of the Oklahoma
17 Statutes.

18 B. Each member shall receive a salary equal to that of a
19 district judge of this state. The salaries shall be paid from the
20 Workers' Compensation Fund and shall be paid in the manner as are
21 salaries of other state officials or employees.

22 SECTION 6. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1.5 of Title 85, unless there is
24 created a duplication in numbering, reads as follows:

1 A. Under the jurisdiction of the Workers' Compensation
2 Commission there are hereby created the positions of administrative
3 law judges. Such judges shall be hired by the Commission and shall
4 be located so that one each is permanently assigned to the
5 Southeast, Southwest, Northwest and Northeast regions of the state.
6 Four additional judges shall be hired by the Commission and shall be
7 located two in Tulsa and two in Oklahoma City.

8 B. The counties located in the Southeast region shall be:
9 Atoka, Bryan, Carter, Choctaw, Coal, Garvin, Haskell, Hughes,
10 Johnston, Latimer, LeFlore, Love, Marshall, McCurtain, McIntosh,
11 Murray, Okfuskee, Pittsburg, Pontotoc, Pushmataha and Seminole.

12 C. The counties located in the Southwest region shall be:
13 Beckham, Caddo, Comanche, Cotton, Grady, Greer, Harmon, Jackson,
14 Jefferson, Kiowa, Stephens, Tillman and Washita.

15 D. The counties located in the Northwest region shall be:
16 Alfalfa, Blaine, Beaver, Cimarron, Custer, Dewey, Ellis, Garfield,
17 Grant, Harper, Kay, Kingfisher, Major, Noble, Payne, Roger Mills,
18 Texas, Woods and Woodward.

19 E. The counties located in the Northeast region shall be:
20 Adair, Cherokee, Craig, Delaware, Mayes, Muskogee, Nowata, Okmulgee,
21 Ottawa, Sequoyah and Washington.

22 F. The counties located in the Tulsa region shall be: Creek,
23 Osage, Pawnee, Rogers, Tulsa and Wagoner.

24

1 G. The counties located in the Oklahoma City region shall be:
2 Canadian, Cleveland, Lincoln, Logan, McClain, Oklahoma and
3 Pottawatomie.

4 H. All claims for workers' compensation under Title 85 of the
5 Oklahoma Statutes shall be heard in the region of the state where
6 the accident occurred, where the claimant resided at the time of the
7 injury or where the employer has its primary place of business. The
8 determination of regional venue shall be by the priority listed
9 above, unless agreed to by both parties. All administrative law
10 judges shall be subject to confirmation by the State Senate. Upon
11 agreement of the parties, the Commission may hold hearings related
12 to a claim by a video conference.

13 SECTION 7. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1.6 of Title 85, unless there is
15 created a duplication in numbering, reads as follows:

16 A. The Governor may remove any member of the Workers'
17 Compensation Commission for inefficiency, neglect of duty, or
18 misconduct in office. The Governor shall provide that member in
19 advance a copy of the causes or charges preferred and an opportunity
20 to be publicly heard, in person or by counsel, upon not less than
21 ten (10) days' notice. Such removal shall be confirmed by a
22 majority of the Senate.

23
24

1 B. A representative of the Office of the Attorney General shall
2 attend the proceedings and, upon the request of the Governor, shall
3 advise or assist the Senate in the proceedings.

4 C. Either party may require the attendance and testimony of
5 witnesses as provided in Title 12 of the Oklahoma Statutes.

6 D. If a member is removed, the Governor shall file in the
7 Office of the Secretary of State a complete statement of all causes
8 or charges made against the member and findings, together with a
9 complete record of all proceedings and a transcript of testimony.
10 It shall constitute a public record of the state.

11 E. The Senate shall have the authority to subpoena and take
12 testimony from any party to the removal, including, but not limited
13 to, the Governor.

14 SECTION 8. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1.7 of Title 85, unless there is
16 created a duplication in numbering, reads as follows:

17 A. Members of the Workers' Compensation Commission shall be
18 considered officers of the state and shall take the oath prescribed
19 by the Oklahoma Constitution and the laws of Oklahoma.

20 B. Except when adopting rules, which requires all members to be
21 present and participating, a majority of the Commission shall
22 constitute a quorum for the transaction of business, and vacancies
23 shall not impair the right of the remaining members to exercise all
24 the powers of the full Commission so long as a majority remains.

1 C. 1. The Commission shall maintain and keep open, during
2 reasonable business hours, an office in Oklahoma City, for the
3 transaction of business, at which office its official records and
4 papers shall be kept.

5 2. The Commission or any member of the Commission shall hold
6 sessions and conduct hearings at any local career and technology
7 education center, also known as state-sponsored Career Tech, within
8 the state.

9 D. The Commission shall have a seal for authentication of its
10 orders, awards, and proceedings, which shall have inscribed the
11 words: "Workers' Compensation Commission, State of Oklahoma".

12 SECTION 9. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 1.8 of Title 85, unless there is
14 created a duplication in numbering, reads as follows:

15 A. 1. For the purpose of administering the provisions of this
16 act, the Workers' Compensation Commission is authorized:

17 a. to make such rules and regulations as may be found
18 necessary,

19 b. to appoint and fix the compensation of temporary
20 technical assistants and medical and legal advisers
21 and to appoint and to fix the compensation of clerical
22 assistants and other officers and employees, and

23 c. to make such expenditures, including those for
24 personal services, rent, books, periodicals, office

1 equipment, and supplies, for printing and binding as
2 may be necessary, and for informing people of the
3 Counselor program.

4 2. a. Prior to the adoption, prescription, amendment
5 modification, or repeal of any rule, regulation, or
6 form, the Commission shall give at least forty-five
7 (45) days' notice of its intended action.

8 b. The notice shall include a statement of the terms or
9 substance of the intended action or description of the
10 subjects and issues involved, and the time, place, and
11 manner in which interested persons may present their
12 views thereon.

13 c. The notice shall be mailed to any person specified by
14 law or who shall have requested advance notice of
15 rule-making proceedings.

16 3. The Commission shall afford all interested persons a
17 reasonable opportunity to submit written data, views, or arguments,
18 and, if the Commission in its discretion directs, oral testimony or
19 argument. The Commission shall comply with the Administrative
20 Procedures Act.

21 4. All expenditures of the Commission in the administration of
22 this act shall be allowed and paid from the Workers' Compensation
23 Fund upon the presentation of itemized vouchers approved by the
24 Commission.

1 B. 1. The Commission may appoint as many persons to be
2 examiners, experts, investigators, counselors, clerks, and other
3 employees as it deems necessary to effectuate the provisions of this
4 act.

5 2. Rate experts shall be considered employees of the Commission
6 and the Insurance Commissioner and shall be paid from the Workers'
7 Compensation Fund.

8 3. Employees appointed pursuant to this subsection shall
9 receive an annual salary to be fixed by the Commission within the
10 appropriation made for the Commission.

11 C. It shall be the duty of an administrative law judge, under
12 the rules adopted by the Commission, to hear and determine claims
13 for compensation and to conduct hearings and investigations and to
14 make such orders, decisions, and determinations as may be required
15 by any rule or order of the Commission. The duty of an
16 administrative law judge shall be to rule only on issues of
17 determination of eligibility for compensation, and shall notify both
18 parties of that decision. If the claim is deemed compensable, the
19 administrative law judge shall direct medical treatment, if
20 appropriate, be provided by a physician selected by the employer,
21 and temporary total disability, if appropriate.

22 SECTION 10. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1.9 of Title 85, unless there is
24 created a duplication in numbering, reads as follows:

1 Any member or employee of the Workers' Compensation Commission
2 shall be entitled to receive necessary traveling expenses actually
3 incurred and for subsistence while traveling on official business
4 and away from the designated station of that member or employee.
5 The expenses shall be certified by the person who incurred them and
6 shall be allowed and paid upon presentation of vouchers approved by
7 the Commission.

8 SECTION 11. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1.10 of Title 85, unless there
10 is created a duplication in numbering, reads as follows:

11 A. In addition to its other duties and powers, the Workers'
12 Compensation Commission is granted full power and authority to:

13 1. Hear and determine all claims for compensation, including,
14 but not limited to, claims based upon injuries that occurred outside
15 the state for which compensation is payable under this act;

16 2. Employ a Chief Medical Officer and special medical examiners
17 and advisors as necessary who shall be paid a reasonable amount per
18 day to be determined by the Commission, plus reasonable traveling
19 expenses;

20 3. Hear appeals from orders made by the Chief Medical Officer
21 regarding ratings of permanent disability, need for medical services
22 or assignment of independent medical evaluations;

23 4. Approve claims for medical services and attorney fees;

24

1 5. Excuse failure to give notice either of injury or death of
2 any employee;

3 6. Make, modify, or rescind awards, and make and enter findings
4 of fact and rulings of law;

5 7. Enter orders in appealed cases;

6 8. Determine the time for the payment of compensation and order
7 the reimbursement of employers for amounts advanced;

8 9. Assess penalties;

9 10. Prescribe rules and regulations governing the
10 representation of employees, employers, and carriers in respect to
11 claims before the Commission;

12 11. Issue subpoenas, administer oaths, and take testimony, by
13 deposition or otherwise;

14 12. Have and exercise all other powers and duties conferred or
15 imposed by this act; and

16 13. Transfer the excess of income over expenses from the
17 Commission's annual educational conference to any nonprofit
18 charitable organization designed to provide scholarships to children
19 of workers who have been killed or become permanently and totally
20 disabled from a compensable injury, including, but not limited to,
21 any accumulation from prior years' conferences.

22 B. 1. In addition to the other powers and duties granted to
23 the Commission in this section and otherwise provided by law, the
24 Commission is authorized to establish and impose reasonable fees to

1 recover the cost of preparation of various informative materials
2 distributed by the Commission.

3 2. The fees shall be established by regulation of the
4 Commission.

5 3. Funds derived from fees shall be deposited in the Workers'
6 Compensation Fund to be used to defray expenses incurred in
7 preparation and distribution of materials.

8 SECTION 12. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 1.11 of Title 85, unless there
10 is created a duplication in numbering, reads as follows:

11 On or before the first day of the regular session of the
12 Legislature, the Workers' Compensation Commission under the
13 authority of at least two of its members shall make to the Governor
14 and to the Legislature a report of the administration of this act
15 for the preceding annual period.

16 SECTION 13. AMENDATORY 85 O.S. 2001, Section 3, as last
17 amended by Section 9, Chapter 1, 1st Extraordinary Session, O.S.L.
18 2005 (85 O.S. Supp. 2009, Section 3), is amended to read as follows:

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

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

22 2. "Amount in dispute" means the dollar value of any permanent
23 disability award granted to the employee by the Court for a
24 disability claim which is greater than the dollar amount offered by

1 the employer to the employee for such disability claim if the
2 employer ~~admits compensability within twenty (20) days of the filing~~
3 ~~of the Employee's First Notice of Accidental Injury and Claim for~~
4 ~~Compensation, has not disputed medical treatment, and has made a~~
5 written settlement offer within ~~fifteen (15)~~ thirty (30) days of the
6 employee reaching maximum medical improvement;

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

- 10 a. systematically monitoring the treatment rendered and
11 the medical progress of the injured or disabled
12 worker,
- 13 b. ensuring that any treatment plan follows all
14 appropriate treatment protocols, utilization controls
15 and practice parameters,
- 16 c. assessing whether alternative health care services are
17 appropriate and delivered in a cost-effective manner
18 based upon acceptable medical standards, and
- 19 d. ensuring that the injured or disabled worker is
20 following the prescribed ~~health care~~ medical treatment
21 plan which follows acceptable medical standards as
22 adopted by the Chief Medical Officer with the advice
23 of the Physician Advisory Committee.
- 24

1 Any final decision in authorizing medical care or treatment,
2 including, but not limited to, medical device equipment or
3 prescription drug authorization, shall be the sole responsibility of
4 the loss adjuster, unless such responsibility has been delegated to
5 another in writing;

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

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

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

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

17 (2) Certified Case Manager (CCM),

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

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

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

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

23 The case manager's objective is to arrange for the delivery of cost-
24 effective services that meet the patient's medical needs. The case

1 manager acts both as an ombudsman for the patient and as an agent of
2 the payor;

3 5. "Child" means any dependent child as defined by the Internal
4 Revenue Service;

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

7 ~~6.~~ 7. Commission" means the Workers' Compensation Commission;

8 8. a. "Compensable injury":

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

1 other factor, causing both the resulting medical
2 condition and disability supported by objective
3 medical finding,

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

13 An injury, illness or death included in this
14 subparagraph shall not be deemed to be a
15 compensable injury unless it is shown that the
16 exertion of the work necessary to precipitate
17 disability or death was extraordinary and unusual
18 in comparison to the usual work of the employee
19 in the course of the regular employment of the
20 employee, or alternatively, that some unusual and
21 unpredicted incident occurred which is found to
22 have been the major cause of the physical harm.
23 Stress, physical or mental, shall not be

1 considered in determining whether the employee or
2 claimant has met the burden of proof.

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

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

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

19 (4) includes injury due to the willful act of a third
20 person directed against an employee because of
21 the employee's employment, and

22 (5) includes an injury or disease resulting from a
23 vaccine administered at the direction of the
24 employer or in response to a declaration by the

1 Secretary of the United States Department of
2 Health and Human Services under the Public Health
3 Services Act to address an actual or potential
4 health risk related to the employee's employment.

5 b. "Compensable injury" shall not include:

6 (1) mental injury that is unaccompanied by physical
7 injury, except in the case of rape, holdups,
8 witnessing killings, or violent death which
9 arises out of and in the course of employment,

10 (2) alcoholism and disabilities attributable thereto,

11 (3) drug addiction or disabilities resulting
12 therefrom, except when such addiction or
13 disability resulted from the use of drugs or
14 medicines prescribed for the treatment of the
15 initial injury by an authorized physician and the
16 employee followed the dosage prescribed,

17 (4) an employee's use of a motor vehicle that was
18 provided to the employee by a motor vehicle
19 dealer and bears a dealer's license plate for
20 commuting to or from work or any other nonwork
21 activity,

22 (5) injury or disability caused primarily by the
23 natural deterioration of tissue, an organ or part
24 of the body, nor by the ordinary, gradual

1 deterioration or progressive degeneration caused
2 by the aging process, unless the employment is a
3 major cause of the deterioration or degeneration
4 and is supported by objective medical evidence,

5 (6) an injury incurred by an employee by the
6 employee's willful intention to injure oneself or
7 another,

8 (7) an injury or disease caused by exposure to a
9 toxic substance, including, but not limited to,
10 asbestos, silica, fungus or mold, unless there is
11 a preponderance of the evidence establishing that
12 exposure to the specific substance involved, at
13 the levels to which the employee was exposed, can
14 cause the injury or disease sustained by the
15 employee,

16 (8) a claim for mental stress resulting solely from
17 disciplinary action taken in good faith by the
18 employer,

19 (9) an injury resulting directly or indirectly from
20 idiopathic causes,

21 (10) any contagious or infectious disease unless it
22 arises out of and occurs during the course of
23 employment,

24

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

3 (12) injury which was inflicted upon the employee at a
4 time when employment services were not being
5 performed or before the employee was hired or
6 after the employment relationship was terminated,
7 or

8 (13) injury where the accident was substantially
9 occasioned by the use of alcohol, illegal drugs,
10 or prescription drugs used in contravention of
11 the orders of a physician.

12 (a) The presence of alcohol, illegal drugs, or
13 prescription drugs used in contravention of
14 orders of a physician shall create a
15 rebuttable presumption that the injury or
16 accident was substantially occasioned by the
17 use of alcohol, illegal drugs, or
18 prescription drugs used in contravention of
19 orders of a physician.

20 (b) Every employee is deemed by his or her
21 performance of services to have impliedly
22 consented to reasonable and responsible
23 testing by properly trained medical or law
24 enforcement personnel for the presence of

1 any of the aforementioned substances in the
2 body of the employee.

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

10 (d) Notwithstanding Section 554 of Title 40 of
11 the Oklahoma Statutes, a public or private
12 employer may require an employee to undergo
13 drug or alcohol testing if the employee or
14 another person has sustained a work-related
15 injury. For purposes of workers'
16 compensation, an employee who tests positive
17 for the presence of substances defined and
18 consumed pursuant to Section 465.20 of Title
19 63 of the Oklahoma Statutes, alcohol, or
20 prescription drugs not prescribed by the
21 employee's treating medical provider shall
22 not be eligible for such compensation unless
23 the employee proves by a preponderance of
24 the evidence that the substances or alcohol

1 were not the proximate cause of the injury
2 or accident.

3 c. A compensable injury must be established by medical
4 evidence supported by objective findings as defined in
5 this act.

6 d. The burden of proof of a compensable injury shall be
7 on the employee.

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

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

14 (2) If any compensable injury combines with a
15 preexisting disease or condition or the natural
16 process of aging to cause or prolong disability
17 or a need for treatment, permanent benefits shall
18 be payable for the resultant condition only if
19 the compensable injury is the major cause of the
20 permanent disability or need for treatment.

21 (3) Under this subparagraph, benefits shall not be
22 payable for a condition which results from a non-
23 work-related independent intervening cause
24 following a compensable injury which causes or

1 prolongs disability or a need for treatment. A
2 non-work-related independent intervening cause
3 does not require negligence or recklessness on
4 the part of a claimant.

5 (4) Nothing in this subparagraph shall limit the
6 payment of rehabilitation benefits or benefits
7 for disfigurement as set forth in this section.

8 f. Aging and the effects of aging on a compensable injury
9 are not to be considered in determining whether there
10 has been a change in physical condition. Nor shall
11 aging or the effect of aging on a compensable injury
12 be considered in determining permanent disability
13 pursuant to this section or any other section in this
14 act. The purpose and intent of this section is to
15 annul any and all case law inconsistent with this
16 section;

17 9. "Court" means the Workers' Compensation Court of Existing
18 Claims, the Workers' Compensation Commission, the Chief Medical
19 Officer or any of the administrative law judges;

20 10. "Compensation" means the benefit payable to the employee or
21 the dependents of the employee in the form of:

22 a. temporary total or temporary partial disability
23 payments,

- 1 b. permanent partial or permanent total disability
2 payments, settlements or awards, and
3 c. other compensation which may include medical care,
4 prescription costs, other fees or costs associated
5 with physical or vocational rehabilitation and funeral
6 expenses.

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

16 ~~7-~~ 11. "Cumulative trauma" means a compensable injury, the
17 major cause of which results from employment activities which are
18 repetitive in nature and engaged in over a period of time and which
19 is supported by objective medical evidence as defined in this
20 section;

21 ~~8-~~ 12. "Death" means only death resulting from a compensable
22 injury as defined in this title;

23 13. "Employer", except when otherwise expressly stated, means a
24 person, partnership, association, limited liability company,

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

11 ~~9.~~ 14. "Employee" means any person engaged in the employment of
12 any person, firm, limited liability company or corporation covered
13 by the terms of the Workers' Compensation Act, and shall include
14 workers associating themselves together under an agreement for the
15 performance of a particular piece of work, in which event such
16 persons so associating themselves together shall be deemed employees
17 of the person having the work executed; provided, that if such
18 associated workers shall employ a worker in the execution of such
19 contract, then as to such employed worker, both the associated
20 employees and the principal employer shall at once become subject to
21 the provisions of the Workers' Compensation Act relating to
22 independent contractors. Sole proprietors, members of a
23 partnership, members of a limited liability company who own at least
24 ten percent (10%) of the capital of the limited liability company or

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

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

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

12 ~~10.~~ 15. "Drive-away operations" include every person engaged in
13 the business of transporting and delivering new or used vehicles by
14 driving, either singly or by tow bar, saddle mount or full mount
15 method, or any combination thereof, with or without towing a
16 privately owned vehicle;

17 ~~11.~~ 16. "Employment" includes work or labor in a trade,
18 business, occupation or activity carried on by an employer or any
19 authorized voluntary or uncompensated worker rendering services as a
20 firefighter, peace officer or emergency management worker;

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

23 ~~13. a.~~ "Compensable injury" means any injury or occupational
24 illness, causing internal or external harm to the

1 ~~body, which arises out of and in the course of~~
2 ~~employment if such employment was the major cause of~~
3 ~~the specific injury or illness. An injury, other than~~
4 ~~cumulative trauma, is compensable only if it is caused~~
5 ~~by a specific incident and is identifiable by time,~~
6 ~~place and occurrence unless it is otherwise defined as~~
7 ~~compensable in this title. A compensable injury must~~
8 ~~be established by objective medical evidence, as~~
9 ~~defined in this section.~~

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

21 e. ~~"Injury" or "personal injury" shall not include mental~~
22 ~~injury that is unaccompanied by physical injury,~~
23 ~~except in the case of rape which arises out of and in~~
24 ~~the course of employment.~~

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

10 ~~14.~~ 17. "Healing period" means that period for healing of an
11 injury resulting from an accident;

12 18. "Insurance Commissioner" means the Insurance Commissioner
13 of the state;

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

17 b. A finding of major cause shall be established
18 according to the preponderance of the objective
19 medical evidence only.

20 c. A determination that a work-related injury or illness
21 is noncompensable for any reason, including a finding
22 that the workplace was not a major cause of the injury
23 or illness, shall not adversely affect the exclusive
24

1 remedy provisions of this title, and shall not create
2 a separate cause of action outside of this title;

3 20. "Objective findings" are those findings which cannot come
4 under the voluntary control of the patient.

5 a. When determining physical or anatomical impairment,
6 neither a physician, any other medical provider, and
7 administrative law judge, the Workers' Compensation
8 Commission, nor the courts may consider complaints of
9 pain.

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

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

21 d. Any difference in the baseline hearing levels must be
22 confirmed with a subsequent test within four (4) weeks
23 following the initial test or tests performed pursuant
24

1 to subparagraph c of this paragraph but not before
2 five (5) days and being adjusted for presbycusis.

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

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

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

1 ~~15.~~ 22. "Insurance carrier" shall include CompSource Oklahoma,
2 stock corporations, reciprocal or interinsurance associations, or
3 mutual associations with which employers have insured, and employers
4 permitted to pay compensation, directly under the provisions of
5 paragraph 4 of subsection A of Section 61 of this title. Whenever
6 required by the context, the term "insurance carrier" shall be
7 deemed to include duly qualified self-insureds or self-insured
8 groups;

9 ~~16.~~ "~~Major cause~~" means the ~~predominate cause of the resulting~~
10 ~~injury or illness;~~

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

14 ~~18.~~ 23. "Occupational disease" means only that disease or
15 illness which is due to causes and conditions characteristic of or
16 peculiar to the particular trade, occupation, process or employment
17 in which the employee is exposed to such disease. An occupational
18 disease arises out of the employment only if the employment was the
19 major cause of the resulting occupational disease and such is
20 supported by objective medical evidence, as defined in this section.
21 No compensation shall be payable for any ordinary disease of life to
22 which the general public is exposed;

23 ~~19.~~ 24. "Permanent impairment" means any anatomical abnormality
24 after maximum medical improvement has been achieved, which

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

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

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

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

7 ~~20.~~ 25. "Permanent total disability" means incapacity because
8 of accidental injury or occupational disease to earn any wages in
9 any employment for which the employee may become physically suited
10 and reasonably fitted by education, training or experience,
11 including vocational rehabilitation; loss of both hands, or both
12 feet, or both arms, or both legs, or both eyes, or any two thereof,
13 shall constitute permanent total disability;

14 ~~21.~~ 26. "Permanent partial disability" means permanent
15 disability which is less than total and shall be equal to or the
16 same as permanent impairment;

17 ~~22.~~ 27. "Maximum medical improvement" means that no further
18 material improvement would reasonably be expected from medical
19 treatment or the passage of time;

20 ~~23.~~ 28. "Independent medical examiner" means a licensed
21 physician authorized to serve as a medical examiner pursuant to
22 Section 17 of this title;

23 ~~24.~~ 29. "Certified workplace medical plan" means an
24 organization of health care providers or any other entity, certified

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

13 ~~25.~~ 30. "Treating physician" means the licensed physician
14 selected as provided in Section 14 of this title.

