

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 1520 By: Bingman of the Senate
3 and
4 Jordan of the House
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7 (workers' compensation benefits - annual affidavit -
8 effective date)
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11 AMENDMENT NO. 1. Strike the stricken title, enacting clause and
12 entire bill and insert

13 "(workers' compensation benefits - reimbursement
14 rates - annual affidavit - tort claims -
15 effective date)
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18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

19 SECTION 1. AMENDATORY 85 O.S. 2011, Section 327, is
20 amended to read as follows:

21 Section 327. A. For the express purpose of reducing the
22 overall cost of medical care for injured workers in the workers'
23 compensation system by five percent (5%), the Administrator of the
24 Workers' Compensation Court is hereby directed to develop a new

1 "Oklahoma Workers' Compensation Medical Fee Schedule" to be
2 implemented by January 1, 2012. Thereafter, the Administrator shall
3 conduct a review of the Fee Schedule every two (2) years. The Fee
4 Schedule shall establish the maximum rates that medical providers
5 shall be reimbursed for medical care provided to injured workers,
6 including, but not limited to, charges by physicians, dentists,
7 counselors, hospitals, ambulatory and outpatient facilities,
8 clinical laboratory services, diagnostic testing services, and
9 ambulance services, and charges for durable medical equipment,
10 prosthetics, orthotics, and supplies.

11 B. Reimbursement for medical care shall be prescribed and
12 limited by the Fee Schedule as adopted by the Administrator, after
13 notice and public hearing. The director of the Oklahoma State
14 Employees Group Insurance Board shall provide the Administrator such
15 information as may be relevant in the development of the Fee
16 Schedule. The Administrator shall develop the Fee Schedule in a
17 manner in which quality of medical care is assured and maintained
18 for injured workers. The Administrator shall give due consideration
19 to additional requirements for physicians treating an injured worker
20 under this act, including, but not limited to, communication with
21 claims representatives, case managers, attorneys, and
22 representatives of employers, and the additional time required to
23 complete forms for the Court, insurance carriers, and employers.

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1 C. In making adjustments to the Fee Schedule, the Administrator
2 shall use, as a benchmark, the reimbursement rate for each Current
3 Procedural Terminology (CPT) code provided for in the fee schedule
4 published by the Centers for Medicare and Medicaid Services of the
5 U.S. Department of Health and Human Services for use in Oklahoma
6 (Medicare Fee Schedule) on the effective date of this act. For
7 services not valued by CMS, the Administrator shall establish values
8 based on the usual, customary and reasonable medical payments to
9 health care providers in the same trade area for comparable
10 treatment of a person with similar injuries.

11 1. No reimbursement shall be allowed for any magnetic resonance
12 imaging (MRI) unless the MRI ~~unit produces a field strength that is~~
13 ~~equal to or greater than 1.0 Tesla~~ is provided by an entity that
14 meets Medicare requirements for the payment of MRI services or is
15 accredited by the American College of Radiology or is accredited by
16 the Intersocietal Accreditation Commission or is accredited by the
17 Joint Commission on Accreditation of Healthcare Organizations. For
18 all other radiology procedures, the reimbursement rate shall be the
19 lesser of the reimbursement rate allowed by the 2010 Oklahoma Fee
20 Schedule or two hundred seven percent (207%) of the Medicare Fee
21 Schedule.

22 2. For reimbursement of medical services for Evaluation and
23 Management of injured employees as defined in the fee schedule
24 adopted by the Administrator, the reimbursement rate shall not be

1 less than one hundred fifty percent (150%) of the Medicare Fee
2 Schedule.

3 3. Any entity providing durable medical equipment, prosthetics,
4 orthotics or supplies must be accredited by a CMS-approved
5 accreditation organization. In the event a physician provides
6 durable medical equipment, prosthetics, orthotics, prescription
7 drugs, or supplies to a patient ancillary to the patient visit,
8 reimbursement will be no more than ten percent (10%) above cost.

9 4. The Administrator shall develop a reasonable stop loss
10 provision of the Fee Schedule to provide for adequate reimbursement
11 for treatment for major burns, severe head and neurological
12 injuries, multiple system injuries, and other catastrophic injuries
13 requiring extended periods of intensive care.