15 SECTION 14. AMENDATORY 85 O.S. 2001, Section 3.1, is
16 amended to read as follows:

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

19 ~~(1)~~ 1. "Actually dependent" means:

- 20 a. a surviving spouse as defined in this section~~,~~,
- 21 b. a child as defined in this ~~section,~~ act, or
- 22 c. any other person dependent in fact upon the employee
23 and refers only to a person who receives one-half
24 (1/2) or more of his support from the employee;

1 ~~(2)~~ 2. "Surviving spouse" means only the employee's spouse
2 living with or actually dependent upon the employee at the time of
3 his injury or death, or living apart for justifiable cause or by
4 reason of desertion by the employee;

5 ~~(3)~~ 3. "Child" means ~~a natural or adopted son or daughter of~~
6 ~~the employee under eighteen (18) years of age; or a natural or~~
7 ~~adopted son or daughter of an employee eighteen (18) years of age or~~
8 ~~over and physically or mentally incapable of self support; or any~~
9 ~~natural or adopted son or daughter of an employee eighteen (18)~~
10 ~~years of age or over who is actually dependent; or any natural or~~
11 ~~adopted son or daughter of an employee between eighteen (18) and~~
12 ~~twenty three (23) years of age who is enrolled as a full time~~
13 ~~student in any accredited educational institution. The term "child"~~
14 ~~includes a posthumous child, a child legally adopted or one for whom~~
15 ~~adoption proceedings are pending at the time of death, an actually~~
16 ~~dependent stepchild or an actually dependent acknowledged child born~~
17 ~~out of wedlock~~ any dependent child as defined by the Internal
18 Revenue Service;

19 ~~(4)~~ 4. "Grandchild" means a child of a child, as herein
20 defined;

21 ~~(5)~~ 5. "Brother" and "sister" ~~means~~ mean a sibling of the
22 employee under eighteen (18) years of age, eighteen (18) years of
23 age or over and physically or mentally incapable of self-support,
24 eighteen (18) years of age or over and actually dependent and

1 brothers and sisters by adoption. Married brothers or married
2 sisters shall not be included except as provided in paragraph ~~(1)~~ 1
3 of this ~~section~~ subsection; and

4 ~~(6)~~ 6. "Parent" means a mother or father, a stepparent, a
5 parent by adoption and a parent-in-law, if actually dependent in
6 each case except as provided in paragraph ~~(1)~~ 1 of this ~~section~~
7 subsection.

8 B. All questions of relationship and dependency shall be
9 determined as of the time of injury for purposes of income benefits
10 for injury, and as of the time of death for purposes of income
11 benefits for death.

12 SECTION 15. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 3.1a of Title 85, unless there
14 is created a duplication in numbering, reads as follows:

15 Compensation to alien nonresident dependents of the United
16 States shall be the same in amount as provided for resident
17 dependents, except that alien nonresident dependents in any foreign
18 country shall be limited to the surviving spouse or minor children
19 or both surviving spouse and minor children.

20 SECTION 16. AMENDATORY 85 O.S. 2001, Section 3.4, is
21 amended to read as follows:

22 Section 3.4 A. Unless a single-incident injury either renders
23 the employee physically or mentally unable to do so, the employee
24 shall report the injury to the employer on a form prescribed or

1 approved by the Workers' Compensation Commission and to a person or
2 at a place specified by the employer, and if not reported in writing
3 within ten (10) business days of the date of the injury, the
4 employer shall not be responsible for disability, medical or other
5 benefits. All reporting procedures shall be reasonable and shall
6 afford each employee reasonable notice of the reporting
7 requirements. Furthermore, any signed statement by an employee that
8 an injury or illness was not work-related shall serve as an absolute
9 bar against any future claim of workers' compensation for that
10 injury or illness. If a claim is found to be noncompensable due to
11 late filing of notice of injury, or for a prior statement having
12 been signed by the employee indicating that the injury or illness
13 was not work-related, there shall be no further remedy for the
14 employee outside of this title.

15 B. Upon the filing of an employer's report of injury, the
16 Workers' Compensation Commission is authorized and directed to
17 promulgate appropriate rules to establish and implement, for claims
18 with respect to injuries occurring on or after November 1, 2010, a
19 preliminary conference procedure designed to accomplish the
20 following objectives:

21 1. To provide the claimant an opportunity to confer with a
22 counselor on the staff of the Commission to be advised of the rights
23 of the claimant under this act. The conference may be held at the
24

1 Career Tech center nearest to the accident or the residence of the
2 claimant;

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

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

7 4. a. To achieve compromise settlements entered into at or
8 as a result of the preliminary conference and
9 facilitating the filing of those joint petition
10 settlements entered into pursuant to this act.

11 b. The purpose and intent of this section is to affirm
12 the duty of the Commission to provide assistance,
13 thereby reducing litigation and workers' compensation
14 costs.

15 C. 1. All claims for any compensation or benefits under the
16 Workers' Compensation Act shall be commenced with the filing of a
17 notice of injury with the Administrator. All claims filed for
18 workers' compensation benefits shall contain a statement that all
19 matters stated therein are true and accurate, and shall be signed by
20 the claimant and the claimant's agent, if any. Any person who signs
21 this statement or causes another to sign this statement knowing the
22 statement to be false shall be guilty of perjury. An individual who
23 signs on behalf of a claimant may be presumed to have the
24 authorization of the claimant and to be acting at the claimant's

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

12 2. All matters pertaining to such claims shall be presented to
13 the Administrator until such time as the Administrator is notified
14 in writing by a party that there is a controverted issue that cannot
15 be resolved by the parties or that the parties have received an
16 agreed final order from the ~~Court~~ Commission. The Administrator
17 shall, within seven (7) days of the receipt of such notification,
18 set the matter for hearing at the earliest available time to be
19 heard by the ~~Court~~ Commission in the appropriate judicial district
20 as provided in Section 3.5 of this title. ~~The Administrator shall~~
21 ~~assign a member of the Court to hear a docket in each judicial~~
22 ~~district of the state at least once each calendar month when there~~
23 ~~has been a request for a hearing in the judicial district. The~~
24 ~~Administrator shall assign judges to the state judicial districts on~~

1 ~~a rotating basis for the purpose of holding prehearing conferences~~
2 ~~and settlement conferences and hearing cases. At the request of~~
3 ~~either party, a prehearing conference shall be held before the~~
4 ~~member of the Court assigned to the case within forty five (45) days~~
5 ~~of the filing of a claimant's request for a hearing. The purpose of~~
6 ~~the prehearing conference shall be to mediate and encourage~~
7 ~~settlement of the case or determine issues in dispute.~~

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

23 ~~4. 3.~~ The Court Commission shall be vested with jurisdiction
24 over all claims filed pursuant to the Workers' Compensation Act.

1 The ~~Court~~ Commission shall determine the lawfulness of any claim for
2 compensation under the Workers' Compensation Act based on the weight
3 of evidence; provided, however, any claim, and subsequent
4 disability, that has as its source a physical condition resulting
5 from incremental damage or injury or a gradual deterioration of
6 physical health, which is caused by a condition arising out of and
7 in the course of employment, must be proven by a preponderance of
8 the evidence presented to the ~~Court~~ Commission.

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

17 E. 1. The Workers' Compensation Commission shall be bound by
18 the Oklahoma Rules of Evidence or federal Daubert Guidelines, or
19 both Oklahoma Rules of Evidence and federal Daubert Guidelines. If
20 there is a further question of evidence or procedure, Title 12 of
21 the Oklahoma Statutes shall be used.

22 2. When deciding any issue, administrative law judges and the
23 Commission shall determine, on the basis of the record as a whole,
24

1 whether the party having the burden of proof on the issue has
2 established it by a preponderance of evidence.

3 F. Hearings shall be open to the public and shall be
4 stenographically reported or recorded in any other accurate and
5 practicable manner. The Commission is authorized to contract for
6 the reporting of the hearings.

7 G. 1. a. All oral evidence or documentary evidence shall be
8 presented to the designated representative of the
9 Commission at the initial hearing on a controverted
10 claim, which evidence shall be stenographically
11 reported or recorded in any other accurate and
12 practicable manner.

13 b. Each party shall present all evidence at the initial
14 hearing.

15 2. a. Any party proposing to introduce medical reports or
16 testimony of physicians at the hearing of a
17 controverted claim shall, as a condition precedent to
18 the right to do so, furnish to the opposing party and
19 to the Commission copies of the written reports or
20 depositions of the physicians of their findings and
21 opinions at least twenty (20) days prior to the date
22 of the hearing. However, if no written reports or
23 depositions are available to a party, then the party
24 shall, in lieu of furnishing the report or deposition,

1 notify in writing the opposing party and the
2 Commission of the name and address of the physicians
3 proposed to be used as witnesses at least twenty (20)
4 days prior to the hearing and the substance of their
5 anticipated testimony.

6 b. If the opposing party desires to cross-examine the
7 physician, the opposing party shall notify the party
8 submitting a medical report as soon as practicable but
9 no less than ten (10) days prior to the scheduled
10 hearing, in order that the party submitting a medical
11 report may make every effort to have the physician
12 present for the hearing.

13 3. A party failing to observe the requirements of this
14 subsection may not be allowed to introduce medical reports or
15 testimony of physicians at a hearing, except at the discretion of
16 the hearing officer or the Commission.

17 4. Medical reports or depositions shall only be allowed to
18 assist the administrative law judge in determining compensability of
19 the claim.

20 SECTION 17. AMENDATORY 85 O.S. 2001, Section 3.6, is
21 amended to read as follows:

22 Section 3.6 A. All the evidence pertaining to each case,
23 except upon agreed orders, shall, insofar as may be possible, be
24 heard by the judge initially assigned to the case. Upon the

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

1 of the ~~Court~~ Court Commission making an award to a claimant is appealed by
2 the employer or the insurance carrier, interest shall be allowed on
3 the accrued amounts of the award due from the date the award was
4 filed, if the award is not modified or vacated on appeal.

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

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

1 Court may hear appeals and modify, reverse, remand for rehearing, or
2 set aside the order or award, upon any of the following grounds, and
3 no other, that the:

4 1. Commission acted without or in excess of its powers;

5 2. Order or award was procured by fraud; or

6 3. Order or award was against the clear weight of the evidence
7 of record.

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

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

1 manner and shall have precedence over all other civil cases in the
2 Supreme Court, except preferred Corporation Commission appeals. The
3 Supreme Court shall require the appealing party to file within
4 forty-five (45) days from the date of the filing of an appeal or an
5 order appealed from, a transcript of the record of the proceedings
6 before the Workers' Compensation ~~Court~~ Commission, or upon
7 application and for good cause shown, the Supreme Court may extend
8 the time for filing said transcript of the record for a period of
9 time not to exceed ninety (90) days from said date, and such action
10 shall be subject to the law and practice applicable to other civil
11 actions cognizable in said Supreme Court. The Commission or Court
12 whose action was appealed shall enter any order directed by the
13 Supreme Court under the final determination.

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

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

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

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

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

11 SECTION 18. AMENDATORY 85 O.S. 2001, Section 3.7, is
12 amended to read as follows:

13 Section 3.7 The Administrator shall have the following powers
14 and duties:

15 1. To ~~hear and approve~~ accept and record settlements ~~pursuant~~
16 ~~to direction by the judges of the Court;~~

17 2. To review and approve "own-risk" applications and group
18 Self-insurance associations applications;

19 3. To monitor "own-risk", self-insurer and group self-insurance
20 programs in accordance with the rules of the ~~Court~~ Commission;

21 4. To establish a toll free telephone number in order to
22 provide information and answer questions about the ~~Court~~ Commission;

23 5. To hear and determine claims concerning disputed medical
24 bills;

1 6. To promulgate necessary rules subject to the approval of the
2 presiding judge; and

3 7. Such other duties and responsibilities authorized by law or
4 as the judges of the Court Commission may prescribe;

5 ~~8. To adopt rules which require every insurance company, the
6 State Insurance Fund and every self insurer authorized to transact
7 workers' compensation insurance in this state to report to the
8 Administrator its statistical experience and its experience
9 regarding the utilization of independent medical examiners in
10 permanent disability cases during the period from July 1, 1995, to
11 July 1, 1997. The information regarding utilization of independent
12 medical examiners shall include, but not be limited to, the number
13 of independent medical examiner appointments, the parties requesting
14 the independent medical examiner, the doctors participating and the
15 number of evaluations done by each, a summary of awards and
16 settlements, medical costs, and duration of temporary total
17 disability. The Administrator shall compile the information
18 collected and present a report of his findings to the President Pro
19 Tempore of the Senate, the Speaker of the House of Representatives,
20 the Governor, the Advisory Council on Workers' Compensation and the
21 Physician Advisory Committee; and~~

22 ~~9. To adopt rules which impose an administrative penalty of One
23 Hundred Dollars (\$100.00) for each day an insurance company or self-~~

1 ~~insurer fails to provide the information required pursuant to~~
2 ~~paragraph 8 of this section.~~

3 SECTION 19. AMENDATORY 85 O.S. 2001, Section 3.8, is
4 amended to read as follows:

5 Section 3.8 A. No employee of the ~~Administrator~~ Court of
6 Existing Claims or Workers' Compensation Commission shall be
7 competent to testify on any matter before a court concerning any
8 information he has received through the performance of his duties
9 under the provisions of the Workers' Compensation Act.

10 B. The ~~Administrator~~ Court of Existing Claims or Workers'
11 Compensation Commission and ~~his~~ its employees shall not solicit
12 employment for any attorney or physician nor shall they recommend or
13 refer any claimant or employer to an attorney or physician. If the
14 ~~Administrator~~ Court of Existing Claims or Workers' Compensation
15 Commission or any of ~~his~~ its employees makes such a solicitation,
16 recommendation or reference, that person, upon conviction, shall be
17 guilty of a misdemeanor punishable, for each offense, by a fine of
18 not more than One Thousand Dollars (\$1,000.00) or by imprisonment
19 not to exceed one (1) year, or by both such fine and imprisonment.
20 The Administrator shall immediately terminate the employment of any
21 such employee who is guilty of such solicitation, recommendation or
22 reference. ~~An Administrator~~ Any Court of Existing Claims or
23 Workers' Compensation Commission employee guilty of such

24

1 solicitation, recommendation or reference shall be subject to
2 removal from office.

3 C. No judge of the Workers' Compensation Commission or Court of
4 Existing Claims shall engage in any ex parte communication with any
5 party to an action pending before the Commission or Court of
6 Existing Claims or with any medical provider regarding the merits of
7 a specific matter pending before the judge for resolution. Any
8 violation of this provision shall subject the judge to
9 disqualification from the action or matter upon presentation of an
10 application for disqualification.

11 SECTION 20. AMENDATORY 85 O.S. 2001, Section 3.10, as
12 amended by Section 12, Chapter 1, 1st Extraordinary Session, O.S.L.
13 2005 (85 O.S. Supp. 2009, Section 3.10), is amended to read as
14 follows:

15 Section 3.10 A. Mediation shall be available to any party to a
16 claim arising pursuant to the provisions of the Workers'
17 Compensation Act, subject to the limitation provisions of Section
18 14.3 of this title and except for claims against the Multiple Injury
19 Trust Fund.

20 B. Unless ordered by the Workers' Compensation Commission or
21 Court of Existing Claims, mediation shall be voluntary, and shall
22 not be conducted without the consent of both parties.

23
24

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

4 2. A request for mediation or consent to mediate does not
5 invoke the jurisdiction of the Commission or Court of Existing
6 Claims.

7 C. The Commission or Court of Existing Claims may order
8 mediation upon request of either party or in any case in which the
9 Commission or Court of Existing Claims believes that mediation may
10 be beneficial to a prompt and efficient resolution of the claim.

11 D. 1. A request for mediation shall be made in writing to the
12 Administrator.

13 2. The party requesting mediation shall inform the
14 Administrator of the issues in dispute, and the name, address, and
15 telephone number of the opposing party or insurance company, if
16 known. If the claim involves a certified workplace medical plan,
17 the requesting party shall provide the name and phone number of the
18 contact person for the plan.

19 E. Once a request has been made, the Administrator shall
20 contact the opposing party. Upon order of the Commission or Court
21 of Existing Claims, the parties shall complete mediation within
22 thirty (30) days of the notification.

23 F. If both parties agree to mediation, they shall enter into a
24 written consent to mediate on a form provided by the Administrator.

1 The form shall contain a statement informing the parties of their
2 rights and obligations and of the confidentiality of the
3 proceedings. This written consent shall be signed by both parties
4 to the claim and shall be submitted to the Administrator before the
5 selection of a mediator is made.

6 G. Mediation is confidential and no part of the proceeding
7 shall be considered a matter of public record. Recommendations of
8 the mediator are not binding unless the parties enter into a
9 settlement agreement. If an agreement is not reached, the results
10 and statements made during the mediation are not admissible in any
11 following proceeding.

12 H. Upon receipt of the consent form or upon order of the
13 Commission or Court of Existing Claims, the Administrator shall
14 provide the parties with a list of certified mediators. Both
15 parties shall agree to a mediator. If the parties are unable to
16 agree, the Administrator shall assign a certified mediator.

17 I. The Workers' Compensation Commission or Court of Existing
18 Claims shall be responsible for certifying those persons who are
19 eligible and qualified to serve as mediators. An individual may be
20 certified as a mediator if; the applicant meets the qualifications
21 as required by the Commission or Court of Existing Claims.

22 J. Each certified mediator shall remain on the list for five
23 (5) years, unless removed. Mediators shall be required to complete
24 at least six (6) hours of continuing education per two-year period

1 in the areas of mediation and workers' compensation. Proof of
2 compliance with this requirement shall be submitted to the
3 Administrator. This continuing education requirement shall be in
4 addition to any other such general requirement which may be required
5 by the Oklahoma State Bar Association. Cost of continuing education
6 is to be borne by the applicant.

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

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

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

20 Section 4. From and after the passage and effective date of the
21 Workers' Compensation Act, all the provisions of the Workers'
22 Compensation Act of this state, Sections 1 et seq. of this title,
23 shall apply to employers and to employees, irrespective of where
24 accident resulting in injury may occur, whether within or without

1 the territorial limits of the State of Oklahoma, when the contract
2 of employment was entered into within the State of Oklahoma, and the
3 said employee was acting in the course of such employment and
4 performing work outside the territorial limits of this state under
5 direction of such employer. In such case the injured employee may
6 elect to commence and maintain his action for benefits and
7 compensation in the State of Oklahoma as provided in the Workers'
8 Compensation Act and the Commission or Court of Existing Claims is
9 hereby vested with jurisdiction thereof as fully as if such injury
10 or accident had occurred within this state. Such right of election
11 shall, however, not preclude the injured employee from recovering
12 any benefits or compensation provided under any law of the state
13 where injury occurred, and if such action be so commenced in such
14 other state, or under the law of another state, and is prosecuted to
15 final determination, such employee shall thereupon be precluded from
16 his right of action under the Workers' Compensation Act of this
17 state. Provided, the injured employee may exercise his right of
18 election to file his claim or commence his said action or proceeding
19 in the State of Oklahoma, at any time prior to final adjudication or
20 determination of his rights under the laws of another state, and the
21 fact that he shall have been furnished or provided with medical,
22 surgical, hospital or other treatment care, or paid temporary
23 disability compensation in such other state, or under the laws
24 thereof, shall not preclude such injured employee from recovering

1 further benefits and compensation under the Workers' Compensation
2 Act of this state. Provided, further, no award made by the
3 Commission or Court of Existing Claims of this state shall include
4 any compensation paid by the employer or insurance carrier before
5 commencement of the action or proceeding in this state and any
6 payments so made shall be treated as compensation voluntarily paid
7 and credit therefor shall be allowed.

8 The State of Oklahoma accepts the provisions of the Acts of
9 Congress designated as Public Law No. 814, 49 Statutes 1938, and
10 hereby extends the territorial jurisdiction of the Workers'
11 Compensation Act of this state to all lands and premises owned or
12 held by the Government of the United States of America, by deed or
13 act of cession, by purchase or otherwise, which are within the
14 exterior boundaries of this state, and to all purchases, buildings,
15 constructions, improvements or property belonging to the Government
16 of the United States of America, which are within the exterior
17 boundaries of this state, in the same manner and to the same extent
18 as if said premises were under the exclusive jurisdiction of the
19 State of Oklahoma, subject only to the limitations placed thereon by
20 the Act of Congress.

21 SECTION 22. AMENDATORY 85 O.S. 2001, Section 11, as
22 amended by Section 77, Chapter 264, O.S.L. 2006 (85 O.S. Supp. 2009,
23 Section 11), is amended to read as follows:

24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 Section 12. The liability prescribed in Section 11 of this
4 title shall be exclusive and in place of all other liability of the
5 employer and any of his employees, any architect, professional
6 engineer, or land surveyor retained to perform professional services
7 on a construction project, at common law or otherwise, for such
8 injury, loss of services, or death, to the employee, or the spouse,
9 personal representative, parents, or dependents of the employee, or
10 any other person. If an employer subject to the Workers'
11 Compensation Act has failed to secure the payment of compensation
12 for his injured employee, as provided for in this title, an injured
13 employee, or his legal representatives if death results from the
14 injury, may maintain an action in the courts for damages on account
15 of such injury, and in such action the defendant may not plead or
16 prove as a defense that the injury was caused by the negligence of a
17 fellow servant, or that the employee assumed the risk of his
18 employment, or that the injury was due to the contributory
19 negligence of the employee; provided:

20 ~~(i)~~ 1. The immunity created by the provisions of this section
21 shall not extend to action by an employee, or the spouse, personal
22 representative, parents, or dependents of the employee, or any other
23 person against another employer, or its employees, on the same job
24 as the injured or deceased worker where such other employer does not

1 stand in the position of an intermediate or principal employer to
2 the immediate employer of the injured or deceased worker;

3 ~~(ii)~~ 2. The immunity created by the provisions of this section
4 shall not extend to action against another employer, or its
5 employees, on the same job as the injured or deceased worker even
6 though such other employer may be considered as standing in the
7 position of a special master of a loaned servant where such special
8 master neither is the immediate employer of the injured or deceased
9 worker nor stands in the position of an intermediate or principal
10 employer to the immediate employer of the injured or deceased
11 worker; and

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

18 ~~(iv)~~ For the purpose of extending the immunity of this section,
19 any architect, professional engineer, or land surveyor shall be
20 deemed an intermediate or principal employer for services performed
21 at or on the site of a construction project, but this immunity shall
22 not extend to the negligent preparation of design plans and
23 specifications.

24

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

3 SECTION 24. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 12.1 of Title 85, unless there
5 is created a duplication in numbering, reads as follows:

6 A. 1. Any employer required to secure the payment of
7 compensation under this act who fails to secure compensation shall
8 be subject to a fine of up to Ten Thousand Dollars (\$10,000.00) as
9 determined by the Workers' Compensation Commission payable to the
10 Death and Permanent Total Disability Trust Fund or be guilty of a
11 misdemeanor and shall be punished by a fine not to exceed Five
12 Hundred Dollars (\$500.00), or by imprisonment in the county jail for
13 a term not to exceed one (1) year, or by both fine and imprisonment.

14 2. This subsection shall not affect any other liability of the
15 employer under this act.

16 B. 1. Whenever the Commission has reason to believe that an
17 employer required to secure the payment of compensation under this
18 act has failed to do so, the Commission shall serve upon the
19 employer a proposed order declaring the employer to be in violation
20 of this act and containing the amount, if any, of the civil penalty
21 to be assessed against the employer pursuant to paragraph 5 of this
22 subsection.

23 2. a. An employer may contest a proposed order of the
24 Commission issued pursuant to paragraph 1 of this

1 subsection by filing with the Commission, within
2 twenty (20) days of receipt of the proposed order, a
3 written request for a hearing.

4 b. Such a request for a hearing need not be in any
5 particular form but shall specify the grounds upon
6 which the person contests the proposed order, the
7 proposed assessment, or both.

8 c. If a written request for hearing is not filed with the
9 Commission within this time, the proposed order, the
10 proposed penalty, or both, shall be a final order of
11 the Commission and shall not be subject to further
12 review by any court.

13 d. A proposed order by the Commission pursuant to this
14 section is prima facie correct, and the burden is upon
15 the employer to prove that the proposed order is
16 incorrect.

17 3. a. If the employer alleges that a carrier has contracted
18 to provide the employer workers' compensation
19 insurance coverage for the period in question, the
20 employer shall include the allegation in its request
21 for hearing and shall name the carrier.

22 b. The Commission shall promptly notify the carrier of
23 the allegation of the employer and of the date of
24 hearing.

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

6 4. The Commission may assess a fine against any employer who
7 fails to secure the payment of compensation in an amount up to One
8 Thousand Dollars (\$1,000.00) per day of violation payable to the
9 Fund.

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

19 SECTION 25. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 12.2 of Title 85, unless there
21 is created a duplication in numbering, reads as follows:

22 A. Every employer who has secured compensation under the
23 provisions of this act shall keep posted in a conspicuous place in
24 and about the place of business of the employer, typewritten or

1 printed notices in accordance with a form prescribed by the Workers'
2 Compensation Commission. The notices shall state that the employer
3 has secured the payment of compensation in accordance with the
4 provisions of this act.

5 B. The notices shall contain the name and address of the
6 carrier, if any, with whom the employer has secured payment of
7 compensation.

8 SECTION 26. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 13.1 of Title 85, unless there
10 is created a duplication in numbering, reads as follows:

11 The employer shall not be liable for any of the payments
12 provided for by this act if the Workers' Compensation Commission
13 determines that the injury is not compensable.

14 SECTION 27. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 13.2 of Title 85, unless there
16 is created a duplication in numbering, reads as follows:

17 The Workers' Compensation Commission is authorized to establish
18 rules and regulations, including schedules of maximum allowable fees
19 for medical services rendered with respect to compensable injuries,
20 for the purpose of controlling the cost of medical and hospital
21 services and supplies.

22 SECTION 28. AMENDATORY 85 O.S. 2001, Section 14, as last
23 amended by Section 15, Chapter 1, 1st Extraordinary Session, O.S.L.

24

1 2005 (85 O.S. Supp. 2009, Section 14), is amended to read as
2 follows:

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

13 2. The treating physician who renders treatment to the employee
14 at any time shall promptly notify the employee and employer or the
15 employer's insurer in writing after the employee has reached maximum
16 medical improvement and is released from active medical care. If
17 the employee is capable of returning to modified light duty work,
18 the treating physician shall promptly notify the employee and the
19 employer or the employer's insurer thereof in writing and shall also
20 specify what restrictions, if any, must be followed by the employer
21 in order to return the employee to work. In the event the treating
22 physician provides such notification to the employer's insurer, the
23 insurer shall promptly notify the employer. If an injured employee,
24 only partially disabled, refuses employment consistent with any

1 restrictions ordered by the treating physician, the employee shall
2 not be entitled to temporary benefits during the continuance of such
3 refusal unless in the opinion of the treating physician such refusal
4 was justifiable; provided, before compensation may be denied, the
5 employee shall be served with a notice setting forth the
6 consequences of the refusal of employment and that temporary
7 benefits will be discontinued fifteen (15) days after the date of
8 such notice. The employee, upon receipt of such notice, may seek a
9 hearing before the Workers' Compensation Commission or Court of
10 Existing Claims depending upon the date of the injury. The
11 Commission or Court of Existing Claims shall grant an expedited
12 hearing within five (5) days of any such application by the
13 employee. At such hearing, the Commission or Court of Existing
14 Claims may enter an order allowing the discontinuation of such
15 benefits, denying the discontinuance of such benefits or temporarily
16 denying the discontinuance of such benefits pending further hearing.
17 An order denying or temporarily denying the discontinuation of
18 temporary benefits shall be based on a finding by the Commission or
19 Court of Existing Claims that probable cause exists to believe the
20 work does not meet the conditions of the treating physician's
21 restrictions or that the restrictions are unreasonable.

22 B. The employer's selected physician shall have the right and
23 responsibility to treat the injured employee. A report of such
24

1 examination shall be furnished to the employer and the injured
2 employee within seven (7) days after such examination.

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

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

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

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

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

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

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

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

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

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

23 4. An invoice for the actual cost to the hospital of an
24 implantable device shall be adjusted by the hospital to reflect all

1 applicable discounts, rebates, considerations and product
2 replacement programs and must be provided to the payor by the
3 hospital as a condition of payment for the implantable device.

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

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

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

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

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

1 Court of Existing Claims shall appoint a case manager from a list of
2 qualified case managers developed, maintained and periodically
3 reviewed by the Commission or Court of Existing Claims.

4 2. The reasonable and customary charges of a medical case
5 manager appointed by the Commission or Court of Existing Claims
6 shall be borne by the employer.

7 3. Except in cases covered by a certified workplace medical
8 plan, upon application of the employee, the Commission or Court of
9 Existing Claims, depending upon the date of the injury, may order
10 the employer to provide one change of case manager if the employee
11 did not make the initial selection of the case manager.

12 I. Diagnostic tests shall not be repeated sooner than six (6)
13 months from the date of the test unless agreed to by the parties or
14 ordered by the Commission or Court of Existing Claims, depending
15 upon the date of the injury.

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

1 SECTION 29. AMENDATORY 85 O.S. 2001, Section 14.2, as
2 amended by Section 16, Chapter 1, 1st Extraordinary Session, O.S.L.
3 2005 (85 O.S. Supp. 2009, Section 14.2), is amended to read as
4 follows:

5 Section 14.2 A. If a self-insured employer, group self-
6 insurance association plan, an employer's workers' compensation
7 insurance carrier or an insured, which shall include any member of
8 an approved group self-insured association, policyholder or public
9 entity, regardless of whether such entity is insured by CompSource,
10 has contracted with a workplace medical plan that is certified by
11 the State Commissioner of Health as provided in Section 14.3 of this
12 title, the employer shall select for the injured employee a the
13 treating physician from the physicians listed within the network of
14 the certified workplace medical plan. The claimant may apply to the
15 certified workplace medical plan for a one-time change of physician
16 to another appropriate physician within the network of the certified
17 workplace medical plan by utilizing the dispute resolution process
18 set out in the certified workplace medical plan on file with the
19 State Department of Health.

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

23 B. The provisions of this section shall not preclude:
24

1 1. An employee, who has exhausted the dispute resolution
2 process of the certified workplace medical plan, from petitioning
3 the Workers' Compensation Commission or Court of Existing Claims,
4 depending upon the date of injury, or the Administrator of the
5 Workers' Compensation Commission or Court of Existing Claims for a
6 change of treating physician within the certified workplace medical
7 plan or, if a physician who is qualified to treat the employee's
8 injuries is not available within the plan, for a change of physician
9 outside the plan, if the physician agrees to comply with all the
10 rules, terms and conditions of the certified workplace medical plan;
11 or

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

14 C. The provisions of this section shall not apply to treatment
15 received by an employee for an accepted accidental injury or
16 occupational disease for which treatment began prior to November 4,
17 1994.

18 SECTION 30. AMENDATORY 85 O.S. 2001, Section 14.3, as
19 amended by Section 17, Chapter 1, 1st Extraordinary Session, O.S.L.
20 2005 (85 O.S. Supp. 2009, Section 14.3), is amended to read as
21 follows:

22 Section 14.3 A. Any person or entity may make written
23 application to the Commissioner of Health of the State of Oklahoma
24 to have a workplace medical plan certified that provides management

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

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

15 2. A description of the places and manner of providing services
16 under the plan.

17 B. 1. The Commissioner shall not certify a plan unless the
18 Commissioner finds that the plan:

19 a. proposes to provide quality services for all medical
20 services which:

21 (1) may be required by the Workers' Compensation Act
22 in a manner that is timely, effective and
23 convenient for the employee, and
24

1 (2) utilizes medical treatment guidelines and
2 protocols substantially similar to those
3 established for use by medical service providers,
4 which have been recommended by the Physician
5 Advisory Committee and adopted by the
6 Administrator pursuant to subsection B of Section
7 201.1 of this title. If the Administrator has
8 not adopted medical treatment guidelines and
9 protocols, the Commissioner may certify a plan
10 that utilizes medical guidelines and protocols
11 established by the plan if, in the discretion of
12 the Commissioner, the guidelines and protocols
13 are reasonable and will carry out the intent of
14 the Workers' Compensation Act. Certified plans
15 must utilize medical treatment guidelines and
16 protocols substantially similar to those adopted
17 by the Administrator pursuant to Section 201.1 of
18 this title, as such guidelines and protocols
19 become adopted,

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

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

- 1 d. provides adequate methods of peer review, utilization
2 review and dispute resolution to prevent
3 inappropriate, excessive or medically unnecessary
4 treatment, and excludes participation in the plan by
5 those providers who violate these treatment standards,
- 6 e. requires the dispute resolution procedure of the plan
7 to include a requirement that disputes on an issue,
8 including a subsequent change of physician as
9 described in the provisions of Section 14 of this
10 title and this section, related to medical care under
11 the plan be attempted to be resolved within ten (10)
12 days of the time the dispute arises and if not
13 resolved within ten (10) days, the employee may pursue
14 remedies in the Workers' Compensation Commission or
15 Court of Existing Claims, depending upon the date of
16 injury,
- 17 f. provides aggressive case management for injured
18 employees and a program for early return to work,
- 19 g. provides workplace health and safety consultative
20 services,
- 21 h. provides a timely and accurate method of reporting to
22 the Commissioner necessary information regarding
23 medical service costs and utilization to enable the
24

1 Commissioner to determine the effectiveness of the
2 plan,

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

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

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

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

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

17 E. An employee shall ~~exhaust~~ obtain written confirmation from
18 the certified workplace medical plan that the dispute resolution
19 procedure of the certified workplace medical plan has been exhausted
20 before seeking legal relief on an issue related to medical care
21 under the plan, including a subsequent change of physician as
22 described in the provisions of Section 14 of this title and this
23 section, provided the dispute resolution procedure shall create a
24 process which shall attempt to resolve the dispute within ten (10)

1 days of the time the dispute arises and if not resolved within ten
2 (10) days, the employee may pursue remedies in the Workers'
3 Compensation Commission or Court of Existing Claims, depending upon
4 the date of injury.

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

13 The Commission shall not alter any course of treatment under a
14 certified workplace medical plan, unless the Chief Medical Officer
15 finds clear and convincing evidence that the treatment offered under
16 the Plan is contrary to the nationally recognized treatment
17 guidelines adopted by the Plan.

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

23 G. On or before November 1, 2005, the Commissioner of Health
24 shall implement a site visit protocol for employees of the State

1 Department of Health to perform an inspection of a certified
2 workplace medical plan to ensure that medical services to a claimant
3 and the medical management of the claimant's needs are adequately
4 met in a timely manner and that the certified workplace medical plan
5 is complying with all other applicable provisions of this act and
6 the rules of the State Department of Health. Such protocol shall
7 include, but not be limited to:

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

12 2. A site visit shall conclude with a determination that a
13 certified workplace medical plan is or is not operating in
14 accordance with its latest application to the State Department of
15 Health;

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

17 a. timely and effective medical services are available
18 with reasonable geographic convenience,

19 b. use of appropriate treatment guidelines and protocols,
20 and

21 c. effective programs for utilization review, case
22 management, grievances, and dispute resolution;

23 4. Performance of a site visit shall include:

24 a. inspection of organizational documentation,

- b. inspection of systems documentation and processes,
- c. random or systematic sampling of closed and open case management cases (files),
- d. random or systematic sampling, or a one hundred percent (100%) inspection of all dispute resolution, grievance, and/or Department of Health request for assistance files,
- e. workplace medical plan employee and management interviews, as appropriate;

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

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

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

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

- a. One Thousand Five Hundred Dollars (\$1,500.00) for an initial, annual site visit,
- b. One Thousand Dollars (\$1,000.00) if a follow-up visit is performed,
- c. separate from the once in five (5) years certification application fee, and
- d. not charged if more than two site visits occur in a twelve-month period; and

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

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

I. All state agencies shall adopt and implement the certified workplace medical plan of their insurer's choice within one (1) year of November 1, 2010.

1 SECTION 31. AMENDATORY 85 O.S. 2001, Section 15, is
2 amended to read as follows:

3 Section 15. ~~Where~~ If a compensable injury results in the loss
4 of one or more eyes, teeth, or limbs of the body, the employer shall
5 furnish such prosthetic devices as may be necessary as determined by
6 the Commission or Court of Existing Claims, depending upon the date
7 of injury, in the treatment and rehabilitation of the injured
8 ~~workman~~ employee. ~~Where a workman~~ If an employee sustains a
9 compensable injury, arising out of and in the course of ~~his~~ their
10 employment, which results in damage to a prosthetic device with
11 which such ~~workman~~ employee is equipped, the employer shall repair
12 or replace such device.

13 SECTION 32. AMENDATORY 85 O.S. 2001, Section 16, as
14 amended by Section 18, Chapter 1, 1st Extraordinary Session, O.S.L.
15 2005 (85 O.S. Supp. 2009, Section 16), is amended to read as
16 follows:

17 Section 16. A. The Workers' Compensation Commission shall hire
18 a Vocational Rehabilitation Director to oversee the vocational
19 rehabilitation program of the Commission. The Vocational
20 Rehabilitation Director shall have not less than a masters degree in
21 rehabilitation counseling and at least ten (10) years of experience
22 in rehabilitation of injured workers.

23 B. The Vocational Rehabilitation Director shall help injured
24 workers return to the work force through the encouragement of light-

1 duty work or retraining. Upon the request of either party, the
2 Vocational Rehabilitation Director shall determine if it is
3 appropriate for a claimant to receive vocational rehabilitation
4 training or services, and will oversee such training. If
5 appropriate, the Vocational Rehabilitation Director shall issue
6 administrative orders, including, but not limited to, an order for a
7 vocational rehabilitation evaluation for any injured employee unable
8 to work for at least ninety (90) days. In addition, the Vocational
9 Rehabilitation Director may assign injured workers to vocational
10 rehabilitation counselors for coordination of recommended services.
11 The cost of the services shall be paid by the employer. If
12 possible, vocational rehabilitation services shall begin
13 concurrently with medical treatment, while the injured employee is
14 temporarily totally disabled and receiving benefits. The Director
15 may order an evaluation for any injured worker receiving medical
16 case management services. All such administrative orders are
17 subject to appeal to the full Commission.

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

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

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

19 ~~B.~~ D. Vocational rehabilitation services or training shall not
20 extend for a period of more than ~~fifty two (52)~~ one hundred four
21 (104) weeks. This period may be extended for an additional fifty-
22 two (52) weeks or portion thereof by special order of the Commission
23 or Court of Existing Claims, after affording the interested parties
24 an opportunity to be heard. A request for vocational rehabilitation

1 services or training may be filed with the Administrator by an
2 interested party at any time after the date of injury but not later
3 than sixty (60) days from the date of the final determination that
4 permanent partial disability benefits are payable to the employee.
5 Vocational rehabilitation services or training shall be payable only
6 to the appropriate agency, institution or facility performing the
7 rehabilitation and shall not be payable as a separate item in any
8 settlement, order or award to the claimant. Nor shall the value of
9 such vocational rehabilitation services or training be included in
10 any calculation for legal fees.

11 ~~C.~~ E. Where rehabilitation requires residence at or near the
12 facility or institution which is away from the employee's customary
13 residence, reasonable cost of the employee's board, lodging, travel,
14 tuition, books and necessary equipment in training shall be paid for
15 by the insurer in addition to weekly compensation benefits to which
16 the employee is otherwise entitled under the Workers' Compensation
17 Act.

18 ~~D.~~ F. During the period when an employee is actively and in
19 good faith being evaluated or participating in a retraining or job
20 placement program for purposes of evaluating permanent total
21 disability status, the employee shall be entitled to receive
22 benefits at the same rate as the employee's temporary total
23 disability benefits computed pursuant to Section 22 of this title
24 for a period of ~~fifty two (52)~~ one hundred four (104) weeks which

1 may be extended by the Commission or Court of Existing Claims for up
2 to a maximum of an additional fifty-two (52) weeks. No attorney
3 fees shall be awarded or deducted from such benefits received during
4 this period. All tuition related to vocational rehabilitation
5 services shall be paid by the employer or the employer's insurer on
6 a periodic basis directly to the facility providing the vocational
7 rehabilitation services or training to the employee.

8 G. Any employer willing to provide on-the-job training to an
9 injured employee may opt out of workers' compensation insurance
10 while the employee is in such training.

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

14 SECTION 33. AMENDATORY 85 O.S. 2001, Section 17, as last
15 amended by Section 19, Chapter 1, 1st Extraordinary Session, O.S.L.
16 2005 (85 O.S. Supp. 2009, Section 17), is amended to read as
17 follows:

18 Section 17. A. 1. The determination of disability shall be
19 the responsibility of the Workers' Compensation Court of Existing
20 Claims. Any claim submitted by an employee for compensation for
21 permanent disability must be supported by competent medical
22 testimony which shall be supported by objective medical findings, as
23 defined in Section 3 of this title, and which shall include an
24 evaluation by the treating physician or an independent medical

1 examiner if there is no evaluation by the treating physician,
2 stating his or her opinion of the employee's percentage of permanent
3 impairment and whether or not the impairment is job-related and
4 caused by the accidental injury or occupational disease. A copy of
5 any written evaluation shall be sent to both parties within seven
6 (7) days of issuance. Medical opinions addressing compensability
7 and permanent impairment must be stated within a reasonable degree
8 of medical certainty. For purposes of this section, a physician
9 shall have the same meaning as defined in Section 14 of this title
10 and shall include a person licensed by another state who would be
11 qualified to be a licensed physician under the laws of this state.

12 2. Any party may object to the opinion of the treating
13 physician by giving written notice to all other parties and to the
14 Court of Existing Claims. Upon receipt of such notice, if the
15 parties fail to agree on the selection of an independent medical
16 examiner, the Court of Existing Claims shall randomly select an
17 independent medical examiner who shall be afforded a reasonable
18 opportunity to examine the employee together with all medical
19 records involved and any other medical data or evidence that the
20 independent medical examiner may consider to be relevant. The
21 independent medical examiner shall issue a verified written report
22 on a form provided by the Administrator to the Court of Existing
23 Claims stating his or her finding of the percentage of permanent
24

1 impairment of the employee and whether or not the impairment is job-
2 related and caused by the accidental injury or occupational disease.

3 a. There shall be a rebuttable presumption in favor of
4 the treating physician's opinions on the issue of
5 temporary disability, permanent disability, causation,
6 apportionment, rehabilitation or necessity of medical
7 treatment. Any determination of the existence or
8 extent of physical impairment shall be supported by
9 objective medical evidence, as defined in Section 3 of
10 this title.

11 b. The Independent Medical Examiner shall be allowed to
12 examine the claimant, receive any medical reports
13 submitted by the parties and review all medical
14 records of the claimant. If the Independent Medical
15 Examiner determines that the opinion of the treating
16 physician is supported by the objective medical
17 evidence, the Independent Medical Examiner shall
18 advise the Court of Existing Claims of the same. If
19 the Independent Medical Examiner determines that the
20 opinion of the treating physician is not supported by
21 objective medical evidence, the Independent Medical
22 Examiner shall advise the Court of Existing Claims of
23 the same and shall provide the Court of Existing
24 Claims with his or her own opinion. In cases in which

1 an independent medical examiner is appointed, the
2 Court of Existing Claims shall not consider the
3 opinion of the Independent Medical Examiner unless the
4 Independent Medical Examiner determines that the
5 opinion of the treating physician is not supported by
6 objective medical evidence, in which case the Court of
7 Existing Claims shall follow the opinion of the
8 Independent Medical Examiner, the opinion of the
9 treating physician or establish its own opinion within
10 the range of opinions of the treating physician and
11 the Independent Medical Examiner. If the Court of
12 Existing Claims does not follow the opinion of the
13 treating physician, the Court of Existing Claims shall
14 set out its reasons for deviating from the opinion of
15 the treating physician.

16 3. Any party may request the deposition testimony of the
17 treating physician or the Independent Medical Examiner providing a
18 written medical report on the issue of temporary disability,
19 permanent disability, causation, apportionment or rehabilitation.
20 The party requesting the deposition testimony of any such physician
21 shall be responsible for the reasonable charges of the physician for
22 such testimony, preparation time, and the expense of the deposition.

23 B. Upon receipt of an independent medical examiner's report,
24 any party shall have the right to object to the introduction into

1 evidence of the report. The objection must be made by giving
2 written notification to all parties and to the Court of Existing
3 Claims within ten (10) days after receipt of the report. The
4 Independent Medical Examiner shall then testify in person or by
5 deposition.

6 C. An independent medical examiner who is selected pursuant to
7 the provisions of this section shall be reimbursed for the review of
8 the medical records and any medical examination, reports and fees in
9 a reasonable and customary amount set by the Court of Existing
10 Claims, and these costs shall be borne by the party objecting to the
11 opinion of the treating physician unless the opinion of the
12 Independent Medical Examiner favors the objecting party in which
13 case the other party shall bear the costs.

14 D. 1. The Court of Existing Claims shall develop and implement
15 an independent medical examiner system by no later than July 1,
16 1995. The Court of Existing Claims shall create, maintain and
17 review a list of licensed physicians who shall serve as independent
18 medical examiners from a list of licensed physicians who have
19 completed such course study as the Administrator of the Workers'
20 Compensation Court of Existing Claims may require. Such courses
21 shall provide training to establish familiarity with the American
22 Medical Association's "Guides to the Evaluation of Permanent
23 Impairment", or alternative method or system of evaluating permanent
24 impairment, for the category of injury established by the

1 Administrator for which such physician desires to be an independent
2 medical examiner. The Court of Existing Claims shall, to the best
3 of its ability, include the most experienced and competent
4 physicians in the specific fields of expertise utilized most often
5 in the treatment of injured employees. The Court of Existing Claims
6 may remove an independent medical examiner from the list for cause.

7 2. An independent medical examiner in a case involving
8 permanent disability shall not be a treating physician of the
9 employee and shall not have treated the employee with respect to the
10 injury for which the claim is being made or the benefits are being
11 paid. Nothing in this subsection precludes the selection of a
12 health care provider authorized to receive reimbursement under
13 Section 14 of this title to be randomly selected to serve in the
14 capacity of an independent medical examiner.

15 3. The Court of Existing Claims shall randomly select an
16 independent medical examiner from the list of independent medical
17 examiners within fifteen (15) days when the employer or the employee
18 petitions the Court of Existing Claims for the selection of an
19 independent medical examiner on the grounds that the petitioner
20 disagrees with the findings of the treating physician. Whenever
21 possible, the Independent Medical Examiner shall be certified by a
22 recognized American medical specialty board in the area or areas
23 appropriate to the condition under review.

24

1 4. The Court of Existing Claims shall, to the best of its
2 ability, maintain a geographic balance of independent medical
3 examiners.

4 5. The treating physician is responsible for the expeditious
5 transmittal of the employee's medical records to the Independent
6 Medical Examiner. The parties are responsible for the expeditious
7 transmittal of prior Court of Existing Claims orders involving the
8 employee, and other pertinent information to the Independent Medical
9 Examiner.

10 6. The Independent Medical Examiner shall submit a verified
11 written report to the Court of Existing Claims as provided in
12 subsection A of this section and shall provide a copy of the report
13 to the parties. In the event the Independent Medical Examiner
14 determines that more medical treatment is necessary or in the event
15 the treating physician refuses to treat, the employer shall
16 designate a treating physician to provide the indicated treatment,
17 as provided in Section 14 of this title.

18 7. If the Independent Medical Examiner determines that the
19 employee is capable of returning to work and the claimant elects not
20 to do so, temporary total disability benefits shall cease. In any
21 case where the claimant contests the cessation of such benefits, the
22 Court of Existing Claims shall hear the dispute within thirty (30)
23 days after the filing of the employee's Motion to Set for Trial.
24 The trial shall not be delayed unless both parties agree.

1 8. Any independent medical examiner who is selected pursuant to
2 the provisions of this subsection shall be reimbursed for the
3 medical examination, reports and fees in a reasonable and customary
4 amount set by the Court of Existing Claims, and these costs shall be
5 borne by the employer.

6 9. The Court of Existing Claims, in consultation with the
7 Advisory Council on Workers' Compensation, shall create a review
8 process to oversee on a continuing basis the quality of performance
9 and the timeliness of the submission of medical findings by
10 independent medical examiners.

11 10. When the injured worker is released from treatment by the
12 treating physician for all body parts injured, the employer may
13 terminate temporary total disability by notifying the employee of
14 the termination. The employee is entitled to one objection under
15 this paragraph.

16 a. If an objection to the termination is filed by the
17 employee within twenty (20) days of receipt of the
18 notice of termination, then the Court of Existing
19 Claims shall appoint an independent medical examiner
20 to determine if further medical treatment is
21 reasonable and necessary. The Independent Medical
22 Examiner shall not provide treatment to the injured
23 worker. The employer shall bear the cost of the
24 independent medical examination.