14 D. The right to recover charges for every type of medical care
15 for injuries arising out of and in the course of covered employment
16 as defined in this act shall lie solely with the Workers'
17 Compensation Court and its administration. When a medical care
18 provider has brought a claim in the Court to obtain payment for
19 services, a party who prevails in full on the claim shall be
20 entitled to a reasonable attorney fee.

21 E. Nothing in this section shall prevent an employer, insurance
22 carrier, group self-insurance association, or certified workplace
23 medical plan from contracting with a provider of medical care for a
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1 reimbursement rate that is greater than or less than limits
2 established by the Fee Schedule.

3 F. A treating physician may not charge more than Four Hundred
4 Dollars (\$400.00) per hour for preparation for or testimony at a
5 deposition or court appearance in connection with a claim covered by
6 the Workers' Compensation Code.

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

22 H. Charges for prescription drugs dispensed by a pharmacy shall
23 be limited to ninety percent (90%) of the average wholesale price of
24 the prescription, plus a dispensing fee of Five Dollars (\$5.00) per

1 prescription. "Average wholesale price" means the amount determined
2 from the latest publication designated by the Administrator.
3 Physicians shall prescribe and pharmacies shall dispense generic
4 equivalent drugs when available. If the NDC for the drug product
5 dispensed is for a repackaged drug, then the maximum reimbursement
6 shall be the lesser of the original labeler's NDC or the lowest cost
7 therapeutic equivalent drug product. Compounded medications shall
8 be billed by the compounding pharmacy at the ingredient level, with
9 each ingredient identified using the applicable NDC of the drug
10 product, and the corresponding quantity. Ingredients with no NDC
11 area are not separately reimbursable. Payment shall be based upon a
12 sum of the allowable fee for each ingredient plus a dispensing fee
13 of ~~five dollars~~ Five Dollars (\$5.00) per prescription.

14 I. When medical care includes prescription drugs dispensed by a
15 physician or other medical care provider, the employer or insurance
16 carrier shall be required to pay the lesser of the reimbursement
17 amount specified under the schedule of fees adopted by the
18 Administrator, the reimbursement amount for prescription drugs
19 obtained by mail order, when mail order is available, or the
20 reimbursement amount for prescription drugs obtained at a retail
21 pharmacy. If the National Drug Code (NDC) for the drug product
22 dispensed is for a repackaged drug, then the maximum reimbursement
23 shall be the lesser of the original labeler's NDC or the lowest cost
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1 therapeutic equivalent drug product. Compounded medications shall
2 be billed by the compounding pharmacy.

3 J. Implantables are paid in addition to procedural
4 reimbursement paid for medical or surgical services. A
5 manufacturer's invoice for the actual cost to a physician, hospital
6 or other entity of an implantable device shall be adjusted by the
7 physician, hospital or other entity to reflect, at the time
8 implanted, all applicable discounts, rebates, considerations and
9 product replacement programs and must be provided to the payer by
10 the physician or hospital as a condition of payment for the
11 implantable device. In the event the physician, or an entity that
12 the physician has a financial interest in, other than an ownership
13 interest of less than five percent (5%) in a publicly traded company
14 provides implantable devices, this relationship must be disclosed to
15 patient, employer, insurance company, third party administrator,
16 certified workplace medical plan, case managers, and attorneys
17 representing claimant and defendant. In the event the physician, or
18 an entity that the physician has a financial interest in, other than
19 an ownership interest of less than five percent (5%) in a publicly
20 traded company, buys and resells implantable devices to the hospital
21 or another physician, that markup shall be limited to ten percent
22 (10%) above cost.

23 K. Payment for medical care as required by this act shall be
24 due within forty-five (45) days of the receipt by the employer or

1 insurance carrier of a complete and accurate invoice, unless the
2 employer or insurance carrier has a good faith reason to request
3 additional information about such invoice. Thereafter, a judge of
4 the Court may assess a penalty up to twenty-five percent (25%) for
5 any amount due under the Fee Schedule that remains unpaid upon the
6 finding by the Court that no good faith reason existed for the delay
7 in payment. In the event the Court finds a pattern of an employer
8 or insurance carrier willfully and knowingly delaying payments for
9 medical care, the Court may assess a civil penalty of not more than
10 Five Thousand Dollars (\$5,000.00) per occurrence.