1 b. An aggrieved party shall have ten (10) days from
2 receipt of the medical report of the Independent
3 Medical Examiner to file an objection. If an
4 objection is timely filed, the deposition of the
5 Independent Medical Examiner shall be taken and the
6 matter submitted to the Court of Existing Claims for a
7 final determination. The objecting party shall bear
8 the cost of deposition.

9 11. The Court of Existing Claims shall promulgate rules
10 necessary to effectuate the purposes of this subsection.

11 E. The impairment rating determined by the Independent Medical
12 Examiner shall be based upon objective medical evidence.

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

22 SECTION 34. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 17.1 of Title 85, unless there
24 is created a duplication in numbering, reads as follows:

1 For any compensable injury or illness occurring on or after
2 November 1, 2010, the determination of disability shall be the
3 responsibility of the Chief Medical Officer of the Workers'
4 Compensation Commission. Any claim submitted by an employee for
5 compensation for permanent disability must be supported by competent
6 medical testimony which shall be supported by objective medical
7 findings, as defined in Section 3 of Title 85 of the Oklahoma
8 Statutes, and which shall include an evaluation by the treating
9 physician or a Medical Impairment Rating Registry (MIR) physician as
10 set out in Section 35 of this act if there is no evaluation by the
11 treating physician or if there is a dispute as to the impairment
12 rating as set out in Section 35 of this act. The evaluation shall
13 state the physician's opinion of the employee's percentage of
14 permanent impairment and whether the impairment is job-related and
15 caused by the accidental injury or occupational disease. A copy of
16 any written evaluation shall be sent to both parties within seven
17 (7) days of issuance. Medical opinions addressing compensability
18 and permanent impairment shall be stated within a reasonable degree
19 of medical certainty. For purposes of this section, a physician
20 shall have the same meaning as defined in Section 14 of Title 85 of
21 the Oklahoma Statutes and shall include a person licensed by another
22 state who would be qualified to be a licensed physician under the
23 laws of this state.

24

1 SECTION 35. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 18 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 A. This section shall apply to all workers compensation claims
5 filed on or after November 1, 2010.

6 B. As used in this act:

7 1. "Act" means the Workers Compensation Act, Title 85 of the
8 Oklahoma Statutes, as amended;

9 2. "Chief Medical Officer" means the Chief Medical Officer
10 appointed by the Workers' Compensation Commission;

11 3. "Commission" means the Workers' Compensation Commission;

12 4. "Dispute of degree of medical impairment" means: either at
13 least two different physicians have issued differing permanent
14 medical impairment ratings in compliance with the act and the
15 parties disagree as to those permanent impairment ratings, or a
16 dispute may also exist if a physician has issued an opinion in
17 compliance with the act that no permanent medical impairment exists,
18 yet that physician has issued permanent physical restrictions to the
19 injured employee;

20 5. "Division" means the Chief Medical Officer's Division of the
21 Workers' Compensation Commission;

22 6. "Employee" shall have the same meaning as set forth in
23 Section 3 of Title 85 of the Oklahoma Statutes;

24

1 7. "Employer" shall have the same meaning as set forth in
2 Section 3 of Title 85 of the Oklahoma Statutes;

3 8. "Form" means the "Application for a Medical Impairment
4 Rating", required to be used to request an MIR Registry physician
5 from the Commission;

6 9. "Insurer" or "carrier" means an employer's workers'
7 compensation insurance carrier and additionally shall include any
8 entity claiming, operating, or attempting to operate as a self-
9 insured employer, self-insured pool, or self-insured trust pursuant
10 to the requirements of Oklahoma law;

11 10. "Medical Impairment Rating Registry" or "MIR Registry"
12 means the registry or listing of physicians established by the
13 Commission to perform independent medical impairment ratings when
14 there is a dispute as to the degree of medical impairment, as
15 defined above;

16 11. "Party" means any person or entity which either could be
17 liable for payment of workers' compensation benefits or a person who
18 has a potential right to receive workers' compensation benefits.
19 "Party" shall include a legal representative of a party;

20 12. "Physician" shall have the same meaning as set forth in
21 Section 14 of Title 85 of the Oklahoma Statutes; and

22 13. "Program Coordinator" means the chief administrative
23 officer of the MIR Registry Program, appointed by the Chief Medical
24 Officer.

1 C. 1. The purpose of the Medical Impairment Rating Registry
2 Program is to establish a resource to resolve disputes regarding the
3 degree of permanent medical impairment ratings for injuries or
4 occupational disease to which workers' compensation statutes apply.
5 In order to ensure high-quality independent medical impairment
6 evaluations, the Commission shall establish the Medical Impairment
7 Rating Registry Program. MIR Registry physicians shall provide
8 evaluations in a manner consistent with the standard of care in
9 their community, as well as issue opinions based upon the applicable
10 edition of the AMA "Guides to the Evaluation of Permanent
11 Impairment" or other appropriate method pursuant to Title 85 of the
12 Oklahoma Statutes.

13 2. The MIR Registry is available to any party with a dispute of
14 the degree of medical impairment rating as defined herein for
15 injuries or any occupational disease which occurred on or after the
16 effective date of this act. The only aspect considered by a MIR
17 Registry physician shall be the degree of permanent medical
18 impairment.

19 D. A physician seeking appointment to the MIR Registry shall
20 make application and must satisfy the following qualifications:

21 1. Possess a license to practice medicine or osteopathy in
22 Oklahoma which is current, active, and unrestricted;

23 2. Be board-certified in their respective specialty by a board
24 recognized by the American Board of Medical Specialties, the

1 American Osteopathic Association or another organization acceptable
2 to the Chief Medical Officer;

3 3. Have successfully completed a training course, approved by
4 the Chief Medical Officer, dedicated to the proper application of
5 the applicable edition of the American Medical Association's "Guides
6 to the Evaluation of Permanent Impairment" (hereafter the "AMA
7 Guides") in impairment evaluation and furnish satisfactory evidence
8 thereof; and

9 4. Furnish satisfactory proof of carrying the minimum medical
10 malpractice insurance coverage.

11 E. 1. Appointment to the MIR Registry shall be for a two-year
12 term, except as otherwise set forth herein. Physicians may seek
13 renewal appointments by the same process as the initial application
14 described herein. The Commission reserves the right to charge
15 physicians a nonrefundable application fee upon appointment,
16 renewal, or reinstatement to the MIR Registry. The Chief Medical
17 Officer shall have the sole and exclusive authority to approve or
18 reject applications for inclusion on the MIR Registry.

19 2. Physicians seeking appointment to the MIR Registry shall
20 complete an "Application for Appointment to the MIR Registry",
21 certify to and, upon approval of the application, comply with the
22 following conditions:

23 a. conduct all MIR evaluations based on the guidelines in
24 the applicable edition of the AMA Guides and submit

1 the original "MIR Report" with all attachments to the
2 Program Coordinator. In cases not covered by the
3 applicable AMA Guides, any impairment rating allowed
4 under the act shall be appropriate,

5 b. decline requests to conduct an evaluation only on the
6 basis of good cause shown. Consideration shall be
7 given to a physician's schedule and other previously
8 arranged or emergency obligations,

9 c. comply with the MIR Registry's rules,

10 d. while on the MIR Registry, agree to maintain an active
11 and unrestricted license to practice medicine or
12 osteopathy in Oklahoma and to immediately notify the
13 Program Coordinator of any change in the status of the
14 license, including any restrictions placed upon the
15 license,

16 e. while on the MIR Registry, agree to maintain all board
17 certifications listed on the application and to
18 immediately notify the Program Coordinator of any
19 change in their status,

20 f. conduct MIR evaluations in an objective and impartial
21 manner, and:

22 (1) conduct these evaluations only in a professional
23 medical office suitable for medical or
24

1 psychiatric evaluations where the primary use of
2 the site is for medical service,

3 (2) comply with all local, state and federal laws,
4 regulations, and other requirements with regard
5 to business operations, including specific
6 requirements for the provision of medical
7 services, and

8 (3) not conduct a physical examination on a claimant
9 of the opposite sex without a witness of the same
10 sex as the claimant present,

11 g. not refer any MIR Registry claimant to another
12 specific physician for any treatment or testing nor
13 suggest referral or treatment. However, if new
14 diagnoses are discovered, the physician has a medical
15 obligation to inform the requesting party and the
16 claimant about the condition and recommend further
17 medical assessment,

18 h. not become the treating physician for the claimant
19 regarding the work-related injury,

20 i. not evaluate a MIR Registry claimant if a conflict of
21 interest exists,

22 j. not substitute, or allow to be substituted, anyone
23 else, including any other physician, physician
24 assistant, nurse practitioner, physical therapist or

1 staff member, as the physician to conduct the MIR
2 Registry evaluation,

3 k. no later than fifteen (15) calendar days after a
4 request by the Program Coordinator to refund to the
5 paying party part or all of any fee paid by that party
6 for a MIR Registry evaluation, as may be required by
7 the Chief Medical Officer, and

8 l. for each MIR Registry case assigned, address only the
9 issue of permanent impairment rating.

10 3. Physicians denied appointment to the MIR Registry on their
11 initial application may seek reconsideration of their application by
12 submitting a request for reconsideration stating the grounds for
13 such reconsideration to the Program Coordinator within fifteen (15)
14 calendar days of the issuance of the Notice of Denial of their
15 application. The Chief Medical Officer may affirm or reverse the
16 initial determination upon reconsideration of the initial decision.
17 The Chief Medical Officer shall issue a Notice of Final
18 Determination which shall be the final decision.

19 F. 1. When a dispute of the degree of medical impairment
20 exists as defined in this section, any party may request a listing
21 of physicians from the Commission's MIR Registry by completing an
22 "Application for a Medical Impairment Rating" (hereinafter "Form").
23 The completed Form shall be returned to the Program Coordinator via
24 electronic mail, facsimile or U.S. Mail.

1 2. The Chief Medical Officer shall require the request for a
2 MIR Registry physician to designate:

- 3 a. all body parts or medical conditions to be evaluated,
- 4 b. the names of all physicians that have previously
5 evaluated, treated or are currently evaluating or
6 treating the claimant for the work-related injury, and
- 7 c. the state file number assigned to the claims.

8 3. Within five (5) business days of receipt of the completed
9 Form from the requesting party, the Program Coordinator shall issue
10 a listing of all qualified physicians in the appropriate geographic
11 area, which shall mean within a one-hundred-mile radius of the
12 employee's residence, from the MIR Registry to all parties listed on
13 the Form so the parties may negotiate an agreement on the selection
14 of a physician as the MIR Registry physician. If the parties agree,
15 they shall notify the Program Coordinator of the agreement so the
16 Program Coordinator may schedule the appointment with the selected
17 physician for the MIR examination. Parties agreeing to the
18 selection of the MIR Registry physician under this paragraph must
19 abide by all requirements set forth herein. A written opinion as to
20 the permanent impairment rating given by the MIR Registry physician
21 selected pursuant to this section shall be presumed to be the
22 accurate impairment rating.

23 4. If the parties cannot agree upon selection of a MIR Registry
24 physician from the Program Coordinator listing of MIR Registry

1 physicians provided within fifteen (15) calendar days of the Program
2 Coordinator's issuing the requested listing, it shall be the
3 responsibility of the employer to provide a written request to the
4 Program Coordinator to provide a three-physician list by submitting
5 such request on the Form. A written opinion as to the permanent
6 impairment rating given by the MIR Registry physician selected
7 pursuant to this section shall be presumed to be the accurate
8 impairment rating.

9 5. The submitting party shall certify that all parties, as well
10 as the Program Coordinator, have been sent the completed Form at the
11 same time. The Form shall not be processed until required
12 information has been provided.

13 6. a. Within five (5) business days of receipt of the
14 completed "Application for a Medical Impairment
15 Rating", the Division shall produce a list of three
16 qualified physicians drawn from the Chief Medical
17 Officer's MIR Registry, from which one physician shall
18 be designated to perform the evaluation. The three-
19 physician listing created shall be comprised of
20 physicians qualified, based on the information
21 provided by the physician and on their accreditation
22 to perform evaluations of the body part or parts or
23 medical condition or conditions designated on the
24 application for an evaluation.

1 b. All physician selections shall be derived from the
2 pool of qualified physicians.

3 7. a. Within three (3) business days of the issuance of the
4 three-physician listing, the employer shall strike one
5 name and inform the Program Coordinator and all
6 parties of the remaining physicians. Within three (3)
7 business days of the date of receipt of that name from
8 the employer, the claimant shall strike one of the two
9 remaining names and inform the Program Coordinator and
10 other parties of the name of the remaining physician,
11 who will perform the evaluation.

12 b. If one party fails to timely strike a name from the
13 listing, the other party shall notify the Program
14 Coordinator and at the same time provide to the
15 Program Coordinator the name that it wishes to strike.
16 In that situation, the Chief Medical Officer may
17 randomly select one physician from the remaining two,
18 and that physician shall perform the evaluation. The
19 Program Coordinator shall inform the parties of the
20 name of the selected physician in writing.

21 c. If a selected physician is unable to perform the
22 evaluation, the Program Coordinator shall provide one
23 replacement name to the original listing using the
24 same criteria and process set forth above, and present

1 that revised listing to the parties and each shall
2 again strike one name according to the above
3 procedures. Additionally, if a physician is removed
4 from the three-physician listing for any reason other
5 than having been struck by one of the parties, the
6 Program Coordinator shall issue one replacement
7 physician name.

8 8. Within three (3) business days of providing or receiving
9 notice of the MIR physician selection, the Program Coordinator shall
10 contact the MIR Registry physician to schedule the evaluation, and
11 shall immediately notify all parties of the date and time of the
12 evaluation. Only after this notification the employer shall contact
13 the MIR Registry physician and only to arrange for payment and for
14 medical records submission required by the rules.

15 9. a. All parties shall concurrently provide to the MIR
16 registry physician and all other parties a complete
17 copy of all pertinent medical records pertaining to
18 the subject injury, postmarked or hand-delivered at
19 least ten (10) calendar days prior to the evaluation.
20 If necessary, the claimant shall promptly sign a "MIR
21 Waiver and Consent" permitting the release of
22 information relevant to the subject injury to the MIR
23 physician.
24

1 b. In cases involving untimely medical record submission
2 by a party, the Program Coordinator may elect to
3 reschedule the evaluation to allow the physician
4 adequate time for record review. Otherwise, the
5 physician shall perform the evaluation and shall
6 produce a "MIR Report".

7 c. The medical records shall include a dated cover sheet
8 listing the claimant's name, MIR Registry physician's
9 name, MIR Registry case number, date and time of the
10 appointment, and claim number, if appropriate. The
11 medical records shall be in chronological order, by
12 provider, and tabbed by year.

13 d. Medical bills, adjustor notes, surveillance tapes,
14 denials, vocational rehabilitation reports, case
15 manager records or commentaries to the MIR Registry
16 physician shall not be submitted.

17 10. Any forms the MIR physician requests to be completed shall
18 be completed by the claimant. If the claimant needs assistance in
19 completing these forms for any reason, the claimant shall notify the
20 MIR Registry physician prior to the evaluation so that assistance
21 can be provided by the MIR Registry physician's staff. The case
22 manager shall not meet with the MIR Registry physician.

23 11. The claimant shall notify the Program Coordinator of the
24 necessity for a language translator at the time of the notification

1 of the chosen physician's name. The Program Coordinator shall
2 arrange for such services and the employer shall be responsible for
3 compensating such language translator. The language translator
4 shall be impartial and independent, and have no professional or
5 personal affiliation with any party to the claim or to the MIR
6 Registry physician.

7 12. When a claimant is required to travel outside a radius of
8 fifteen (15) miles from the claimant's residence or workplace, then
9 such claimant shall be reimbursed by the employer for reasonable
10 travel expenses as allowed in Title 85 of the Oklahoma Statutes.

11 G. 1. A physician performing evaluations under this section
12 shall be prepaid by the employer a total evaluation fee for each
13 evaluation performed, under a MIR Registry physician estimated time-
14 table as outlined below:

15 a. One Thousand Dollars (\$1,000.00) for completed reports
16 received and accepted by the Program Coordinator
17 within thirty (30) calendar days of the scheduling of
18 the appointment,

19 b. Eight Hundred Fifty Dollars (\$850.00) for completed
20 reports received and accepted by the Program
21 Coordinator between thirty-one (31) and forty-five
22 (45) calendar days of the scheduling of the
23 appointment,
24

- 1 c. Five Hundred Dollars (\$500.00) for completed reports
2 received and accepted between forty-six (46) and sixty
3 (60) days of the scheduling of the appointment, and
4 d. no fee paid for completed reports received and
5 accepted by the Program Coordinator later than sixty
6 (60) calendar days of the scheduling of the
7 appointment.

8 2. The evaluation fee includes normal record review, the
9 evaluation, and production of a standard "MIR Report". All
10 nonroutine tests for an impairment rating essential under the
11 applicable edition of the AMA Guides to the Evaluation of Permanent
12 Impairment shall be performed prior to the evaluation. Routine
13 tests necessary for a complete evaluation shall be performed by the
14 MIR Registry physician as part of the evaluation at no additional
15 cost.

16 3. Failure by an employer or insurer to prepay the evaluation
17 fee shall allow the physician to charge the employer an additional
18 one-hundred-dollar late fee for the evaluation. If the evaluation
19 fee or late fee remains unpaid fifteen (15) calendar days following
20 the date of the evaluation, an additional two-hundred-fifty-dollar
21 penalty is authorized. If any portion of a fee or penalty remains
22 unpaid after an additional thirty-calendar-day period, an additional
23 five-hundred-dollar penalty is authorized, and reauthorized for each
24 additional thirty-calendar-day period, or portion thereof, that it

1 remains unpaid until all fees or penalties or both fees and
2 penalties are fully paid. Failure by a MIR Registry physician to
3 timely refund any unearned evaluation fee shall allow the employer
4 or insurer to recover in addition to the unearned fee a one-hundred-
5 dollar late fee from that MIR Registry physician. If the unearned
6 fee or late fee remains unpaid fifteen (15) calendar days following
7 the date of the evaluation, an additional two-hundred-fifty-dollar
8 penalty against the MIR Registry physician is authorized. If any
9 portion of the unearned fee or penalty remains unpaid after an
10 additional thirty-calendar-day period, an additional five-hundred-
11 dollar penalty is authorized, and reauthorized for each additional
12 thirty-calendar-day period, or portion thereof, that it remains
13 unpaid until all fees or penalties or both fees and penalties are
14 fully paid.

15 4. To be considered timely, notice of a party's desire to
16 cancel an evaluation appointment shall be given to the Program
17 Coordinator at least three (3) business days prior to the date of
18 the evaluation. An evaluation may be canceled or rescheduled only
19 after obtaining the consent of the Chief Medical Officer. The Chief
20 Medical Officer shall decide whether an evaluation may be
21 rescheduled within ten (10) calendar days of a request to cancel.

22 a. If the request to cancel is not timely, the MIR
23 registry physician shall be entitled to collect or
24 retain a three-hundred-dollar cancellation penalty

1 fee. If the evaluation is rescheduled, the MIR
2 Registry physician is entitled to the entire
3 evaluation fee (for the rescheduled evaluation) in
4 addition to this fee.

5 b. If the claimant fails to appear for the evaluation
6 with good cause, the Program Coordinator shall
7 reschedule the evaluation.

8 c. If the claimant fails to appear for the evaluation
9 without good cause as determined by the Program
10 Coordinator, this may be deemed a refusal to comply
11 with a reasonable request for medical examination and
12 the injured employee's right to compensation may be
13 suspended, by order of the Chief Medical Officer, and
14 no compensation shall be due and payable while the
15 injured employee continues such refusal.

16 H. In instances of more than one impairment rating being
17 disputed in more than one medical specialty, and there is an
18 insufficient number of physicians on the Registry who are qualified
19 to perform all aspects of the evaluation, separate evaluation may be
20 required, each being separate application and physician-selection
21 processes and fees.

22 I. 1. During the MIR physician selection process, registry
23 physicians cannot render opinions as to the impairment relating to
24 the subject injury to a party to the case in cases in which the

1 physicians' name appears on the three-physician listing. MIR
2 Registry physicians who have rendered an opinion as to the
3 impairment relating to the subject injury to a party must disclose
4 the nature and extent of those discussions to the Program
5 Coordinator immediately upon their selection as the MIR Registry
6 physician. The Chief Medical Officer, in the Chief Medical
7 Officer's sole authority, shall determine whether or not a conflict
8 of interest exists. Failure to disclose a potential conflict of
9 interest may result in a physician's removal from the MIR Registry.
10 While removed from the Registry, physicians shall not be eligible to
11 perform MIR evaluations.

12 2. If selected as the MIR physician, there shall be no
13 communication with the parties or their representatives prior to the
14 evaluation, unless allowed by this section or approved by the Chief
15 Medical Officer. Any approved communication, other than arranging
16 for payment and the submission of medical records and the evaluation
17 itself, shall be in writing with copies to all parties and the
18 Program Coordinator. Failure by a Registry physician to disclose
19 such communications shall subject that physician to penalties under
20 the rules.

21 3. A party seeking the presence of the MIR physician as a
22 witness at a proceeding for any purpose, by subpoena, deposition or
23 otherwise, shall be responsible for payment for those services to
24

1 the MIR physician. Deposition fees shall be in accordance with
2 applicable state rules and laws.

3 J. 1. The MIR Registry physician's responsibilities prior to
4 the evaluation are to:

5 a. review all materials provided by the parties subject
6 to this section, and

7 b. review the purpose of the evaluation and the
8 impairment questions to be answered in the evaluation
9 report.

10 2. The MIR Registry physician's responsibilities following the
11 evaluation are to:

12 a. consider all medical evidence obtained in the
13 evaluation and provided by the parties subject to this
14 section,

15 b. complete a "MIR Report",

16 c. notify the Program Coordinator when the report has
17 been completed, and

18 d. send the complete report with all required attachments
19 to the Program Coordinator only, via electronic mail
20 or overnight delivery. The Program Coordinator shall
21 acknowledge, to the physician, receipt of the report.

22 3. No physician-patient relationship is created between the MIR
23 Registry physician and the claimant through the MIR Registry
24 evaluation. The sole purpose of the evaluation is to establish an

1 impairment rating and not to recommend future treatment or to
2 provide a diagnosis or other medical advice. However, if new
3 diagnoses are discovered, the physician has a medical obligation to
4 inform the requesting party and the claimant about the condition and
5 recommend further medical assessment.

6 K. 1. After conducting the evaluation, the MIR physician shall
7 produce the "MIR Report". The format, approved by the Chief Medical
8 Officer, shall be used in all cases to detail the evaluation's
9 results. The MIR Registry physician shall first review the
10 determination by the attending physician that the claimant has
11 reached Maximum Medical Improvement (MMI).

12 2. If, after reviewing the records, taking a history from the
13 claimant and performing the evaluation, the MIR Registry physician
14 concurs with the attending doctor's determination of MMI, the report
15 shall, at a minimum, contain the following:

- 16 a. a brief description and overview of the claimant's
17 medical history as it relates to the subject injury,
18 including reviewing and recapping all previous
19 treatments,
- 20 b. a statement of concurrence with the attending doctor's
21 determination of MMI,
- 22 c. pertinent details of the physical evaluation performed
23 (both positive and negative findings),
24

1 d. an impairment rating consistent with the findings and
2 utilizing a standard method as outlined in the
3 applicable AMA Guides, calculated as a total to the
4 whole person if appropriate. In cases not covered by
5 the AMA Guides, an impairment rating by any
6 appropriate method used and accepted by the medical
7 community is allowed. However, a statement that the
8 AMA Guides fails to cover the case as well as a
9 statement of the system on which the rating was based
10 shall be included,

11 e. the rationale for the rating based on reasonable
12 medical certainty, supported by specific references to
13 the clinical findings, especially objective findings
14 and supporting documentation including the specific
15 rating system, section, tables, figures, and AMA
16 Guides page numbers, when appropriate, to clearly show
17 how the rating was derived, and

18 f. a true or electronic signature and date by the MIR
19 physician performing the evaluation certifying to the
20 following:

21 "It is my opinion, both within and to a reasonable
22 degree of medical certainty that, based upon all
23 information made available to me at the time of the
24 MIR impairment evaluation and by utilizing the

1 relevant AMA Guides or other appropriate method as
2 noted above, the claimant has the permanent impairment
3 so described in this report. I certify that the
4 opinion furnished is my own, that this document
5 accurately reflects my opinion, and that I am aware
6 that my signature attests to its truthfulness. I
7 further certify that my statement of qualifications to
8 serve on the MIR Registry is both current and
9 completely accurate."