11 L. In the event an employee fails to appear for a scheduled
12 appointment with a physician, the employer or insurance company
13 shall pay to the physician a reasonable charge, to be determined by
14 the Administrator, for the missed appointment. In the absence of a
15 good faith reason for missing the appointment, the Court shall order
16 the employee to reimburse the employer or insurance company for such
17 charge.

18 M. Physicians providing treatment under this act shall disclose
19 under penalty of perjury to the Administrator of the Workers'
20 Compensation Court, on a form prescribed by the Administrator, any
21 ownership or interest in any health care facility, business, or
22 diagnostic center that is not the physician's primary place of
23 business. Such disclosure shall include any employee leasing
24 arrangement between the physician and any health care facility that

1 is not the physician's primary place of business. A physician's
2 failure to disclose as required by this section shall be grounds for
3 the Administrator to disqualify the physician from providing
4 treatment under this act.

5 SECTION 2. AMENDATORY 85 O.S. 2011, Section 333, is
6 amended to read as follows:

7 Section 333. A. The determination of permanent impairment or
8 disability shall be the responsibility of the Workers' Compensation
9 Court. Any claim by an employee for compensation for permanent
10 partial impairment must be supported by competent medical testimony
11 of the treating physician who is a medical doctor or a doctor of
12 osteopathy or a qualified independent medical examiner which shall
13 be supported by objective medical findings, as defined in ~~this act~~
14 the Workers' Compensation Code, and which shall include an
15 evaluation by a physician stating his or her opinion of the
16 employee's percentage of permanent partial impairment and whether or
17 not the impairment is job-related and caused by the accidental
18 injury or occupational disease. A physician's opinion of the nature
19 and extent of permanent partial impairment to parts of the body
20 other than scheduled members must be based solely on criteria
21 established by the American Medical Association's "Guides to the
22 Evaluation of Permanent Impairment", Fifth Edition, or any
23 subsequent edition approved by the Administrator after public
24 hearing and review by the Physician Advisory Committee, hereinafter

1 referred to as "Guides". A copy of any written evaluation shall be
2 sent to both parties within seven (7) days of issuance. Medical
3 opinions addressing compensability and permanent impairment must be
4 stated within a reasonable degree of medical certainty. For
5 purposes of this section, "physician" has the same meaning as
6 defined in Section ~~26~~ 326 of this ~~act~~ title and includes a person
7 licensed by another state who would be qualified to be a licensed
8 physician under the laws of this state. Any party may submit the
9 report of an evaluating physician.

10 B. Permanent partial impairment shall not be allowed to a part
11 of the body for which no medical treatment has been received. A
12 determination of permanent impairment or disability made by the
13 Court which is not supported by objective medical findings provided
14 by a treating physician who is a medical doctor or doctor of
15 osteopathy or a qualified independent medical examiner shall be
16 considered an abuse of discretion.

17 C. The Physician Advisory Committee may recommend the adoption
18 of a method or system to evaluate permanent impairment that shall
19 deviate from, be used in place of, or in combination with the
20 Guides. Such recommendation shall be made to the Administrator of
21 the Workers' Compensation Court who may adopt the recommendation in
22 part or in whole. The adopted method or system shall be submitted
23 by the Administrator to the Governor, the Speaker of the House of
24 Representatives and the President Pro Tempore of the Senate within

1 the first ten (10) legislative days of a regular session of the
2 Legislature. Such method or system so submitted shall be subject to
3 disapproval by joint or concurrent resolution of the Legislature
4 during the legislative session in which submitted. If disapproved,
5 the existing method of determining permanent partial impairment
6 shall continue in effect. If the Legislature takes no action on the
7 method or system submitted by the Administrator, the method or
8 system shall become operative ten (10) days following the
9 adjournment of the Legislature.

10 D. The examining physician shall not deviate from the Guides or
11 any alternative thereto except as may be specifically provided for
12 in the Guides or modifications to the Guides adopted pursuant to
13 subsection C of this section.

14 E. In cases of permanent partial impairment, the compensation
15 shall be seventy percent (70%) of the employee's average weekly
16 wages, and shall be paid to the employee for the period prescribed
17 by the following schedule:

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

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

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

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

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

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

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

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

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

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

20 Arm: For the loss of an arm, two hundred seventy-five (275)
21 weeks. Provided, that for the purposes of the arm as a scheduled
22 member, the arm shall mean that part of the body that extends from
23 the surgical neck of the humerus and includes the elbow joint.