10 3. If, after reviewing the records, taking a history from the
11 claimant and performing the evaluation, the MIR Registry physician
12 does not concur with the attending doctor's determination of MMI, a
13 report shall be completed similar to the one outlined above which
14 documents and certifies to, in sufficient detail, the rationale for
15 disagreeing. The MIR Registry physician shall be entitled to
16 collect or retain the appropriate MIR fee regardless of the opinion.

17 4. Services rendered by a MIR Registry physician shall conclude
18 upon the Chief Medical Officer's acceptance of the final "MIR
19 Report". A MIR report is final and accepted for the purpose of this
20 section when it includes the requested determination regarding final
21 medical impairment rating and any necessary worksheets. Once the
22 report has been accepted, the Program Coordinator shall distribute
23 copies of the report to the parties.

1 L. All MIR Reports are subject to review for appropriateness
2 and accuracy by an individual or organization designated by the
3 Chief Medical Officer at any time. Failure to properly apply the
4 AMA Guides in determining an impairment rating, as determined by the
5 Chief Medical Officer, may result in penalties up to and including
6 removal from the MIR Registry.

7 M. 1. The Chief Medical Officer may remove a physician from
8 the MIR Registry permanently or temporarily. In doing so, the Chief
9 Medical Officer shall first notify the physician in writing that the
10 physician is at risk of being removed from the MIR Registry. The
11 Chief Medical Officer may remove a physician from the MIR Registry
12 permanently or temporarily based upon any of the following grounds:

- 13 a. misrepresentation on the "Application for Appointment
14 to the MIR Registry" as determined by the Chief
15 Medical Officer,
- 16 b. failure to timely report a conflict of interest in a
17 case assignment, as determined by the Chief Medical
18 Officer,
- 19 c. refusal or substantial failure to comply with the
20 provisions of this section, including, but not limited
21 to, failure to determine impairment ratings correctly
22 using the AMA Guides, as determined by the Chief
23 Medical Officer,

24

- 1 d. failure to maintain the requirements of this section,
2 as determined by the Chief Medical Officer, and
3 e. any other reason for the good of the Registry as
4 determined solely and exclusively by the Chief Medical
5 Officer.

6 2. Written complaints regarding any MIR Registry physician
7 shall be submitted to the Program Coordinator. Upon receipt of a
8 complaint regarding a MIR Registry physician, the Chief Medical
9 Officer shall send written notice of the complaint to such
10 physician, stating the grounds, and notifying the physician that the
11 physician is at risk of being removed from the MIR Registry.

- 12 a. The physician shall have thirty (30) calendar days
13 from the date of the Notice of Complaint in which to
14 respond in writing to the complaint or complaints, and
15 may submit any responsive supporting documentation to
16 the Program Coordinator for consideration. Failure of
17 the physician to submit a timely response to the
18 Notice of Complaint may result in removal of the
19 physician from the MIR Registry.

- 20 b. The Chief Medical Officer shall consider the complaint
21 or complaints and any response from the physician in
22 reaching a decision as to whether the physician shall
23 be removed from the MIR Registry, and if removed,
24 whether the removal shall be permanent or temporary.

1 c. Upon reaching a determination on the complaint or
2 complaints, the Chief Medical Officer shall issue a
3 written Notice of Determination and set forth the
4 basis for the decision in such Notice. The
5 determination set forth shall become final fifteen
6 (15) calendar days after issuance of the Notice of
7 Determination, unless a timely request for
8 reconsideration is received.

9 d. A MIR Registry physician may seek reconsideration of
10 an adverse decision from the Chief Medical Officer by
11 submitting a request for reconsideration stating the
12 grounds for such reconsideration to the Commission
13 within fifteen (15) calendar days of the issuance of
14 the Notice of Determination. The Commission may
15 affirm, modify or reverse the initial determination
16 upon reconsideration of the initial decision. The
17 Commission shall issue a Notice of Determination upon
18 Reconsideration which shall be the final decision.

19 3. A physician who has been removed from the MIR Registry by
20 the Chief Medical Officer may apply for reinstatement six (6) months
21 after the date of removal by submitting a written request to the
22 Program Coordinator.

23 N. Notwithstanding any other provision in this section to the
24 contrary, and in addition to any other penalty provided for in this

1 section, failure by any party to comply with this section in a
2 manner for which no penalty has specifically been set forth herein
3 may subject that party to civil penalties of One Hundred Dollars
4 (\$100.00) per violation, as determined by the Chief Medical Officer.
5 Any party so penalized may request a contested case hearing by
6 submitting a request for such hearing within fifteen (15) days of
7 issuance of the notice of violation and assessment of civil
8 penalties hereunder to the Commission.

9 O. All time limits referenced in this section may be extended
10 by the Chief Medical Officer in the Chief Medical Officer's sole and
11 exclusive discretion.

12 P. Injured workers, employers, insurers and carriers shall
13 cooperate in good faith with all reasonable requests made by a MIR
14 Registry physician.

15 Q. Parties are prohibited from seeking a second MIR Registry
16 impairment rating for the same injury if an impairment rating was
17 issued after the first MIR Registry evaluation.

18 R. Once the MIR physician's report has been filed with the
19 Program Coordinator, the Chief Medical Officer shall issue a final
20 determination of disability within ten (10) business days and notify
21 all parties. The Chief Medical Officer's determination may be
22 appealed to the full Commission but may only be amended or revised
23 based on the reports filed by the physicians involved in the case,
24 the MIR physician or the Chief Medical Officer.

1 SECTION 36. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 19 of Title 85, unless there is
3 created a duplication in numbering, reads as follows:

4 The Chief Medical Officer shall be hired by the Commission and
5 shall be subject to Senate confirmation. Every four (4) years, the
6 Commission shall review the performance of the Chief Medical Officer
7 and shall recommend to the State Senate for confirmation of
8 reappointment for another four-year period. The Chief Medical
9 Officer shall receive the same compensation as a Commissioner. In
10 addition to determining disability ratings, the Chief Medical
11 Officer shall handle all medical disputes outside of Certified
12 Workplace Medical Plan (hereafter CWMP) programs, oversee the
13 reimbursement fee schedule for all medical providers outside of
14 CWMPs, and determine the appropriateness of requests for continuing
15 medical treatment. The Chief Medical Officer shall determine the
16 nature and extent of any such "medical maintenance" programs and
17 issue the appropriate order or orders to ensure the need for such
18 program. All such administrative orders are subject to appeal to
19 the full Commission as set out in this act.

20 SECTION 37. AMENDATORY 85 O.S. 2001, Section 22, as last
21 amended by Section 1, Chapter 172, O.S.L. 2009 (85 O.S. Supp. 2009,
22 Section 22), is amended to read as follows:

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

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

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

8 (b) Except in a statutory permanent total disability case, in no
9 case shall a claimant receive both permanent total disability and
10 any other form of disability (permanent partial, temporary partial
11 or temporary total) at the same time or for the same period of
12 disability.

13 (c) No more often than annually, the carrier, self-insured
14 employer or the Death and Permanent Total Disability Trust Fund may
15 require an injured worker receiving permanent total disability
16 benefits, or the treating physician, or both injured worker and
17 treating physician, to certify on forms provided by the Commission
18 that the injured worker is permanently and totally disabled and not
19 gainfully employed. Failure of the employee to so certify within
20 thirty (30) days after receipt of the notice shall permit the
21 discontinuation of benefits without penalty. If the Commission
22 finds that the claim of permanent total disability was made in bad
23 faith by the employee, or if the employee made misleading
24 representations regarding disability benefits, the Commission shall

1 refer the case to the Workers' Compensation Fraud Unit for
2 appropriate prosecution.

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

16 (b) With respect to injuries occurring on or after November 4,
17 1994, in cases of temporary total disability, seventy percent (70%)
18 of the employee's average weekly wages shall be paid to the employee
19 during the continuance thereof, but not in excess of fifty-two (52)
20 weeks, except as otherwise provided in the Workers' Compensation
21 Act. Provided, after compensation has been paid for a period of
22 forty-two (42) weeks, the employee may request a review of the case
23 by a judge of the Court for continued temporary total disability
24 benefits provided by the Workers' Compensation Act. Upon a finding

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

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

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

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

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

24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 Hernia: In case of an injury resulting in hernia, temporary
20 total compensation for fourteen (14) weeks, and the cost of an
21 operation shall be payable; provided, in any case where the injured
22 employee has been twice previously operated for hernia in the same
23 area and it is established by opinion of a competent surgeon that
24 further surgery in the same area will not result in full relief of

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

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

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

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

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

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

10 (4) For each remaining percent of disability, the identical
11 number of weeks of compensation provided by law prior to November 4,
12 1994.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3 Deafness: Deafness from industrial cause, including occupations
4 which are hazardous to hearing, accident or sudden trauma, three
5 hundred fifteen (315) weeks, and total deafness of one ear from
6 industrial cause, including occupations which are hazardous to
7 hearing, accident or sudden trauma, one hundred five (105) weeks.

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

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

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

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

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

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

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

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

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

20 Hernia: In case of an injury resulting in hernia, temporary
21 total compensation for six (6) weeks, and the cost of an operation
22 shall be payable, unless the employee has not been released from
23 active medical treatment, temporary total compensation not to exceed
24 nine (9) weeks, and the cost of an operation shall be payable;

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

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

23 (d) With respect to injuries occurring on or after January 1,
24 2003, in case of disability, partial in character but permanent in

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

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

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

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

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

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

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

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

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

24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 determined by the Court, but not in excess of Twenty Thousand
2 Dollars (\$20,000.00) for an injury occurring before November 1,
3 2005, and not in excess of Fifty Thousand Dollars (\$50,000.00) for
4 an injury occurring on or after November 1, 2005; provided, that
5 compensation for permanent disfigurement shall not be in addition to
6 the other compensation provided for in this section but shall be
7 taken into consideration in fixing the compensation otherwise
8 provided.

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

17 Soft Tissue Injury: In case of a nonsurgical soft tissue injury,
18 temporary total compensation shall not exceed eight (8) weeks. A
19 claimant who has been recommended by a treating physician for
20 surgery for a soft tissue injury may petition the Court for one
21 extension of temporary total compensation and the court may order
22 such an extension, not to exceed sixteen (16) additional weeks, if
23 the treating physician indicates that such an extension is
24 appropriate or as agreed to by all parties. In the event the

1 surgery is not performed, the benefits for the extension period
2 shall be terminated. For purposes of this section, "soft tissue
3 injury" means damage to one or more of the tissues that surround
4 bones and joints. "Soft tissue injury" includes, but is not limited
5 to: sprains, strains, contusions, tendonitis, and muscle tears.
6 Cumulative trauma is to be considered a soft tissue injury. "Soft
7 tissue injury" does not include any of the following:

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

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

11 a. sensory or motor disturbances,

12 b. communication disturbances,

13 c. complex integrated disturbances of cerebral function,

14 d. episodic neurological disorders, or

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

18 (3) Total knee replacement.

19 In all cases of soft tissue injury, the employee shall only be
20 entitled to appropriate and necessary medical care and temporary
21 total disability as set out in paragraph 2 of this section, unless
22 there is objective medical evidence of a permanent anatomical
23 abnormality. In determining the existence of such an abnormality,
24 the Court may consider if there is credible medical evidence that

1 the ability of the employee to earn wages at the same level as
2 before the injury has been permanently impaired.

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

18 (e) With respect to injuries occurring on or after November 1,
19 2010, in case of disability, partial in character but permanent in
20 quality, the compensation shall be sixty-six and two-thirds percent
21 (66 2/3%) of the employee's average weekly wages, not to exceed
22 Three Hundred Forty-two Dollars (\$342.00) per week, and shall be
23 paid to the employee for the period prescribed by the following
24 schedule:

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

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

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

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

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

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

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

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

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

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

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

3 weeks.

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

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

6 weeks.

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

8 weeks.

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

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

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

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

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

3 Permanent disfigurement: In case of an injury resulting in
4 serious and permanent disfigurement to that portion of the body not
5 normally covered by clothing and open to public view, compensation
6 shall be payable in an amount to be determined by the Court, but not
7 in excess of Five Thousand Dollars (\$5,000.00).

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

16 Soft Tissue Injury: In case of a nonsurgical soft tissue injury,
17 temporary total compensation shall not exceed eight (8) weeks. A
18 claimant who has been recommended by a treating physician for
19 surgery for a soft tissue injury, or who has had surgery for a soft
20 tissue injury as a result of a recommendation by a treating
21 physician, may petition the Court for one extension of temporary
22 total compensation and the Court may order such an extension, not to
23 exceed sixteen (16) additional weeks, if the treating physician
24 indicates that such an extension is appropriate or as agreed to by

1 all parties. In the event the surgery is not recommended, or is
2 recommended but not performed within ninety (90) days after the
3 recommendation, the benefits for the extension period shall be
4 terminated. For purposes of this section, "soft tissue injury"
5 includes, but is not limited to: sprains, strains, contusions,
6 tendonitis, and muscle tears. Cumulative trauma is to be considered
7 a soft tissue injury. In all cases of nonsurgical soft tissue
8 injury, the employee shall only be entitled to appropriate and
9 necessary medical care and temporary total disability as set out in
10 this subparagraph. "Soft tissue injury" does not include any of the
11 following:

12 (1) Injury to or disease of the spine, spinal disks, spinal
13 nerves or spinal cord, where 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

20 as severe in nature as any condition provided in

21 subdivisions a through d of this division; or

22 (3) Total knee replacement.

23 Odd-lot doctrine: The Commission and courts shall not consider

24 the odd-lot doctrine for permanent disability claims.

1 4. Temporary Partial Disability. (a) With respect to injuries
2 occurring before November 4, 1994, in case of temporary partial
3 disability, except the particular cases mentioned in paragraph 3 of
4 this section, an injured employee shall receive seventy percent
5 (70%) of the difference between the employee's average weekly wages
6 and the employee's wage-earning capacity thereafter in the same
7 employment or otherwise, if less than before the injury, during
8 continuance of such partial disability, but not to exceed one
9 hundred fifty (150) weeks. Provided, after compensation has been
10 paid for a period of one hundred forty (140) weeks, the employee may
11 request a review of the case by a judge of the Court for continued
12 temporary partial disability benefits provided by the Workers'
13 Compensation Act. Upon a finding that benefits should be extended
14 beyond the initial one-hundred-fifty-week period, compensation may
15 be continued for an additional one hundred fifty (150) weeks.

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

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

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

18 (d) With respect to injuries occurring before November 1, 2010,
19 in case of temporary partial disability, except the particular cases
20 mentioned in paragraph 3 of this section, an injured employee shall
21 receive sixty-six and two-thirds percent (66 2/3%) of the difference
22 between the employee's average weekly wages and the employee's wage-
23 earning capacity thereafter in the same employment or otherwise, if

24

1 less than before the injury, during continuance of such partial
2 disability, but not to exceed one hundred four (104) weeks.

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

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

20 6. Limitation. The compensation payments under the provisions
21 of the Workers' Compensation Act shall not exceed the sum of
22 seventy-five percent (75%) of the state's average weekly wage as
23 determined by the Oklahoma Employment Security Commission, the sum
24 of ninety percent (90%) of the state's average weekly wage beginning

1 January 1, 1995, for injuries occurring after December 31, 1994, and
2 the sum of one hundred percent (100%) of the state's average weekly
3 wage beginning January 1, 1996, for injuries occurring after
4 December 31, 1995, for temporary disability; Sixty Dollars (\$60.00)
5 per week beginning as of the effective date of the Workers'
6 Compensation Act, and Seventy Dollars (\$70.00) per week beginning
7 January 1, 1979, and Eighty Dollars (\$80.00) per week beginning
8 January 1, 1980, and Ninety Dollars (\$90.00) per week beginning
9 January 1, 1981, and to fifty percent (50%) of the state's average
10 weekly wage beginning January 1, 1982, for permanent partial
11 disability; Seventy-five Dollars (\$75.00) per week beginning as of
12 the effective date of the Workers' Compensation Act, and Ninety
13 Dollars (\$90.00) per week beginning January 1, 1979, and One Hundred
14 Ten Dollars (\$110.00) per week beginning January 1, 1980, to sixty-
15 six and two-thirds percent (66 2/3%) of the state's average weekly
16 wage beginning January 1, 1981, to seventy-five percent (75%) of the
17 state's average weekly wage beginning September 1, 1992, to ninety
18 percent (90%) of the state's average weekly wage beginning January
19 1, 1995, for injuries occurring after December 31, 1994, and to one
20 hundred percent (100%) of the state's average weekly wage beginning
21 January 1, 1996, for injuries occurring after December 31, 1995, for
22 permanent total disability, or at any time be less than Thirty
23 Dollars (\$30.00) per week; provided, however, that if the employee's
24 wages at the time of the injury are less than Thirty Dollars

1 (\$30.00) per week, the employee shall receive the employee's full
2 weekly wages; provided further, that the compensation received, as
3 provided for temporary partial disability, shall not, when added to
4 the wages received by such employee after such injury, amount to a
5 greater sum than eighty percent (80%) of the average weekly wages of
6 the employee received prior to said injury. Provided, further, that
7 for injuries occurring after November 1, 2010, the compensation for
8 permanent partial disability shall not exceed Three Hundred Forty-
9 two Dollars (\$342.00) per week.

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

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

24

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 SECTION 38. AMENDATORY 85 O.S. 2001, Section 24.1, as
22 amended by Section 21, Chapter 1, 1st Extraordinary Session, O.S.L.
23 2005 (85 O.S. Supp. 2009, Section 24.1), is amended to read as
24 follows:

1 Section 24.1 A. Every employer shall keep a record of
2 injuries, which result in the loss of time beyond the shift or which
3 require medical attention away from the work site, fatal or
4 otherwise, received by his employees in the course of their
5 employment.

6 B. Within ten (10) days or a reasonable time thereafter, after
7 the occurrence of such injury a report thereof shall be made in
8 writing by the employer to the ~~Court~~ Commission and to the
9 employer's workers' compensation insurance carrier, if any, upon
10 blanks to be procured from the ~~Court~~ Commission for that purpose.
11 Such reports shall state the name and nature of the business of the
12 employer, the location of the employer's establishment or place of
13 work, the name, address and occupation of the injured employee, the
14 time, nature, and cause of the injury and such other information as
15 may be required by the Administrator. The report, known as the
16 Employer's First Notice of Injury, shall be kept confidential and
17 shall not be open to public inspection; provided, such reports shall
18 be made available immediately upon request by the injured employee
19 named in the report, the injured employee's legal representative,
20 the employer, the employer's legal representative or any
21 prosecutorial authority.

22 C. Any employer who refuses or neglects to make a report as
23 required by this section shall be liable for an administrative
24

1 violation and subject to a fine by the Administrator of not more
2 than One Thousand Dollars (\$1,000.00).

3 SECTION 39. AMENDATORY 85 O.S. 2001, Section 24.2, is
4 amended to read as follows:

5 Section 24.2 A. Unless an employee or former employee gives
6 ~~oral or~~ written notice to the employer or former employer within
7 ~~thirty (30)~~ ten (10) business days of the date an injury occurs ~~or~~
8 ~~the employee receives medical attention from a licensed physician~~
9 ~~during the thirty day period from the date an injury occurred~~, the
10 rebuttable presumption shall be that the injury was not work
11 related. Such presumption must be overcome by a preponderance of
12 the evidence. For an occupational disease or cumulative trauma,
13 written notice shall be given to the employer within the statutory
14 period for occupational disease set out in ~~Section 43 of~~ this title;
15 provided, there shall be a rebuttable presumption that injury from
16 occupational disease or injury caused by cumulative trauma does not
17 arise out of and in the course of employment unless ~~oral or~~ written
18 notice is given by the employee to the employer within ~~ninety (90)~~
19 thirty (30) days of the employee's separation from employment. Such
20 presumption must be overcome by a preponderance of the evidence.

21 B. If the employer has notice of the injury and the injury is
22 not disputed and weekly temporary total disability benefit payments
23 are not commenced within twenty (20) days or if any subsequent
24 installment of temporary total disability benefits is not made

1 within ten (10) days after it becomes due, the insurer of the
2 employer shall pay to the employee a penalty of fifteen percent
3 (15%) of the unpaid or delayed weekly benefits. This penalty may be
4 imposed by the ~~Court~~ Commission for good cause shown on a case-by-
5 case basis.

6 C. The Administrator, on the basis of information collected,
7 may ask the ~~Court~~ Commission to impose the penalty provided in
8 subsection B of this section.

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

11 SECTION 40. AMENDATORY 85 O.S. 2001, Section 25, is
12 amended to read as follows:

13 Section 25. An employee claiming or entitled to compensation
14 under the Workers' Compensation Act, shall, if ordered by the ~~Court~~
15 Commission or Chief Medical Officer, submit himself for medical
16 examination. The employee shall be entitled to have a physician or
17 physicians of his own selection to be paid by him present to
18 participate in such examination. If an employee refuses to submit
19 himself to examination, his right to prosecute any proceeding under
20 the Workers' Compensation Act shall be suspended, and no
21 compensation shall be payable for the period of such refusal.
22 Provided, however, that in any case where such injured employee is
23 either rendered professional services or examined by a physician
24 retained by his employer, or by his employer's insurance carrier, or

1 both, and a report pertaining thereto is furnished by such physician
2 to either such employer, or insurance carrier, or to an attorney
3 representing either or both of them, a true copy of such reports
4 shall be furnished by such recipient to either the injured employee
5 or to his attorney of record.

6 SECTION 41. AMENDATORY 85 O.S. 2001, Section 26, as
7 amended by Section 22, Chapter 1, 1st Extraordinary Session, O.S.L.
8 2005 (85 O.S. Supp. 2009, Section 26), is amended to read as
9 follows:

10 Section 26. A. The Administrator shall provide printed notice
11 forms to be used by the injured employee. Notice of injury filed by
12 the employee with the Administrator shall be verified subject to the
13 laws of perjury of this state and shall be styled: In re: Claim of
14 the _____ (the name of the employee) and shall include in addition
15 to any other requirements the following information:

- 16 1. The name and social security number of the employee;
- 17 2. The name of the employer;
- 18 3. The judicial district of the county of residence of the
19 employee at the time of the injury;
- 20 4. The address of the principal place of business of the
21 employer;
- 22 5. The judicial district of the county where the injury
23 occurred; and

24

1 6. The judicial district of the county where the injured
2 employee wants the claim docketed.

3 B. Any time after the expiration of the first three (3) days of
4 disability on the part of the injured employee, a claim for
5 compensation may be presented to the Administrator. If the employer
6 and the injured employee shall reach a final agreement as to the
7 facts with relation to an injury, and the resulting disability for
8 which compensation is claimed under the Workers' Compensation Act, a
9 memorandum of such agreement, in form as prescribed by the
10 Administrator, signed by both the employer and employee shall be
11 filed by the employer with the Administrator. In cases in which the
12 claimant is not represented by legal counsel, the claimant and the
13 employer may reach a compromise settlement of all issues. ~~The~~
14 ~~settlement must be approved by the Administrator or a judge of the~~
15 ~~Court after the filing of an Employer's First Notice of Injury and~~
16 ~~may be paid in a lump sum.~~ There shall be no requirement for the
17 filing of an Employee's First Notice of Accidental Injury and Claim
18 for Compensation to effect such settlement. ~~The Court shall~~
19 ~~promulgate rules to allow the creation of a file, the making of a~~
20 ~~record before a reporter of the Workers' Compensation Court, and the~~
21 ~~approval of the settlement. This procedure shall be known as a~~
22 ~~"compromise settlement". Compensation received by a claimant in a~~
23 ~~compromise settlement as defined by this subsection or in a~~
24 ~~settlement based upon a dismissal of a claim with prejudice shall~~

1 ~~not be considered to be an award of permanent partial disability.~~
2 In the absence of fraud this agreement shall be deemed binding upon
3 the parties thereto. ~~The Court shall have full power and authority~~
4 ~~to determine all questions in relation to payment of claims for~~
5 ~~compensation under the provisions of the Workers' Compensation Act.~~
6 ~~The Court shall make, or cause to be made, such investigation as it~~
7 ~~deems necessary, and upon application of either party shall order a~~
8 ~~hearing, and as soon as practicable, after a claim for compensation~~
9 ~~is submitted under this section, or such hearing closed, shall make~~
10 ~~or deny an award determining such claim for compensation, and file~~
11 ~~the same in the office of the Administrator, together with the~~
12 ~~statement of its conclusion of fact and rulings of law. Upon a~~
13 ~~hearing pursuant to this section either party may present evidence~~
14 ~~and be represented by counsel. The decision of the Court shall be~~
15 ~~final as to all questions of fact, and except as provided in Section~~
16 ~~3.6 of this title, as to all questions of law.~~

17 C. A good faith effort shall be made on the part of any
18 insurance carrier, CompSource Oklahoma, or group self-insured plan
19 to notify an insured employer of the possibility of, and/or terms
20 of, any settlement of a workers' compensation case pursuant to this
21 section. Written comments or objections to settlements shall be
22 filed with the Workers' Compensation ~~Court~~ Commission and
23 periodically shared with the management of the applicable insurer.
24 A written notice shall be made to all policyholders of their right

1 to a good faith effort by their insurer to notify them of any
2 proposed settlement, if the policyholder so chooses.