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

1 Leg: For the loss of a leg, two hundred seventy-five (275)
2 weeks. Provided, that for the purposes of the leg as a scheduled
3 member, the leg shall mean that part of the body that extends from
4 the surgical neck of the femur and includes the knee joint.

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

7 Deafness: Deafness from industrial cause, including occupations
8 which are hazardous to hearing, accident or sudden trauma, three
9 hundred thirty (330) weeks, and total deafness of one ear from
10 industrial cause, including occupations which are hazardous to
11 hearing, accident or sudden trauma, one hundred ten (110) weeks.
12 Any examining physician shall only evaluate deafness or hearing
13 impairment in accordance with the latest publication of the American
14 Medical Association's "Guides to the Evaluation of Permanent
15 Impairment" in effect at the time of the injury or alternative
16 method provided for under provisions of ~~this act~~ the Workers'
17 Compensation Code.

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 Hernia: In case of an injury resulting in the first or second
10 hernia in the same area of the body, there shall be no award of
11 permanent partial impairment. Payment of benefits in such cases
12 shall be limited to temporary total disability compensation for six
13 (6) weeks, and all necessary medical costs including, but not
14 limited to, the cost of surgery. A claimant who has had surgery for
15 a hernia may petition the Workers' Compensation Court for one
16 extension of temporary total disability compensation and the Court
17 may order such an extension, not to exceed six (6) additional weeks,
18 if the treating physician indicates such an extension is
19 appropriate, or as agreed to by all parties. An award for temporary
20 total disability or permanent partial impairment may be entered by
21 the Court if an injury results in a third hernia, or more, in the
22 same area of the body.

23 Other cases: In cases in which the Court finds an injury to a
24 part of the body not specifically covered by the foregoing

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

12 F. The compensation payments under the provisions of the
13 Workers' Compensation Code for permanent partial impairment shall
14 not:

15 1. Exceed the sum of Three Hundred Twenty-three Dollars
16 (\$323.00) per week for injuries occurring on or after August 27,
17 2010, through August 26, 2015, or fifty percent (50%) of the state's
18 average weekly wage beginning August 27, 2015;

19 2. At any time be less than One Hundred Fifty Dollars (\$150.00)
20 per week for injuries occurring on or after August 27, 2010.

21 G. Previous Disability: The fact that an employee has suffered
22 previous disability or impairment or received compensation therefor
23 shall not preclude the employee from compensation for a later
24 accidental personal injury or occupational disease. In the event

1 there exists a previous impairment, including a previous non-work-
2 related injury or condition which produced permanent disability and
3 the same is aggravated or accelerated by an accidental personal
4 injury or occupational disease, compensation for permanent
5 disability shall be only for such amount as was caused by such
6 accidental personal injury or occupational disease and no additional
7 compensation shall be allowed for the preexisting disability or
8 impairment. The sum of all permanent partial impairment awards,
9 excluding awards against the Multiple Injury Trust Fund, shall not
10 exceed five hundred twenty (520) weeks, except for awards for
11 amputations and disability to the parts of the body for which
12 surgery was received in the latest injury.

13 H. No payments on any permanent partial impairment order shall
14 begin until payments on any preexisting permanent partial impairment
15 orders have been completed.

16 I. Any person receiving total disability benefits from an
17 employer or the employer's insurance carrier, regardless of whether
18 proceedings have been initiated by the filing of a Form 3, shall
19 file with the Workers' Compensation Court, twelve (12) months after
20 receipt of the first benefit and every year thereafter, an affidavit
21 under penalty of perjury stating that he or she has not been
22 gainfully employed and is not capable of gainful employment, and
23 stating that there has been no change in income from any source
24 during the previous twelve (12) months. Such affidavit shall be on

1 a form promulgated by the Workers' Compensation Court. Failure to
2 file the affidavit shall result in the suspension of benefits and
3 shall create a rebuttable presumption for the termination of
4 benefits until the person shows by a preponderance of the evidence
5 that he or she is not employed or capable of employment and there
6 has been no change in income. Failure to file an affidavit as
7 required by this subsection shall be recorded on the permanent
8 record of the person's case for suspension of benefits, and the
9 Workers' Compensation Court shall make written findings of fact as
10 to the evidence considered in rebutting the presumption against the
11 suspension or termination of benefits.

12 SECTION 3. AMENDATORY 85 O.S. 2011, Section 341, is
13 amended to read as follows:

14 Section 341. A. No employer may discharge or, except for
15 nonpayment of premium, terminate any group health insurance of any
16 employee because the employee has in good faith:

- 17 1. Filed a claim;
- 18 2. Retained a lawyer for representation regarding a claim;
- 19 3. Instituted or caused to be instituted any proceeding under
20 the provisions of ~~this act~~ the Workers' Compensation Code;
- 21 4. Testified or is about to testify in any proceeding under the
22 provisions of ~~this act~~ the Workers' Compensation Code; or

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1 5. Elected to participate or not to participate in a certified
2 workplace medical plan as provided in ~~this act~~ the Workers'
3 Compensation Code.

4 B. No employer may discharge any employee during a period of
5 temporary total disability solely on the basis of absence from work.

6 C. After an employee's period of temporary total disability has
7 ended, no employer shall be required to rehire or retain any
8 employee who is determined to be physically unable to perform
9 assigned duties. The failure of an employer to rehire or retain any
10 such employee shall not be deemed a violation of this section.

11 D. No employer may discharge an employee for the purpose of
12 avoiding payment of temporary total disability benefits to the
13 injured employee.

14 E. An employer which violates any provision of this section
15 shall be liable in a district court action for reasonable damages,
16 actual and punitive if applicable, suffered by an employee as a
17 result of the violation. An employee discharged in violation of the
18 Workers' Compensation Code shall be entitled to be reinstated to his
19 or her former position. Exemplary or punitive damage awards made
20 pursuant to this section shall not exceed One Hundred Thousand
21 Dollars (\$100,000.00). The employee shall have the burden of proof
22 by a preponderance of the evidence. The liability of the state or
23 any political subdivision, as defined in paragraph 11 of Section 152
24 of Title 51 of the Oklahoma Statutes, found in violation of this

1 section shall be limited to the amounts set forth under The
2 Governmental Tort Claims Act.

3 SECTION 4. AMENDATORY 85 O.S. 2011, Section 342, is
4 amended to read as follows:

5 Section 342. Within the time prescribed by Section ~~18~~ 318 of
6 this ~~act~~ title, the Workers' Compensation Court may find that the
7 injured employee has suffered a change of condition for the worse or
8 better and amend any prior order involving temporary total
9 disability, additional permanent partial impairment, permanent total
10 disability, and medical benefits. Provided, that any change of
11 condition shall only be found to those body parts adjudicated by the
12 previous award or as a result of a consequential injury and must be
13 proved by objective medical evidence of a change of condition.
14 Additional permanent partial impairment awarded after a change of
15 condition and the permanent partial impairment from the previous
16 award shall not exceed five hundred twenty (520) weeks, except for
17 additional permanent partial impairment resulting from amputation or
18 surgery as a result of the change of condition. The Workers'
19 Compensation Court shall include a statement on all forms for
20 notices and instructions to employers and employees informing
21 employees that they shall promptly comply with the requirements of
22 this section.

23 SECTION 5. This act shall become effective November 1, 2012."
24

1 ENGROSSED SENATE
2 BILL NO. 1520

By: Bingman of the Senate

3 and

4 Jordan of the House

5
6 [workers' compensation benefits - annual affidavit -
7 effective date]
8

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

10 SECTION 6. AMENDATORY 85 O.S. 2011, Section 333, is
11 amended to read as follows:

12 Section 333. A. The determination of permanent impairment or
13 disability shall be the responsibility of the Workers' Compensation
14 Court. Any claim by an employee for compensation for permanent
15 partial impairment must be supported by competent medical testimony
16 of the treating physician who is a medical doctor or a doctor of
17 osteopathy or a qualified independent medical examiner which shall
18 be supported by objective medical findings, as defined in ~~this act~~
19 the Workers' Compensation Code, and which shall include an
20 evaluation by a physician stating his or her opinion of the
21 employee's percentage of permanent partial impairment and whether or
22 not the impairment is job-related and caused by the accidental
23 injury or occupational disease. A physician's opinion of the nature
24 and extent of permanent partial impairment to parts of the body