3 SECTION 42. AMENDATORY 85 O.S. 2001, Section 27.1, is
4 amended to read as follows:

5 Section 27.1 Neither the claimant nor the respondent in
6 hearings before the ~~Court~~ Commission or Chief Medical Officer shall
7 be permitted to introduce the testimony of more than two physicians
8 where the evidence of any additional physician would be cumulative
9 testimony; provided, however, that the ~~Court~~ Commission or Chief
10 Medical Officer, on its own motion, may order that any claimant
11 appearing before it be examined by other physicians.

12 SECTION 43. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 28.1 of Title 85, unless there
14 is created a duplication in numbering, reads as follows:

15 A. 1. The Workers' Compensation Commission may review any
16 compensation order, award, or decision, except joint petition
17 settlements which have been agreed upon and filed with the
18 Commission.

19 2. Review by an administrative law judge or the Commission of
20 any compensation order or award, made by the administrative law
21 judge or the Commission, may be done at any time within three (3)
22 months of termination of the compensation period fixed in the
23 original compensation order or award, upon the application of any
24 party in interest, on the ground of a change in physical condition.

1 3. Upon the review, the Commission may make an order or award
2 terminating, continuing, decreasing, or increasing for the future
3 the compensation previously awarded, subject to the maximum limits
4 provided for in this act.

5 B. The review and subsequent order or award shall be made in
6 accordance with the procedure prescribed in this act.

7 C. The Commission may, at any time within twelve (12) months
8 from the issuance of any order or award, correct any clerical error
9 in any order or award.

10 SECTION 44. AMENDATORY 85 O.S. 2001, Section 30, as
11 amended by Section 23, Chapter 1, 1st Extraordinary Session, O.S.L.
12 2005 (85 O.S. Supp. 2009, Section 30), is amended to read as
13 follows:

14 Section 30. A. 1. If the Workers' Compensation ~~Court~~
15 Commission before which any proceedings for compensation or
16 concerning an award of compensation have been brought, under the
17 Workers' Compensation Act, determines that such proceedings have not
18 been brought on a reasonable ground, or that denial of benefits has
19 not been based on a reasonable ground, the ~~Court~~ Commission shall
20 assess the total cost of the proceedings on the party, who has
21 brought them or the party who has unreasonably denied payment of
22 benefits.

23 2. In the event a respondent fails to pay travel expenses as
24 required by an order of the ~~Court~~ Commission within twenty-five (25)

1 business days of such order, the ~~Court~~ Commission shall assess a
2 Five Hundred Dollar (\$500.00) penalty against the respondent and
3 payable to the claimant.

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

10 C. A claim for legal services shall be determined by the ~~Court~~
11 Commission pursuant to the provisions of this subsection.

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

17 2. A claim for legal services shall not exceed twenty percent
18 (20%) of the amount of the award for permanent disability or death
19 benefits.

20 D. Claims for legal services for temporary disability awards
21 shall be paid periodically. Claims for legal fees for permanent
22 total disability awards shall be paid periodically at the rate of
23 twenty percent (20%) of each weekly check to the claimant until the
24 attorney fee is satisfied, based upon a maximum of four hundred

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

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

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

7 SECTION 45. AMENDATORY 85 O.S. 2001, Section 41, is
8 amended to read as follows:

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

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

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

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

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

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

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

10 SECTION 46. AMENDATORY 85 O.S. 2001, Section 41.1, is
11 amended to read as follows:

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

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

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

7 SECTION 47. AMENDATORY 85 O.S. 2001, Section 42, is
8 amended to read as follows:

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

1 until the date of satisfaction. On or after November 1, 2001,
2 compensation ordered to be paid from the Multiple Injury Trust Fund
3 shall bear simple interest only at the percentage rate applicable to
4 judgments in civil cases pursuant to Section 727 of Title 12 of the
5 Oklahoma Statutes from the date of the award. Any award from the
6 Multiple Injury Trust Fund prior to November 4, 1994, shall bear
7 interest at the percentage rate applicable to judgments in civil
8 cases pursuant to Section 727 of Title 12 of the Oklahoma Statutes.
9 Upon the filing of the certified copy of the Commission's or Court
10 of Existing Claims' award a writ of execution shall issue and
11 process shall be executed and the cost thereof taxed, as in the case
12 of writs of execution, on judgments of courts of record, as provided
13 by Title 12 of the Oklahoma Statutes; provided, however, the
14 provisions of this section relating to execution and process for the
15 enforcement of awards shall be and are cumulative to other
16 provisions now existing or which may hereafter be adopted relating
17 to liens or enforcement of awards or claims for compensation.

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

1 SECTION 48. AMENDATORY 85 O.S. 2001, Section 43, as
2 amended by Section 24, Chapter 1, 1st Extraordinary Session, O.S.L.
3 2005 (85 O.S. Supp. 2009, Section 43), is amended to read as
4 follows:

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

1 toll the above limitations. ~~Post-termination injury~~ Injury claims
2 shall be filed within ~~six (6) months~~ ten (10) business days of
3 termination of employment, provided that nothing herein shall extend
4 any limitation period set forth in this section.

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

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

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

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

22 SECTION 49. AMENDATORY 85 O.S. 2001, Section 44, as
23 amended by Section 25, Chapter 1, 1st Extraordinary Session, O.S.L.

24

1 2005 (85 O.S. Supp. 2009, Section 44), is amended to read as
2 follows:

3 Section 44. (a) If a worker entitled to compensation under the
4 Workers' Compensation Act is injured or killed by the negligence or
5 wrong of another not in the same employ, such injured worker shall,
6 before any suit or claim under the Workers' Compensation Act, elect
7 whether to take compensation under the Workers' Compensation Act, or
8 to pursue his remedy against such other. Such election shall be
9 evidenced in such manner as the Administrator may by rule or
10 regulation prescribe. If he elects to take compensation under the
11 Workers' Compensation Act, the cause of action against such other
12 shall be assigned to the insurance carrier liable for the payment of
13 such compensation, and if he elects to proceed against such other
14 person or insurance carrier, as the case may be, the employer's
15 insurance carrier shall contribute only the deficiency, if any,
16 between the amount of the recovery against such other person
17 actually collected, and the compensation provided or estimated by
18 the Workers' Compensation Act for such case. The compromise of any
19 such cause of action by the worker at any amount less than the
20 compensation provided for by the Workers' Compensation Act shall be
21 made only with the written approval of the Commission or Court of
22 Existing Claims. Whenever recovery against such other person is
23 effected without compromise settlement by the employee or his
24 representatives, the employer or insurance company having paid

1 compensation under the Workers' Compensation Act shall be entitled
2 to reimbursement as hereinafter set forth and shall pay from its
3 share of said reimbursement a proportionate share of the expenses,
4 including attorneys fees, incurred in effecting said recovery to be
5 determined by the ratio that the amount of compensation paid by the
6 employer bears to the amount of the recovery effected by the
7 employee. After the expenses and attorneys fees have been paid, the
8 balance of the recovery shall be apportioned between the employer or
9 insurance company having paid the compensation and the employee or
10 his representatives in the same ratio that the amount of
11 compensation paid by the employer bears to the total amount
12 recovered; provided, however, the balance of the recovery may be
13 divided between the employer or insurance company having paid
14 compensation and the employee or his representatives as they may
15 agree.

16 In the event that recovery is effected by compromise settlement,
17 then in that event the expenses, attorneys fees and the balance of
18 the recovery may be divided between the employer or insurance
19 company having paid compensation and the employee or his
20 representatives as they may agree. Provided, that in the event they
21 are unable to agree, then the same shall be apportioned by the
22 district court having jurisdiction of the employee's action against
23 such other person, in such manner as is just and reasonable.

24

1 ~~(b) Notwithstanding subsection (d) of this section, the~~
2 ~~employer or his insurance carrier shall not have the right of~~
3 ~~subrogation to recover money paid by the employer or his insurance~~
4 ~~carrier for death claims or death benefits under the Workers'~~
5 ~~Compensation Act from third persons, with all common law rights~~
6 ~~against other than the employer and his employees preserved and to~~
7 ~~be in those persons who would have had such rights had there been no~~
8 ~~death claim or death benefits under the Workers' Compensation Act.~~

9 ~~(e) The employer or his insurance carrier shall have the right~~
10 ~~of subrogation to recover money paid by the employer or his~~
11 ~~insurance carrier for the expenses of the last illness or accident~~
12 ~~under the Workers' Compensation Act from third persons, with all~~
13 ~~common law rights against other than the employer and his employees~~
14 ~~preserved and to be in those persons who would have had such rights~~
15 ~~had there been no benefits under the Workers' Compensation Act.~~

16 ~~(d) An employer shall have a cause of action against a third~~
17 ~~party whose wrongful or negligent conduct causes the death of an~~
18 ~~employee entitled to compensation under this title to recover any~~
19 ~~money paid for death benefits on behalf of the employee. Nothing~~
20 ~~contained in this section shall allow an employer or insurance~~
21 ~~carrier for an employer to seek an interest in either the death~~
22 ~~benefits received by the employee or the employee's beneficiary or~~
23 ~~in a life insurance policy procured by the employee.~~

1 SECTION 50. AMENDATORY 85 O.S. 2001, Section 45, is
2 amended to read as follows:

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

7 B. No employee may receive temporary total disability benefits
8 covering the same period of time as unemployment compensation
9 benefits received by the employee as provided by the Oklahoma
10 Employment Security Commission or the unemployment insurance law of
11 any other state.

12 SECTION 51. AMENDATORY 85 O.S. 2001, Section 47.1, is
13 amended to read as follows:

14 Section 47.1 Where an applicant for employment, though not
15 actually disabled, is found to be affected by silicosis or
16 asbestosis, he may, subject to the approval of the ~~State Industrial~~
17 Commission, be permitted to waive in writing full compensation for
18 any aggravation of his condition that may result from his continuing
19 in his hazardous occupation. In the event of total disablement as a
20 result of the disease with which the employee was so affected, after
21 such a waiver, compensation shall nevertheless be payable as herein
22 elsewhere provided, but in no case for longer than one hundred (100)
23 weeks or to exceed Two Thousand (\$2,000.00) Dollars in the
24 aggregate. A waiver so permitted shall remain effective, for the

1 trade, occupation, process or employment for which executed,
2 notwithstanding a change or changes of employer. The Commission
3 shall make reasonable rules and regulations relative to the form,
4 execution, filing or registration and public inspection of waivers
5 or records thereof.

6 SECTION 52. AMENDATORY 85 O.S. 2001, Section 48.1, is
7 amended to read as follows:

8 Section 48.1 A. 1. A lien against workers' compensation
9 benefits is authorized for the purpose of enforcing a judgment for
10 child support. Child support liens filed in accordance with Section
11 135 of Title 43 of the Oklahoma Statutes are specifically authorized
12 and shall be paid in accordance with such statute without any order
13 of the Worker's Compensation Commission or Court of Existing Claims.

14 2. Additionally, all income assignments or wage assignments for
15 child support issued pursuant to Section 1170 of Title 12 of the
16 Oklahoma Statutes or Section 240 of Title 56 of the Oklahoma
17 Statutes are specifically authorized and shall be paid in accordance
18 with such statutes without any order of the Workers' Compensation
19 Commission or Court of Existing Claims.

20 B. Venue for purposes of subsection B of Section 1171.3 of
21 Title 12 of the Oklahoma Statutes and subsection E of Section 240.2
22 of Title 56 of the Oklahoma Statutes shall be either the location of
23 the employer's insurance carrier or the employer's place of business
24 within Oklahoma.

1 SECTION 53. AMENDATORY 85 O.S. 2001, Section 61, as
2 amended by Section 78, Chapter 264, O.S.L. 2006 (85 O.S. Supp. 2009,
3 Section 61), is amended to read as follows:

4 Section 61. A. An employer shall secure compensation to his
5 employees in one of the following ways:

6 1. By insuring and keeping insured the payment of such
7 compensation with any stock corporation, mutual association, or
8 other concerns authorized to transact the business of workers'
9 compensation insurance in this state, or by exchanging contracts of
10 indemnity or interinsurance, pursuant to reasonable rules prescribed
11 by the Administrator providing for and securing the payment of the
12 compensation provided for in the Workers' Compensation Act. When an
13 insurer issues a policy to provide workers' compensation benefits
14 pursuant to the provisions of the Workers' Compensation Act, the
15 insurer shall file, or cause to be filed, with the Administrator a
16 notice in such form and detail as the Administrator may prescribe by
17 rule. The notice shall contain the name, address, and principal
18 occupation of the employer, the number, effective date, and
19 expiration date of the policy, and such other information as may be
20 required by the Administrator. The notice shall be filed by the
21 insurer within thirty (30) days after the effective date of the
22 policy. Any insurer who fails to file the notice required by this
23 subsection shall be liable for an administrative violation and

24

1 subject to a fine by the Administrator of not more than One Thousand
2 Dollars (\$1,000.00);

3 2. By obtaining and keeping in force guaranty insurance with
4 any company authorized to do guaranty business in this state. Each
5 company that issues such guaranty insurance shall file a copy of the
6 contract with the Administrator within thirty (30) days after the
7 effective date of the contract. Any company that fails to file a
8 copy of the contract as required by this subsection shall be liable
9 for an administrative violation and subject to a fine by the
10 Administrator of not more than One Thousand Dollars (\$1,000.00);

11 3. By obtaining and keeping in force a workers' compensation
12 equivalent insurance product approved by the Insurance Commissioner
13 pursuant to Section 65 of this title; or

14 4. By furnishing satisfactory proof to the Administrator of the
15 employer's financial ability to pay such compensation. The
16 Administrator, pursuant to rules adopted by the Court or the
17 Administrator for an individual self-insured or a group self-
18 insurance association, shall require an employer that has:

19 a. less than one hundred employees or less than One
20 Million Dollars (\$1,000,000.00) in net assets to:

21 (1) deposit with the Administrator securities, an
22 irrevocable letter of credit or a surety bond
23 payable to the state, in an amount determined by
24 the Administrator which shall be at least an

1 average of the yearly claims for the last three
2 (3) years; or

3 (2) provide proof of excess coverage with such terms
4 and conditions as is commensurate with their
5 ability to pay the benefits required by the
6 provisions of the Workers' Compensation Act.

7 b. one hundred or more employees and One Million Dollars
8 (\$1,000,000.00) or more in net assets to:

9 (1) secure a surety bond payable to the state, or an
10 irrevocable letter of credit, in an amount
11 determined by the Administrator which shall be at
12 least an average of the yearly claims for the
13 last three (3) years; or

14 (2) provide proof of excess coverage with such terms
15 and conditions as is commensurate with their
16 ability to pay the benefits required by the
17 provisions of the Workers' Compensation Act.

18 The Administrator may waive the requirements of this paragraph
19 in an amount which is commensurate with the ability of the
20 individual self-insured or group self-insurance association to pay
21 the benefits required by the provisions of the Workers' Compensation
22 Act. Irrevocable letters of credit required by this paragraph shall
23 contain such terms as may be prescribed by the Administrator and
24 shall be issued for the benefit of the Workers' Compensation ~~Court~~

1 Commission by a financial institution whose deposits are insured by
2 the Federal Deposit Insurance Corporation.

3 B. An employer, upon application to become a member of a group
4 self-insurance association, shall file with the Administrator of the
5 Workers' Compensation ~~Court~~ Commission a notice, in such form as
6 prescribed by the Administrator of the ~~Court~~ Commission,
7 acknowledging that the employer, by entering into a group self-
8 insurance association, accepts joint and several liability. Such
9 notice shall be submitted to the Workers' Compensation ~~Court~~
10 Commission with the application for membership.

11 C. An employer who fails to comply with the provisions of this
12 section shall be subject to the penalty provided for in Section 12
13 of this title.

14 D. Any employer that knowingly provides false information to
15 the Administrator for purposes of becoming self-insured or a group
16 self-insurance association shall be subject to the perjury laws of
17 this state.

18 E. The provisions of this title shall not be construed to limit
19 or restrict the ability of political subdivisions of this state or
20 employers subject to the provisions of the Workers' Compensation Act
21 from joining together to form group self-insurance associations
22 pursuant to law or rules promulgated by the Court or the
23 Administrator.

24

1 SECTION 54. AMENDATORY 85 O.S. 2001, Section 61.2, is
2 amended to read as follows:

3 Section 61.2 All self-insured employers and group self-
4 insurance association plans shall be required to develop and
5 implement workplace safety plans by January 1, 1996, and shall
6 notify the Administrator of the Workers' Compensation ~~Court~~
7 Commission, in writing, upon implementation of the plan. All
8 private employers who become self-insured after the effective date
9 of this act and group self-insurance association plans approved by
10 the Administrator of the Workers' Compensation ~~Court~~ Commission
11 after the effective date of this act shall implement a workplace
12 safety plan within six (6) months of becoming self-insured and shall
13 notify the Administrator of the Workers' Compensation ~~Court~~
14 Commission, in writing, upon implementation of the plan.

15 SECTION 55. AMENDATORY 85 O.S. 2001, Section 64, as last
16 amended by Section 79, Chapter 264, O.S.L. 2006 (85 O.S. Supp. 2009,
17 Section 64), is amended to read as follows:

18 Section 64. A. Every policy of insurance covering the
19 liability of the employer for compensation issued by a stock company
20 or by a mutual association or other concern authorized to transact
21 workers' compensation insurance in this state shall contain a
22 provision setting forth the right of the Administrator to enforce in
23 the name of the state, for the benefit of the person entitled to the
24 compensation insured by the policy either by filing a separate

1 application or by making the insurance carrier a party to the
2 original application, the liability of the insurance carrier in
3 whole or in part for the payment of such compensation; provided,
4 however, that payment in whole or in part of the compensation by
5 either the employer or the insurance carrier shall, to the extent
6 thereof, be a bar to the recovery against the other of the amount so
7 paid.

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

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

22 D. 1. Every such policy issued to cover a risk in this state
23 shall include provisions giving the insured employer the option of
24 choosing a deductible amount for medical benefits in amounts ranging

1 from Five Hundred Dollars (\$500.00) to Two Thousand Five Hundred
2 Dollars (\$2,500.00) in increments of Five Hundred Dollars (\$500.00).
3 The policy issued may also include separate provisions giving the
4 insured employer the option of choosing a deductible amount for
5 indemnity benefits in amounts ranging from Five Hundred Dollars
6 (\$500.00) to Two Thousand Five Hundred Dollars (\$2,500.00) in
7 increments of Five Hundred Dollars (\$500.00). The insured employer,
8 if choosing to exercise the option, shall choose only one deductible
9 amount.

10 2. If an insured employer exercises the option and chooses a
11 medical benefits deductible or indemnity benefits deductible, the
12 insured employer shall be liable for the amount of the deductible or
13 deductibles for the medical or indemnity benefits paid for each
14 claim of work injury suffered by an injured employee.

15 3. The Insurance Commissioner, in exercising the authority to
16 approve the form of the policy to be issued, shall not approve any
17 policy form that permits, directly or indirectly, any part of the
18 deductible to be charged to or passed on to the injured worker or
19 insurer.

20 4. The insurer shall pay the entire cost of medical bills
21 directly to the provider of the services and then seek reimbursement
22 from the insured employer for the deductible amount. The insurer
23 shall pay the entire cost of the indemnity benefits as if no
24

1 deductible were in place and then seek reimbursement from the
2 insured employer for the deductible amount.

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

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

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

14 E. Every such policy issued to a sole proprietor, partnership,
15 limited liability company, corporation, or other business entity
16 must disclose to the potential purchaser in writing the option to
17 elect to include the sole proprietors, any or all of the partnership
18 members, any or all of the limited liability company members, or any
19 or all stockholder-employees as employees for the purpose of
20 workers' compensation insurance coverage by endorsing the policy in
21 accordance with Section 3 of this title.

22 F. Every contract or agreement of an employer the purpose of
23 which is to indemnify the employer from loss or damage on account of
24 the injury of an employee by accidental means, or on account of the

1 negligence of such employer or the employer's officer, agent or
2 servant shall be absolutely void unless it shall also cover
3 liability for the payment of the compensation provided for in this
4 title.

5 G. No contract of insurance issued by a stock company or mutual
6 association or other concern against the liability arising under
7 this title shall be canceled within the time limited in such
8 contract for its expiration until at least ten (10) days after
9 notice of intention to cancel such contract, on a date specified in
10 such notice, shall be filed in the office of the Administrator and
11 also served on the employer. Such notice shall be served on the
12 employer by delivering it to the employer or by sending it by mail,
13 by registered letter, addressed to the employer at the employer's
14 last-known place of residence; provided, that if the employer be a
15 partnership, then such notice may be so given to any one of the
16 partners, and if the employer be a corporation, then the notice may
17 be given to any agent or officer of the corporation upon whom legal
18 process may be served. Provided, however, if a contract of
19 insurance has been terminated by an employer insured thereunder who
20 has obtained other compensation insurance, as evidenced by filing in
21 compliance with Section 61 of this title, and no intervening rights
22 of any employee are involved, omission of a predecessor insurer to
23 file notice of time of termination of liability shall not constitute
24 basis for imposition of liability against such predecessor insurer.

1 H. An insurance carrier or its representative commits an
2 administrative violation under Title 36 of the Oklahoma Statutes if
3 that person attends a workers' compensation dispute resolution
4 proceeding without complete authority or fails to exercise authority
5 to effectuate agreement or settlement.

6 SECTION 56. AMENDATORY 85 O.S. 2001, Section 66.1, is
7 amended to read as follows:

8 Section 66.1 A. There is hereby created the "Individual
9 Self-Insured Guaranty Fund Board". The Board shall have supervision
10 over the administration and operation of the Individual Self-Insured
11 Guaranty Fund.

12 B. The Board shall consist of not less than three (3) nor more
13 than nine (9) members. Each member shall be from an employer who
14 has been approved by the Workers' Compensation ~~Court~~ Commission as
15 an own risk carrier or self-insured risk. The Board shall be
16 appointed by the Administrator.

17 The initial members of the Board shall be appointed to terms of
18 office as follows:

- 19 1. One member shall be appointed for one (1) year;
- 20 2. One member shall be appointed for two (2) years; and
- 21 3. One member shall be appointed for three (3) years.

22 If more than three members are appointed, the fourth member shall be
23 appointed for four (4) years and each of the others appointed shall
24 be for terms of office in the order of their appointment of one,

1 two, three or four years with the ninth member also serving four (4)
2 years. Thereafter, each person appointed shall serve for four (4)
3 years.

4 C. The State Treasurer shall establish the Individual
5 Self-Insured Guaranty Fund in the State Treasury.

6 D. The monies paid into the Fund, together with the interest
7 thereon, shall constitute the Individual Self-Insured's Guaranty
8 Fund.

9 E. Until the Individual Self-Insured Guaranty Fund contains One
10 Million Dollars (\$1,000,000.00), the Oklahoma Tax Commission shall
11 assess and collect from the employers carrying their own risk a tax
12 at the rate of one percent (1%) of the total compensation for
13 permanent partial disability awards paid out during each quarter of
14 the calendar year by the employers. The Oklahoma Tax Commission
15 shall forward to the State Treasurer the proceeds of the tax for
16 deposit in the Fund. When the amount in the Fund falls below Seven
17 Hundred Fifty Thousand Dollars (\$750,000.00), the tax made pursuant
18 to this section shall be assessed until the Fund contains One
19 Million Dollars (\$1,000,000.00). The State Treasurer shall place
20 monies in the Fund in interest-bearing accounts.