1 other than scheduled members must be based solely on criteria
2 established by the American Medical Association's "Guides to the
3 Evaluation of Permanent Impairment", Fifth Edition, or any
4 subsequent edition approved by the Administrator after public
5 hearing and review by the Physician Advisory Committee, hereinafter
6 referred to as "Guides". A copy of any written evaluation shall be
7 sent to both parties within seven (7) days of issuance. Medical
8 opinions addressing compensability and permanent impairment must be
9 stated within a reasonable degree of medical certainty. For
10 purposes of this section, "physician" has the same meaning as
11 defined in Section ~~26~~ 326 of this ~~act~~ title and includes a person
12 licensed by another state who would be qualified to be a licensed
13 physician under the laws of this state. Any party may submit the
14 report of an evaluating physician.

15 B. Permanent partial impairment shall not be allowed to a part
16 of the body for which no medical treatment has been received. A
17 determination of permanent impairment or disability made by the
18 Court which is not supported by objective medical findings provided
19 by a treating physician who is a medical doctor or doctor of
20 osteopathy or a qualified independent medical examiner shall be
21 considered an abuse of discretion.

22 C. The Physician Advisory Committee may recommend the adoption
23 of a method or system to evaluate permanent impairment that shall
24 deviate from, be used in place of, or in combination with the

1 Guides. Such recommendation shall be made to the Administrator of
2 the Workers' Compensation Court who may adopt the recommendation in
3 part or in whole. The adopted method or system shall be submitted
4 by the Administrator to the Governor, the Speaker of the House of
5 Representatives and the President Pro Tempore of the Senate within
6 the first ten (10) legislative days of a regular session of the
7 Legislature. Such method or system so submitted shall be subject to
8 disapproval by joint or concurrent resolution of the Legislature
9 during the legislative session in which submitted. If disapproved,
10 the existing method of determining permanent partial impairment
11 shall continue in effect. If the Legislature takes no action on the
12 method or system submitted by the Administrator, the method or
13 system shall become operative ten (10) days following the
14 adjournment of the Legislature.

15 D. The examining physician shall not deviate from the Guides or
16 any alternative thereto except as may be specifically provided for
17 in the Guides or modifications to the Guides adopted pursuant to
18 subsection C of this section.

19 E. In cases of permanent partial impairment, the compensation
20 shall be seventy percent (70%) of the employee's average weekly
21 wages, and shall be paid to the employee for the period prescribed
22 by the following schedule:

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

24

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

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

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

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

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

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

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

20 Phalange of Toe: The loss of the first phalange of any toe shall
21 be considered to be equal to the loss of one-half (1/2) of such toe,
22 and compensation shall be one-half (1/2) of the amount specified.
23 The loss of more than one phalange shall be considered as the loss
24 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. Provided, that for the purposes of the arm as a scheduled
4 member, the arm shall mean that part of the body that extends from
5 the surgical neck of the humerus and includes the elbow joint.

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

7 Leg: For the loss of a leg, two hundred seventy-five (275)
8 weeks. Provided, that for the purposes of the leg as a scheduled
9 member, the leg shall mean that part of the body that extends from
10 the surgical neck of the femur and includes the knee joint.

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 Any examining physician shall only evaluate deafness or hearing
19 impairment in accordance with the latest publication of the American
20 Medical Association's "Guides to the Evaluation of Permanent
21 Impairment" in effect at the time of the injury or alternative
22 method provided for under provisions of ~~this act~~ the Workers'
23 Compensation Code.

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

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

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

16 Hernia: In case of an injury resulting in the first or second
17 hernia in the same area of the body, there shall be no award of
18 permanent partial impairment. Payment of benefits in such cases
19 shall be limited to temporary total disability compensation for six
20 (6) weeks, and all necessary medical costs including, but not
21 limited to, the cost of surgery. A claimant who has had surgery for
22 a hernia may petition the Workers' Compensation Court for one
23 extension of temporary total disability compensation and the Court
24 may order such an extension, not to exceed six (6) additional weeks,

1 if the treating physician indicates such an extension is
2 appropriate, or as agreed to by all parties. An award for temporary
3 total disability or permanent partial impairment may be entered by
4 the Court if an injury results in a third hernia, or more, in the
5 same area of the body.