21 F. 1. If an employer, who is currently approved by the
22 Workers' Compensation ~~Court~~ Commission as a self-insured or own risk
23 carrier, is unable to make payment of an award and judgment is
24 rendered against such employer and execution is levied and returned

1 | unsatisfied in whole or in part, payments for such liabilities shall
2 | be made from the Individual Self-Insured Guaranty Fund.

3 | The Administrator shall proceed to recover such payments from
4 | the employer, or the employer's receiver or trustee in bankruptcy,
5 | and may commence an action or proceeding or file a claim therefor.

6 | The Attorney General shall appear on behalf of the Administrator
7 | in any such action or proceeding. All monies recovered in such
8 | action shall be paid into the Fund.

9 | 2. Each employer approved as an individual self-insurer or own
10 | risk carrier shall pay into the Fund a sum equal to that assessed
11 | against such employer as provided for in subsection E of this
12 | section. When the award becomes final, the sum shall be payable
13 | regardless of whether or not the award made to the claimant is paid.

14 | 3. In making and entering awards for compensation for permanent
15 | partial disability, the ~~Court~~ Commission shall determine and fix the
16 | amounts that shall be paid to the Tax Commission pursuant to the
17 | provisions of subsection E of this section. The amount so
18 | determined and fixed shall have the same force and effect as an
19 | award of the ~~Court~~ Commission for compensation and all provisions
20 | relating to the collection of awards of the ~~Court~~ Commission shall
21 | apply to such judgments.

22 | 4. It shall be the duty of the Oklahoma Tax Commission to
23 | collect the payments provided for in this section. The Oklahoma Tax
24 | Commission is hereby authorized to bring an action for the recovery

1 of any delinquent or unpaid payments required in this section. The
2 Oklahoma Tax Commission may also enforce payments by proceeding in
3 accordance with the provisions of Section 42 of Title 85 of the
4 Oklahoma Statutes.

5 The Oklahoma Tax Commission shall on or before the first day of
6 April of each year find and determine the amount of money held as of
7 March 1 of that year by the State Treasurer for the benefit of the
8 Individual Self-Insured Guaranty Fund and shall on or before the
9 first day of October of each year find and determine the amount of
10 money held as of September 1 of that year by the State Treasurer for
11 the benefit of the Individual Self-Insured Guaranty Fund. Promptly
12 after making each such determination, the Oklahoma Tax Commission
13 shall advise the Administrator in writing of its findings.

14 5. Eighty percent (80%) of all sums held by the State Treasurer
15 to the credit of the Individual Self-Insured Guaranty Fund by order
16 of the Administrator, with the approval of the Individual
17 Self-Insured Guaranty Fund Board, may be invested in or loaned on
18 the pledge of any of the securities in which a state bank may invest
19 the moneys deposited therein by the State Treasurer; or may be
20 deposited in state or national banks or trust companies upon insured
21 time deposit bearing interest at a rate no less than currently being
22 paid upon insured savings accounts in said institutions. "Insured"
23 as used in this section shall mean insurance as provided by an
24 agency of the federal government. All such securities or evidence

1 of indebtedness shall be placed in the hands of the State Treasurer,
2 who shall be the custodian thereof, who shall collect the principal
3 and interest when due, and pay the same into said Fund. The State
4 Treasurer shall pay by vouchers drawn on the Individual Self-Insured
5 Guaranty Fund for the making of such investments, when signed by the
6 Administrator and approved by the Individual Self-Insured Guaranty
7 Board, upon delivery of such securities or evidence of indebtedness
8 to him. The Administrator, upon approval of the individual
9 Self-Insured Guaranty Board, may sell any of such securities, the
10 proceeds thereof to be paid over to the State Treasurer for deposit
11 in the Fund.

12 6. The refund provisions of Sections 227 through 229 of Title
13 68 of the Oklahoma Statutes shall be applicable to any payment of
14 assessments made to the Fund when the Fund has over One Million
15 Dollars (\$1,000,000.00) in it. Refunds shall be paid from the Fund.

16 7. The Oklahoma Tax Commission shall pay, monthly, to the State
17 Treasurer to the credit of the Individual Self-Insured Guaranty Fund
18 all moneys collected under the provisions of this section. The State
19 Treasurer shall pay out of the Individual Self-Insured Guaranty Fund
20 only upon the order and direction of a court of this state acting
21 under the provisions thereof.

22 8. Where an award has been made by the Court or a payment in
23 lieu thereof for compensable injury for a permanent partial
24 disability, the employer shall pay to the Tax Commission such sum as

1 is due of which ninety-eight percent (98%) of said sum shall be paid
2 into the Fund and the remaining two percent (2%) thereof shall be
3 paid to the Oklahoma Tax Commission not later than the fifteenth of
4 the month following the close of the calendar quarter in which the
5 award was made.

6 G. The Board may retain an insurance carrier or approved
7 service organization to process, investigate and pay valid claims.
8 The charge for such service shall be paid from the Fund.

9 H. The provisions of this section shall not apply to any state
10 entity or any political subdivision of the state.

11 I. No claim or award shall be allowed against the Fund unless
12 such claim or award is made within (1) one year of the time provided
13 in paragraph 1 of subsection F of this section.

14 SECTION 57. AMENDATORY 85 O.S. 2001, Section 66.2, is
15 amended to read as follows:

16 Section 66.2 A. There is hereby created the "Group
17 Self-Insurance Association Guaranty Fund Board". The Board shall
18 have supervision over the administration and operation of the Group
19 Self-Insurance Association Guaranty Fund.

20 B. The Board shall consist of not less than three (3) nor more
21 than nine (9) members. Each member shall be an administrator of a
22 Group Self-Insurance Association which has been approved by the
23 Workers' Compensation ~~Court~~ Commission as an own risk carrier or
24 self-insured risk. The Board shall be appointed by the

1 Administrator. The initial members of the Board shall be appointed
2 to terms of office as follows:

- 3 1. One member shall be appointed for one (1) year;
- 4 2. One member shall be appointed for two (2) years; and
- 5 3. One member shall be appointed for three (3) years.

6 If more than three members are appointed, the fourth member shall be
7 appointed for four (4) years and each of the others appointed shall
8 be for terms of office in the order of their appointment of one,
9 two, three or four years with the ninth member also serving four (4)
10 years. Thereafter, each person appointed shall serve for four (4)
11 years.

12 C. The State Treasurer shall establish the Group Self-Insurance
13 Association Guaranty Fund in the State Treasury.

14 D. The monies paid into the Fund, together with the interest
15 thereon, shall constitute the Group Self-Insurance Association
16 Guaranty Fund.

17 E. Until the Group Self-Insurance Association Guaranty Fund
18 contains One Million Dollars (\$1,000,000.00), the Oklahoma Tax
19 Commission shall assess and collect from each group self-insurance
20 association carrying their own risk, a tax at the rate of one
21 percent (1%) of the total compensation for permanent partial
22 disability awards paid out during each quarter of the calendar year
23 by each group self-insurance association. The Oklahoma Tax
24 Commission shall forward to the State Treasurer the proceeds of the

1 tax for deposit in the Fund. When the amount in the Fund falls
2 below Seven Hundred Fifty Thousand Dollars (\$750,000.00), the tax
3 made pursuant to this section shall be assessed until the Fund
4 contains One Million Dollars (\$1,000,000.00). The State Treasurer
5 shall place monies in the Fund in interest-bearing accounts.

6 F. 1. If a group self-insurance association, that is currently
7 approved by the Workers' Compensation ~~Court~~ Commission as a
8 self-insured or own risk carrier, is unable to make payment of an
9 award and judgment is rendered against such group self-insurance
10 association and execution is levied and returned unsatisfied in
11 whole or in part, payments for such liabilities shall be made from
12 the Group Self-Insurance Association Guaranty Fund.

13 The Administrator shall proceed to recover such payments from
14 the group self-insurance association, or the group self-insurance
15 association's receiver or trustee in bankruptcy, and may commence an
16 action or proceeding or file a claim therefor.

17 The Attorney General shall appear on behalf of the Administrator
18 in any such action or proceeding. All monies recovered in such
19 action shall be paid into the Fund.

20 2. Each group self-insurance association approved as a
21 self-insurer or own risk carrier shall pay into the Fund a sum equal
22 to that assessed against such group self-insurance association as
23 provided for in subsection E of this section. When the award
24

1 becomes final, the sum shall be payable regardless of whether or not
2 the award made to the claimant is paid.

3 3. In making and entering awards for compensation for permanent
4 partial disability, the ~~Court~~ Commission shall determine and fix the
5 amounts that shall be paid to the Tax Commission pursuant to the
6 provisions of subsection E of this section. The amount so
7 determined and fixed shall have the same force and effect as an
8 award of the ~~Court~~ Commission for compensation and all provisions
9 relating to the collection of awards of the Court shall apply to
10 such judgments.

11 4. It shall be the duty of the Oklahoma Tax Commission to
12 collect the payments provided for in this section. The Oklahoma Tax
13 Commission is hereby authorized to bring an action for the recovery
14 of any delinquent or unpaid payments required in this section. The
15 Oklahoma Tax Commission may also enforce payments by proceeding in
16 accordance with the provisions of Section 42 of Title 85 of the
17 Oklahoma Statutes.

18 The Oklahoma Tax Commission shall on or before the first day of
19 April of each year find and determine the amount of money held as of
20 March 1 of that year by the State Treasurer for the benefit of the
21 Group Self-Insurance Association Guaranty Fund and shall on or
22 before the first day of October of each year find and determine the
23 amount of money held as of September 1 of that year by the State
24 Treasurer for the benefit of the Group Self-Insurance Association

1 Guaranty Fund. Promptly after making each such determination, the
2 Oklahoma Tax Commission shall advise the Administrator in writing of
3 its findings.

4 5. Eighty percent (80%) of all sums held by the State Treasurer
5 to the credit of the Group Self-Insurance Association Guaranty Fund
6 by order of the Administrator, with the approval of the Group
7 Self-Insurance Association Guaranty Fund Board, may be invested in
8 or loaned on the pledge of any of the securities in which a state
9 bank may invest the moneys deposited therein by the State Treasurer;
10 or may be deposited in state or national banks or trust companies
11 upon insured time deposit bearing interest at a rate no less than
12 currently being paid upon insured savings accounts in said
13 institutions. "Insured" as used in this section shall mean
14 insurance as provided by an agency of the federal government. All
15 such securities or evidence of indebtedness shall be placed in the
16 hands of the State Treasurer, who shall be the custodian thereof,
17 who shall collect the principal and interest when due, and pay the
18 same into said Fund. The State Treasurer shall pay by vouchers
19 drawn on the Group Self-Insurance Association Guaranty Fund for the
20 making of such investments, when signed by the Administrator and
21 approved by the Group Self-Insurance Association Guaranty Board,
22 upon delivery or evidence of indebtedness to him. The
23 Administrator, upon approval of the Group Self-Insurance Association
24 Guaranty Board, may sell any of such securities, the proceeds

1 thereof to be paid over to the State Treasurer for deposit in the
2 Fund.

3 6. The refund provisions of Sections 227 through 229 of Title
4 68 of the Oklahoma Statutes shall be applicable to any payment of
5 assessments made to the Fund when the Fund has over One Million
6 Dollars (\$1,000,000.00) in it. Refunds shall be paid from the Fund.

7 7. The Oklahoma Tax Commission shall pay, monthly, to the State
8 Treasurer to the credit of the Group Self-Insurance Association
9 Guaranty Fund all moneys collected under the provisions of this
10 section. The State Treasurer shall pay out of the Group
11 Self-Insurance Association Guaranty Fund only upon the order and
12 direction of a court of this state acting under the provisions
13 thereof.

14 8. Where an award has been made by the ~~Court~~ Commission or a
15 payment in lieu thereof for compensable injury for a permanent
16 partial disability, the employer shall pay to the Tax Commission
17 such sum as is due of which ninety-eight percent (98%) of said sum
18 shall be paid into the Fund and the remaining two percent (2%)
19 thereof shall be paid to the Oklahoma Tax Commission not later than
20 the fifteenth of the month following the close of the calendar
21 quarter in which the award was made.

22 G. The Board may retain an insurance carrier or approved
23 service organization to process, investigate and pay valid claims.
24 The charge for such service shall be paid from the Fund.

1 H. The provisions of this section shall not apply to any group
2 self-insurance association consisting of state entities or of any
3 political subdivisions of the state.

4 I. No claim or award shall be allowed against said Fund unless
5 such claim or award is made within one (1) year of the time provided
6 in paragraph 1 of subsection F of this section.

7 SECTION 58. AMENDATORY 85 O.S. 2001, Section 80, is
8 amended to read as follows:

9 Section 80. A. Failure to attend in obedience to a subpoena
10 issued by the Workers' Compensation ~~Court~~ Commission may be
11 punishable as contempt of the ~~Court~~ Commission. The ~~Court~~
12 Commission may compel obedience to the subpoena by attachment
13 proceedings as for contempt pursuant to Sections 393 and 396 of
14 Title 12 of the Oklahoma Statutes. Punishment for failure to attend
15 in obedience to a subpoena, except in case of a demand and failure
16 to pay witness fees as provided in Section 81 of this title, shall
17 be limited to a fine not to exceed One Thousand Dollars (\$1,000.00)
18 which the ~~Court~~ Commission may order the witness to pay. The fine
19 imposed by the Court shall be paid into the Administrator of
20 Workers' Compensation Revolving Fund created pursuant to Section 95
21 of this title.

22 B. In case of disobedience of any person to comply with the
23 order of the Workers' Compensation ~~Court~~ Commission, the judge of
24 the district court of the county in which the person resides, or of

1 the county in which such hearing is being conducted, on application
2 of a judge of the Workers' Compensation ~~Court~~ Commission, shall
3 compel obedience by attachment proceedings as for contempt, pursuant
4 to Sections 393 and 396 of Title 12 of the Oklahoma Statutes.

5 SECTION 59. AMENDATORY 85 O.S. 2001, Section 81, is
6 amended to read as follows:

7 Section 81. Each witness who appears in obedience to a subpoena
8 before the Commission or Court of Existing Claims to obtain the
9 required information, shall receive for his attendance the fee and
10 mileage provided for witnesses in civil cases.

11 SECTION 60. AMENDATORY 85 O.S. 2001, Section 84, is
12 amended to read as follows:

13 Section 84. A. The power and jurisdiction of the Commission or
14 Court of Existing Claims over each case shall be continuing and it
15 may, from time to time, make such modifications or changes with
16 respect to former findings or orders relating thereto if, in its
17 opinion, it may be justified, including the right to require
18 physical examinations as provided for in Section 25 of this title,
19 and subject to the same penalties for refusal; provided, that upon
20 petition filed by the employer or insurance carrier, and the injured
21 employee, or other person entitled to compensation under the
22 Workers' Compensation Act, the Commission or Court of Existing
23 Claims shall have jurisdiction to consider the proposition of
24 whether or not a final settlement may be had between the parties

1 presenting such petition. The Commission or Court of Existing
2 Claims is authorized and empowered to have a full hearing on the
3 petition, and to take testimony of physicians and others relating to
4 the permanency or probable permanency of the injury, and to take
5 such other testimony relevant to the subject matter of such petition
6 as the Commission or Court of Existing Claims may require. The
7 Commission or Court of Existing Claims shall have authority to
8 consider such petition and to dismiss the same without a hearing if
9 in its judgment the same shall not be set for a hearing; the
10 expenses of such hearing or investigation, including necessary
11 medical examinations, shall be paid by the employer or insurance
12 carrier, and such expenses may be included in the final award. If
13 the Commission or Court of Existing Claims decides it is for the
14 best interest of both parties to said petition that a final award be
15 made, a decision shall be rendered accordingly and the Commission or
16 Court of Existing Claims may make an award that shall be final as to
17 the rights of all parties to said petition and thereafter the
18 Commission or Court of Existing Claims shall have no jurisdiction
19 over any claim for the injury or any results arising from same. If
20 the Commission or Court of Existing Claims shall decide the case
21 should not be finally settled at the time of the hearing, the
22 petition shall be dismissed without prejudice to either party, and
23 the Commission or Court of Existing Claims shall have the same
24 jurisdiction over the matter as if said petition had not been filed.

1 The same rights of appeal shall exist from the decision rendered
2 under such petition as if provided for appeals in other cases before
3 the Commission or Court of Existing Claims; provided there shall be
4 no appeal allowed from an order of the Commission or Court of
5 Existing Claims dismissing such petition as provided in this
6 section.

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

18 SECTION 61. AMENDATORY 85 O.S. 2001, Section 85, is
19 amended to read as follows:

20 Section 85. Annually, on or before the first day of July,
21 commencing with July, 1987, the Administrator shall prepare and
22 submit a report for the prior calendar year to the Governor, the
23 Chief Justice of the Supreme Court, the President Pro Tempore of the
24 Senate, the Speaker of the House of Representatives and each member

1 of the Legislature, which shall include a statement of the number of
2 awards made and the causes of the accidents leading to the injuries
3 for which the awards were made, total work load data of the Court, a
4 detailed report of the work load of each judge of the Court, a
5 detailed statement of the expenses of the office of the
6 Administrator of Workers' Compensation and the Commission or Court
7 of Existing Claims, together with any other matter which the
8 Administrator deems proper to report to the Governor, including any
9 recommendations he may desire to make.

10 SECTION 62. AMENDATORY 85 O.S. 2001, Section 104, is
11 amended to read as follows:

12 Section 104. All books, records and payrolls of the employers
13 showing or reflecting in any way upon the amount of wage
14 expenditures of such employers shall always be open for inspection
15 by the Administrator or any other authorized auditors, accountants,
16 or inspector for the purpose of ascertaining the correctness of the
17 wage expenditure and number of men employed and such other
18 information as may be necessary for the purposes and uses of the
19 Administrator in the administration of the Workers' Compensation
20 Act. No person shall be excused from testifying or from producing
21 any books or papers or documents in any investigation or inquiry, by
22 or upon any hearing before the Commission or Court of Existing
23 Claims, when ordered to do so by the Commission or Court of Existing
24 Claims, upon the ground that the testimony or payroll or other

1 competent evidence required of him may tend to incriminate him or
2 subject him to penalty or forfeiture; but no person shall be
3 prosecuted, punished or subjected to any penalty or forfeiture for
4 or on account of any act, transaction, matter or thing concerning
5 which he shall under oath, have, by order of the Commission or Court
6 of Existing Claims, testified to or produced documentary evidence
7 of; provided however, that no person so testifying shall be exempt
8 from prosecution or punishment for any perjury committed by him in
9 his testimony.

10 SECTION 63. AMENDATORY 85 O.S. 2001, Section 110, as
11 amended by Section 1, Chapter 338, O.S.L. 2002 (85 O.S. Supp. 2009,
12 Section 110), is amended to read as follows:

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

21 B. 1. All requests made to the Workers' Compensation
22 Commission or Court of Existing Claims for information on prior
23 workers' compensation claims involving a worker, including written
24 inquiries about prior claims and requests to access a worker's

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

20 2. This subsection shall not apply:

21 a. to requests for claims information made by a public
22 officer or by a public employee in the performance of
23 his or her duties on behalf of a governmental entity
24 or as may be allowed by law,

- 1 b. to requests for claims information made by an insurer,
2 self-insured employer, third-party claims
3 administrator, or a legal representative thereof, when
4 necessary to process or defend a worker's compensation
5 claim,
- 6 c. when a worker or the worker's representative requests
7 review of the worker's claims information,
- 8 d. when the disclosure is made for educational or
9 research purposes and in such a manner that the
10 disclosed information cannot be used to identify any
11 worker who is the subject of a claim,
- 12 e. to requests for claims information made by a health
13 care or rehabilitation provider or the provider's
14 legal representative when necessary to process payment
15 of health care or rehabilitation services rendered to
16 a worker, and
- 17 f. to requests for claim information made by an employer
18 or personnel service company (including but not
19 limited to an individual or entity) where the worker
20 executes a written authorization permitting the search
21 and designating the employer or personnel service
22 company as the worker's representative for that
23 purpose; however, nothing in this subparagraph shall
24 relieve the employer or personnel service company from

1 complying with the requirements of utilizing the form
2 set forth in paragraph 1 of this subsection.

3 SECTION 64. AMENDATORY 85 O.S. 2001, Section 112, is
4 amended to read as follows:

5 Section 112. A. There is hereby created an Advisory Council on
6 Workers' Compensation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 its findings annually to the Governor, the Chief Justice of the
2 Supreme Court, the President Pro Tempore of the Senate, and the
3 Speaker of the House of Representatives.

4 ~~F.~~ H. In addition to other duties required by this section, the
5 Advisory Council shall consult with the Workers' Compensation ~~Court~~
6 Commission and Chief Medical Officer regarding oversight of
7 ~~independent medical examiners~~ Medical Impairment Rating physicians
8 as provided in ~~Section 17~~ of this title.

9 SECTION 65. AMENDATORY 85 O.S. 2001, Section 149.1, is
10 amended to read as follows:

11 Section 149.1 A. The Workers' Compensation ~~Court~~ Commission
12 shall adopt rules permitting two or more employers not otherwise
13 subject to the provisions of Section 2b of this title to pool
14 together liabilities under this act for the purpose of qualifying as
15 a group self-insurer and each such employer shall be classified as a
16 self-insurer.

17 B. The ~~Court~~ Commission shall approve the distribution of all
18 undistributed policyholders' surplus of a Workers' Compensation
19 Self-Insurance Program if the Program complies with the following
20 criteria:

- 21 1. Has been in business for at least five (5) years;
- 22 2. Has its financial statements audited by a public accounting
23 firm which audits at least one corporate client which has assets in
24 excess of One Billion Dollars (\$1,000,000,000.00) and on which the

1 accounting firm has issued an unqualified opinion as to the fair
2 presentation of the financial position of the Program showing
3 adequate solvency and reserves; and

4 3. Is in compliance with the provisions of this title and all
5 other regulations as required by the ~~Court~~ Commission.

6 C. A group self-insurer created pursuant to this section either
7 prior to or after the effective date of this act shall not be
8 subject to the provisions of the Oklahoma Securities Act.

9 SECTION 66. AMENDATORY 85 O.S. 2001, Section 149.2, is
10 amended to read as follows:

11 Section 149.2 The Workers' Compensation ~~Court~~ Commission shall
12 adopt rules permitting two or more group self-insurance associations
13 to pool their liabilities under this act for the purpose of
14 providing such group self-insurance associations specific and
15 aggregate excess insurance.

16 SECTION 67. AMENDATORY 85 O.S. 2001, Section 171, as
17 amended by Section 27, Chapter 1, 1st Extraordinary Session, O.S.L.
18 2005 (85 O.S. Supp. 2009, Section 171), is amended to read as
19 follows:

20 Section 171. For the purpose of Sections 171 through 176 of
21 this title, the term "physically impaired person" means a person who
22 as a result of accident, disease, birth, military action, or any
23 other cause, has suffered the loss of the sight of one eye, the loss
24 by amputation of the whole or a part of a member of his body, or the

1 loss of the use or partial loss of the use of a member such as is
2 obvious and apparent from observation or examination by an ordinary
3 layman, that is, a person who is not skilled in the medical
4 profession, or any previous adjudications of disability adjudged and
5 determined by the Workers' Compensation Commission or Court of
6 Existing Claims or any disability resulting from separately
7 adjudicated injuries and adjudicated occupational diseases even
8 though arising at the same time.

9 SECTION 68. AMENDATORY 85 O.S. 2001, Section 173, as
10 last amended by Section 29, Chapter 1, 1st Extraordinary Session,
11 O.S.L. 2005 (85 O.S. Supp. 2009, Section 173), is amended to read as
12 follows:

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

16 A. 1. a. As soon as practicable after January 1 of each year,
17 the Workers' Compensation ~~Court~~ Commission
18 Administrator shall establish an assessment rate
19 applicable to each mutual or interinsurance
20 association, stock company, CompSource Oklahoma, or
21 other insurance carrier writing workers' compensation
22 insurance in this state, each employer carrying its
23 own risk, and each group self-insurance association,
24 for amounts for purposes of computing the assessment

1 authorized by this section necessary to pay the annual
2 obligations of the Multiple Injury Trust Fund
3 determined on or before December 31 of each year by
4 the Board of Managers of CompSource Oklahoma to be
5 outstanding for the next calendar year, and to pay the
6 allocations provided for in subsection I of this
7 section. The rate shall be equal for all parties
8 required to pay the assessment.

9 b. The Oklahoma Tax Commission shall assess and collect
10 from any uninsured employer a temporary assessment at
11 the rate of five percent (5%) of the total
12 compensation for permanent total disability awards,
13 permanent partial disability awards, and death
14 benefits paid out during each quarter of the calendar
15 year by the employers.

16 2. The assessments shall be paid to the Tax Commission.

17 Insurance carriers, self-insurers, group self-insurance associations
18 and CompSource Oklahoma shall pay the assessment in four equal
19 installments not later than the fifteenth day of the month following
20 the close of each quarter of the calendar year of the assessment.

21 Assessments shall be determined based upon gross direct written
22 premiums, normal premiums or actual paid losses of the paying party,
23 as applicable, during the calendar quarter for which the assessment
24 is due. Uninsured employers shall pay the assessment not later than

1 the fifteenth day of the month following the close of each quarter
2 of the calendar year of the assessment. For purposes of this
3 section, "uninsured employer" means an employer required by law to
4 carry workers' compensation insurance but who has failed or
5 neglected to do so. Only one-third (1/3) of assessments against
6 insurance carriers and CompSource Oklahoma may be charged to
7 policyholders and shall not be considered in determining whether any
8 rate is excessive. The remaining two-thirds (2/3) of assessments
9 against insurance carriers and CompSource Oklahoma may not be
10 included in any rate, premium, charge, fee, assessment or other
11 amount to be collected from a policyholder. Insurance carriers and
12 CompSource Oklahoma shall not separately state the amount of the
13 assessment on any invoice or billing assessment.

14 3. a. The assessment authorized in this section shall be
15 determined using a rate equal to the proportion that
16 the sum of the outstanding obligations of the Multiple
17 Injury Trust Fund as determined pursuant to paragraph
18 1 of this subsection and the allocations provided for
19 in subsection I of this section bear to the combined
20 gross direct written premiums of all such insurers;
21 all actual paid losses of all individual self-
22 insureds; and the normal premium of all group self-
23 insurance associations, for the year period from
24 January 1 to December 31 preceding the assessment.

1 b. No employer or insurer shall be liable for payment of
2 the January 15, 2002, assessment. Payments made
3 pursuant to the January 15, 2002, assessment shall be
4 credited to any assessment obligation of the payor
5 pursuant to this section. Any payment made pursuant
6 to the January 15, 2002, assessment by a payor having
7 no assessment obligation pursuant to this section
8 during the 2002 calendar year shall be refunded in its
9 entirety to the payor upon application by the payor in
10 the same time and manner as provided for the payment
11 of rebates in Section 6101 of Title 68 of the Oklahoma
12 Statutes.

13 c. For purposes of this subsection:

14 (1) "actual paid losses" means all medical and
15 indemnity payments, including temporary
16 disability, permanent disability, and death
17 benefits, and excluding loss adjustment expenses
18 and reserves, and

19 (2) "normal premium" means a standard premium less
20 any discounts.

21 4. By April 15 of each year, the Insurance Commissioner, Board
22 of Managers of CompSource Oklahoma and each individual and group
23 self-insured shall provide the Administrator with such information
24

1 as the Administrator may determine is necessary to effectuate the
2 purposes of this section.

3 5. Each mutual or interinsurance association, stock company,
4 CompSource Oklahoma, or other insurance carrier writing workers'
5 compensation insurance in this state, and each employer carrying its
6 own risk, including each group self-insurance association, shall be
7 notified by the Administrator in writing of the rate for the
8 assessment on or before May 1 of each year in which a rate is
9 determined. The rate determined by the Administrator shall be in
10 effect for four calendar quarters beginning July 1 following
11 determination by the Administrator.

12 6. a. No mutual or interinsurance association, stock
13 company, CompSource Oklahoma, or other insurance
14 carrier writing workers' compensation insurance in
15 this state, may be assessed in any year an amount
16 greater than six percent (6%) of the gross direct
17 written premiums of that insurer.

18 b. No employer carrying its own risk may be assessed in
19 any year an amount greater than six percent (6%) of
20 the total actual paid losses of that individual self-
21 insured.

22 c. No group self-insurance association may be assessed in
23 any year an amount greater than six percent (6%) of
24

1 the normal premium of that group self-insurance
2 association.

3 d. If the maximum assessment does not provide in any one
4 year an amount sufficient to make all necessary
5 payments for obligations of the Multiple Injury Trust
6 Fund and for the allocations provided for in
7 subsection I of this section, the unpaid portion shall
8 be paid as soon thereafter as funds become available.

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

11 C. It shall be the duty of the Tax Commission to collect the
12 payments provided for herein. The Tax Commission is hereby
13 authorized to bring an action for the recovery of any delinquent or
14 unpaid payments required in this section. The Tax Commission may
15 also enforce payments by proceeding in accordance with the
16 provisions of Section 42 of this title.

17 D. Any mutual or interinsurance association, stock company, or
18 other insurance company, which is subject to regulation by the
19 Insurance Commissioner, or CompSource Oklahoma, failing to make
20 payments required herein promptly and correctly, and failing to
21 report payment of the same to the Insurance Commission within ten
22 (10) days of payment shall be subject to administrative penalties as
23 allowed by law, including but not limited to, a fine in the amount
24 of Five Hundred Dollars (\$500.00) or an amount equal to one percent

1 (1%) of the unpaid amount, whichever is greater, to be paid to the
2 Insurance Commissioner.

3 E. Any employer carrying its own risk, or group self-insurance
4 association failing to make payments required herein promptly and
5 correctly, and failing to report payment of the same to the
6 Administrator within ten (10) days of payment shall be subject to
7 administrative penalties as allowed by law, including but not
8 limited to a fine in the amount of Five Hundred Dollars (\$500.00) or
9 an amount equal to one percent (1%) of the unpaid amount, whichever
10 is greater, to be paid to the Administrator.

11 F. On or before the first day of April of each year, the State
12 Treasurer shall advise the ~~Court~~ Commission Administrator, the Board
13 of Managers of CompSource Oklahoma and the Tax Commission of the
14 amount of money held as of March 1 of that year by the State
15 Treasurer to the credit of the Multiple Injury Trust Fund. On or
16 before the first day of November of each year, the State Treasurer
17 shall advise the Court Administrator, the Board of Managers of
18 CompSource Oklahoma and the Tax Commission of the amount of money
19 held as of October 1 of that year by the State Treasurer to the
20 credit of the Multiple Injury Trust Fund.

21 G. Eighty percent (80%) of all sums held by the State Treasurer
22 to the credit of the Multiple Injury Trust Fund may by order of the
23 President and Chief Executive Officer of CompSource Oklahoma, with
24 the approval of the Board of Managers of CompSource Oklahoma, be

1 | invested in or loaned on the pledge of any of the securities in
2 | which a state bank may invest the monies deposited therein by the
3 | State Treasurer; or may be deposited in state or national banks or
4 | trust companies upon insured time deposit bearing interest at a rate
5 | no less than currently being paid upon insured savings accounts in
6 | said institutions. "Insured" as used in this section shall mean
7 | insurance as provided by an agency of the federal government. All
8 | such securities or evidence of indebtedness shall be placed in the
9 | hands of the State Treasurer, who shall be the custodian thereof,
10 | who shall collect the principal and interest when due, and pay the
11 | same into the Multiple Injury Trust Fund. The State Treasurer shall
12 | pay by vouchers drawn on the Multiple Injury Trust Fund for the
13 | making of such investments, when signed by the President and Chief
14 | Executive Officer of CompSource Oklahoma and approved by the Board
15 | of Managers of CompSource Oklahoma, upon delivery of such securities
16 | or evidence of indebtedness to the State Treasurer. The President
17 | and Chief Executive Officer of CompSource Oklahoma may, upon like
18 | approval of the Board of Managers of CompSource Oklahoma, sell any
19 | of such securities, the proceeds thereof to be paid over to the
20 | State Treasurer for the Multiple Injury Trust Fund.

21 | H. The refund provisions of Sections 227 through 229 of Title
22 | 68 of the Oklahoma Statutes shall be applicable to any payments made
23 | to the Multiple Injury Trust Fund. Refunds shall be paid from and
24 | out of the Multiple Injury Trust Fund.

1 I. Beginning January 1, 2002, the Tax Commission shall pay,
2 monthly, to the State Treasurer to the credit of the Multiple Injury
3 Trust Fund all monies collected pursuant to the provisions of this
4 section, less the annual sum of Two Million Five Hundred Fifty
5 Thousand Dollars (\$2,550,000.00), of which One Million Two Hundred
6 Seventy-five Thousand Dollars (\$1,275,000.00) shall be payable by
7 the Oklahoma Tax Commission to the State Treasurer in equal monthly
8 installments to the credit of the Department of Labor, Six Hundred
9 Thirty-seven Thousand Five Hundred Dollars (\$637,500.00) shall be
10 payable in equal monthly installments to the credit of the Office of
11 the Attorney General, and Six Hundred Thirty-seven Thousand Five
12 Hundred Dollars (\$637,500.00) shall be payable in equal monthly
13 installments to the credit of the Oklahoma Department of Career and
14 Technology Education. Monies received by the Department of Labor
15 under this section shall be used for safety consultation and the
16 regulation of the safety of public employees through the
17 Occupational Safety and Health Act of 1970. Monies received by the
18 Office of the Attorney General shall be deposited to the credit of
19 the Attorney General's Workers' Compensation Fraud Unit Revolving
20 Fund created pursuant to Section 19.2 of Title 74 of the Oklahoma
21 Statutes. Monies received by the Oklahoma Department of Career and
22 Technology Education shall supplement other funding to the
23 Department for purposes of implementing the provisions of subsection
24 B of Section 414 of Title 40 of the Oklahoma Statutes. The State

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

4 J. The Administrator of the Workers' Compensation ~~Court~~
5 Commission shall promulgate rules as the Administrator deems
6 necessary to effectuate the provisions of this section and Section
7 174 of this title.

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

12 SECTION 69. AMENDATORY 85 O.S. 2001, Section 175, as
13 last amended by Section 30, Chapter 1, 1st Extraordinary Session,
14 O.S.L. 2005 (85 O.S. Supp. 2009, Section 175), is amended to read as
15 follows:

16 Section 175. A. CompSource Oklahoma shall be charged with the
17 administration and protection of the Multiple Injury Trust Fund and
18 shall be notified by the Administrator of all proceedings which may
19 affect such fund.

20 B. CompSource Oklahoma shall have standing and the authority to
21 appear in any case before the Workers' Compensation Commission or
22 Court of Existing Claims in which the Commission or Court of
23 Existing Claims is considering an award from the Multiple Injury
24 Trust Fund.

1 C. Any party interested shall have a right to bring a
2 proceeding in the Supreme Court of the State of Oklahoma to review
3 an award of the Commission or Court of Existing Claims affecting
4 such Multiple Injury Trust Fund, in the same manner as is now
5 provided by law with reference to other awards by the Commission or
6 Court of Existing Claims.

7 D. The State Treasurer shall allocate to CompSource Oklahoma
8 out of the Multiple Injury Trust Fund, sufficient funds for
9 administration expenses thereof in amounts to be fixed and approved
10 by the Administrator for the Multiple Injury Trust Fund, unless
11 rejected by the Governor and Attorney General.

12 SECTION 70. AMENDATORY 85 O.S. 2001, Section 177, is
13 amended to read as follows:

14 Section 177. A. 1. There is hereby established with the State
15 Treasurer a Workers' Compensation Administration Fund to be used for
16 the costs of administering the Workers' Compensation Act and for
17 other purposes pursuant to legislative appropriation.

18 2. No money on deposit with the State Treasurer to the credit
19 of the Workers' Compensation Administration Fund shall be expended
20 except pursuant to legislative appropriation.

21 B. For the purpose of providing funds for the Workers'
22 Compensation Administration Fund until July 1, 1997, and for the
23 General Revenue Fund beginning July 1, 1997, each mutual or
24 interinsurance association, stock company, the State Insurance Fund

1 or other insurance carrier writing workers' compensation insurance
2 in this state or providing a workers' compensation equivalent
3 insurance product as provided in Section 65 of this title shall pay
4 to the Oklahoma Tax Commission a tax at a rate of one percent (1%)
5 of all gross direct premiums written during each quarter of the
6 calendar year for workers' compensation insurance on risks located
7 in this state after deducting from such gross direct premiums,
8 return premiums, unabsorbed portions of any deposit premiums, policy
9 dividends, safety refunds, savings and other similar returns paid or
10 credited to policyholders. Such payments to the Tax Commission
11 shall be made not later than the fifteenth day of the month
12 following the close of each quarter of the calendar year in which
13 such gross direct premium is collected or collectible.
14 Contributions made by insurance carriers and the State Insurance
15 Fund, under the provisions of this section, shall be considered for
16 the purpose of computing workers' compensation rates.

17 C. When an employer is authorized to become a self-insurer, the
18 Administrator as directed by the ~~Court~~ Commission shall so notify
19 the Oklahoma Tax Commission, giving the effective date of such
20 authorization. The Oklahoma Tax Commission shall then assess and
21 collect from the employers carrying their own risk a tax at the rate
22 of two percent (2%) of the total compensation for permanent total
23 disability awards, permanent partial disability awards and death
24 benefits paid out during each quarter of the calendar year by the

1 employers. Such tax shall be payable by the employers and collected
2 by the Oklahoma Tax Commission according to the provisions of this
3 section regarding payment and collection of the tax created in
4 subsections B, D, E and F of this section.

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

11 E. Until July 1, 1997, the Oklahoma Tax Commission shall pay
12 monthly to the State Treasurer to the credit of the Workers'
13 Compensation Administration Fund all monies collected under the
14 provisions of this section. Beginning July 1, 1997, the Oklahoma
15 Tax Commission shall pay monthly to the State Treasurer to the
16 credit of the General Revenue Fund all monies collected under the
17 provisions of this section.

18 F. The refund provisions of Sections 227 through 229 of Title
19 68 of the Oklahoma Statutes shall be applicable to any payments made
20 pursuant to this section.

21 G. After fiscal year 1997 appropriations have been satisfied,
22 any monies remaining in the Workers' Compensation Administration
23 Fund shall be transferred to the General Revenue Fund.

24

1 SECTION 71. AMENDATORY 85 O.S. 2001, Section 201, is
2 amended to read as follows:

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

8 B. The Administrator shall adopt rules to establish a system of
9 review of medical practices of health care providers through the
10 workers' compensation system to evaluate on an aggregate basis the
11 quantity and quality of treatment, charges and evaluations of
12 permanent impairment by such providers. The Administrator may refer
13 charges of abusive practices by health care providers under the
14 workers' compensation system to the Physician Advisory Committee for
15 review and recommendation. The findings and recommendation of the
16 Committee shall be only advisory to the Administrator and shall not
17 be binding or conclusive upon him. If the Administrator determines
18 that a health care provider has, on an aggregate basis, established
19 a pattern of over or under treating, failing to adhere to the AMA
20 Guides or modifications thereto when evaluating permanent
21 impairment, or overcharging, the Administrator shall impose
22 administrative penalties for abusive practices and may waive payment
23 for medical services or evaluations of permanent impairment of the
24 health care provider rendered under the Workers' Compensation Act,

1 Section 1 et seq. of this title, for not to exceed five (5) years.
2 A pattern of abusive practices shall include, but not be limited to,
3 a pattern of referral to a medical facility for treatment found to
4 be in excess of treatment guidelines adopted by the Administrator
5 under Section 201.1 of this title. Physicians providing treatment
6 under the Workers' Compensation Act shall disclose to the
7 Administrator of the Workers' Compensation Court, on a form
8 prescribed by the Administrator, any ownership or interest in any
9 health care facility that is not the physician's primary place of
10 business. Such disclosure shall include, but not be limited to, any
11 employee leasing arrangement between the physician and any health
12 care facility that is not the physician's primary place of business.

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

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

23
24

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

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

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

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

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

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

19 1. A statement that a health care provider aggrieved by the
20 decision of the Administrator shall have ten (10) days after the
21 decision is filed within which to request a hearing before a judge
22 of the Workers' Compensation Commission or Court of Existing Claims
23 to determine the propriety of the Administrator's decision; and that
24 the order of the judge shall be subject to the same appellate

1 procedure set forth in Section 3.6 of this title for all other
2 orders of the Court; and

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

4 SECTION 72. AMENDATORY 85 O.S. 2001, Section 201.1, as
5 last amended by Section 31, Chapter 1, 1st Extraordinary Session,
6 O.S.L. 2005 (85 O.S. Supp. 2009, Section 201.1), is amended to read
7 as follows:

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

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

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

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

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

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

22 c. To fill the positions for which the term of office
23 expires on January 1, 1998, the Governor, the
24 President Pro Tempore of the Senate and the Speaker of

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

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

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

22 B. The Committee shall:

23 1. Assist and advise the Administrator of the Workers'

24 Compensation Court regarding utilization review as it relates to the

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

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

20 3. After public hearing, review and make recommendations for
21 acceptable deviations from the American Medical Association's
22 "Guides to the Evaluation of Permanent Impairment" using appropriate
23 and scientifically valid data. Those recommendations ~~may~~ shall be
24 reviewed and adopted, in part or in whole, by the ~~Administrator~~

1 Chief Medical Officer to be used as provided for in ~~paragraph 11 of~~
2 ~~Section 3 and Section 22 of this title;~~

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

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

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

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

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

22 d. If the Chief Medical Officer awards payment of medical
23 treatment outside that which is recommended by the
24 treatment guidelines then the order must explain why

1 the medical treatment was reasonably required and
2 necessary to relieve or cure the individual patient;

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

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

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

13 7. 6. Review utilization on cases or of providers when
14 requested by any employer, injured employee or insurer. The
15 Committee may issue a public or private censure to any provider for
16 utilization which is excessive or inadequate, or recommend the ~~Court~~
17 Commission or Chief Medical Officer order treatment within the
18 treatment guidelines;

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

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

1 ~~10.~~ 9. Assist the judges of the Workers' Compensation
2 Commission or Court of Existing Claims in accessing medical
3 information from scientific literature; and

4 ~~11.~~ 10. Report its progress annually to the Governor, the
5 President Pro Tempore of the Senate, and the Speaker of the House of
6 Representatives.

7 C. As used in this section:

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

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

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

1 independent experts through a comparably rigorous, objective, and
2 scientific review;

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

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

8 D. The term of office for initial appointees shall expire March
9 1, 1994. Thereafter, successors in office shall serve as follows:

10 1. The term of office for three positions, one each appointed
11 by the Governor, the President Pro Tempore of the Senate and the
12 Speaker of the House of Representatives, shall expire on January 1,
13 1996;

14 2. The term of office for three positions, one each appointed
15 by the Governor, the President Pro Tempore of the Senate and the
16 Speaker of the House of Representatives, shall expire on January 1,
17 1997;

18 3. The term of office for three positions, one each appointed
19 by the Governor, the President Pro Tempore of the Senate and the
20 Speaker of the House of Representatives, shall expire on January 1,
21 1998;

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

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

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

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

13 ~~F.~~ G. The Administrator shall provide office supplies and
14 personnel of the Workers' Compensation ~~Court~~ Commission to assist
15 the Committee in the performance of its duties.

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

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

1 the Administrator of the Workers' Compensation Commission or Court of
2 Existing Claims or for assisting in the origination, investigation,
3 or preparation of the report or other information so provided.

4 SECTION 73. AMENDATORY 85 O.S. 2001, Section 203, is
5 amended to read as follows:

6 Section 203. A. Whenever two or more carriers disagree as to
7 which carrier shall be liable for the continuing health care
8 expenses of an employee, the Commission or Court of Existing Claims
9 may order one of the carriers to start paying for health care costs
10 immediately. The decision of the Commission or Court of Existing
11 Claims to choose one carrier over another to pay for the medical
12 treatment of an employee shall not be appealable until the
13 Commission's or Court of Existing Claims' final order as to the
14 disability of the employee.

15 B. The ~~Court~~ Commission shall promulgate rules for expedited
16 hearings in cases involving carrier disputes over the need for
17 immediate medical care.

18 C. The carrier in the final order who is liable on the risk for
19 the injury shall immediately reimburse the other carrier for medical
20 monies expended upon proper proof of payment.

21 D. In the event that two or more insurance carriers or
22 employers disagree as to which entity is liable for the payment of
23 temporary disability benefits, the Commission or Court of Existing
24

1 Claims shall determine which carrier or employer is liable and order
2 reimbursements as determined appropriate.

3 E. In the event temporary benefits are overpaid by any carrier
4 or employer, the Commission or Court of Existing Claims shall award
5 a credit against any subsequent order for permanent disability in
6 favor of the carrier or employer, subject to Section 41.1 of this
7 title.

8 F. The Commission or Court of Existing Claims shall have
9 authority to require an employer and an insurance carrier to
10 reimburse other employers and insurance carriers for benefits paid
11 pursuant to the Workers' Compensation Act in appropriate cases.

12 SECTION 74. AMENDATORY 85 O.S. 2001, Section 211, is
13 amended to read as follows:

14 Section 211. A. Every employer and every employee subject to
15 the provisions of the Workers' Compensation Act, Section 1 et seq.
16 of this title, upon filing a notice of injury, accidental injury,
17 death, occupational disease, or claim for benefits from the Multiple
18 Injury Trust Fund, shall give written permission for the
19 Administrator of the Workers' Compensation ~~Court~~ Commission or a
20 designee, the Insurance Commissioner or a designee, the Attorney
21 General or a designee or a district attorney or a designee to
22 examine all records relating to the notice, any matter contained in
23 the notice, and any matter relating to the notice.

24

1 B. Written permission given pursuant to this section shall
2 constitute authorization for access to medical records pursuant to
3 Section 19 of Title 76 of the Oklahoma Statutes.

4 C. In carrying out the responsibilities given to the Workers'
5 Compensation Fraud Unit, the Attorney General or designee may use
6 subpoenas or other process in aid of investigations and prosecutions
7 and may take possession of records subject to examination pursuant
8 to this section by subpoena. The Attorney General shall supply
9 copies of the records obtained which are necessary to the
10 continuation of normal business operations by the person maintaining
11 the records or may require the person maintaining the records to
12 provide copies as they are kept in the usual course of business.

13 D. Subpoenas ad testificandum or duces tecum requested by the
14 Attorney General or designee pursuant to subsection C of this
15 section shall be issued by the district court in the county of the
16 residence of the person to whom the subpoena is directed, in the
17 county where the records are located or in the county where a person
18 is to produce records or appear and be sworn. Subpoenas issued
19 pursuant to this section may be served by the Attorney General, any
20 peace officer or any competent person over eighteen (18) years of
21 age, and may require attendance or production at any place in this
22 state. Service may be made by mail and may be accomplished by
23 mailing a copy thereof by certified mail with return receipt
24 requested and delivery restricted to the person named in the

1 subpoena. Proof of service shall be made upon affidavit, and if
2 made by mail, a copy of the return receipt shall be attached. A
3 refusal to obey such subpoena, or willful failure to appear, be
4 sworn, testify or produce records at the place and time specified
5 shall constitute contempt and shall be enforced by the district
6 court of the county where issued.

7 E. Nothing in this section shall be construed to waive, limit
8 or impair any evidentiary privilege recognized by law.

9 F. The Workers' Compensation ~~Court~~ Commission shall include a
10 statement on forms for notices and instructions to employers and
11 employees that the permission required by this section must be given
12 at the time of filing a notice specified in subsection A of this
13 section.

14 G. As used in this section, "records" include, but are not
15 limited to, anything for which a request to produce may be served
16 pursuant to Section 3234 of Title 12 of the Oklahoma Statutes.

17 SECTION 75. REPEALER 85 O.S. 2001, Section 3.5, as
18 amended by Section 10, Chapter 1, 1st Extraordinary Session, O.S.L.
19 2005 (85 O.S. Supp. 2009, Section 3.5), is hereby repealed.

20 SECTION 76. REPEALER 85 O.S. 2001, Section 21, is hereby
21 repealed.

22 SECTION 77. REPEALER 85 O.S. 2001, Section 28, is hereby
23 repealed.

24

1 SECTION 78. REPEALER 85 O.S. 2001, Section 69.5, is
2 hereby repealed.

3 SECTION 79. REPEALER 85 O.S. 2001, Section 122, is
4 hereby repealed.

5 SECTION 80. REPEALER 85 O.S. 2001, Section 201.2, is
6 hereby repealed.

7 SECTION 81. This act shall become effective November 1, 2010.

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