6 Other cases: In cases in which the Court finds an injury to a
7 part of the body not specifically covered by the foregoing
8 provisions of this section, the employee may be entitled to
9 compensation for permanent partial impairment. The compensation
10 ordered paid shall be seventy percent (70%) of the employee's
11 average weekly wage for the number of weeks which the partial
12 disability of the employee bears to five hundred (500) weeks. No
13 permanent disability shall be awarded unless there is objective
14 medical evidence of a permanent anatomical abnormality. In
15 determining the existence of such an abnormality, the Court may
16 consider if there is credible medical evidence that the ability of
17 the employee to earn wages at the same level as before the injury
18 has been permanently impaired.

19 F. The compensation payments under the provisions of the
20 Workers' Compensation Code for permanent partial impairment shall
21 not:

22 1. Exceed the sum of Three Hundred Twenty-three Dollars
23 (\$323.00) per week for injuries occurring on or after August 27,
24

1 2010, through August 26, 2015, or fifty percent (50%) of the state's
2 average weekly wage beginning August 27, 2015;

3 2. At any time be less than One Hundred Fifty Dollars (\$150.00)
4 per week for injuries occurring on or after August 27, 2010.

5 G. Previous Disability: The fact that an employee has suffered
6 previous disability or impairment or received compensation therefor
7 shall not preclude the employee from compensation for a later
8 accidental personal injury or occupational disease. In the event
9 there exists a previous impairment, including a previous non-work-
10 related injury or condition which produced permanent disability and
11 the same is aggravated or accelerated by an accidental personal
12 injury or occupational disease, compensation for permanent
13 disability shall be only for such amount as was caused by such
14 accidental personal injury or occupational disease and no additional
15 compensation shall be allowed for the preexisting disability or
16 impairment. The sum of all permanent partial impairment awards,
17 excluding awards against the Multiple Injury Trust Fund, shall not
18 exceed five hundred twenty (520) weeks, except for awards for
19 amputations and disability to the parts of the body for which
20 surgery was received in the latest injury.

21 H. No payments on any permanent partial impairment order shall
22 begin until payments on any preexisting permanent partial impairment
23 orders have been completed.

24

1 I. Any person receiving disability benefits from an employer or
2 the employer's insurance carrier, regardless of whether proceedings
3 have been initiated by the filing of a Form 3, shall file with the
4 Workers' Compensation Court, twelve (12) months after receipt of the
5 first benefit and every year thereafter, an affidavit under penalty
6 of perjury stating that he or she has not been gainfully employed
7 and is not capable of gainful employment, and stating that there has
8 been no change in income from any source during the previous twelve
9 (12) months. Such affidavit shall be on a form promulgated by the
10 Workers' Compensation Court. Failure to file the affidavit shall
11 result in the suspension of benefits and shall create a rebuttable
12 presumption for the termination of benefits until the person shows
13 by a preponderance of the evidence that he or she is not employed or
14 capable of employment and there has been no change in income.
15 Failure to file an affidavit as required by this subsection shall be
16 recorded on the permanent record of the person's case for suspension
17 of benefits, and the Workers' Compensation Court shall make written
18 findings of fact as to the evidence considered in rebutting the
19 presumption against the suspension or termination of benefits.

20 SECTION 7. AMENDATORY 85 O.S. 2011, Section 342, is
21 amended to read as follows:

22 Section 342. Within the time prescribed by Section ~~48~~ 318 of
23 this ~~act~~ title, the Workers' Compensation Court may find that the
24 injured employee has suffered a change of condition for the worse or

1 better and amend any prior order involving temporary total
2 disability, additional permanent partial impairment, permanent total
3 disability, and medical benefits. Provided, that any change of
4 condition shall only be found to those body parts adjudicated by the
5 previous award or as a result of a consequential injury and must be
6 proved by objective medical evidence of a change of condition.
7 Additional permanent partial impairment awarded after a change of
8 condition and the permanent partial impairment from the previous
9 award shall not exceed five hundred twenty (520) weeks, except for
10 additional permanent partial impairment resulting from amputation or
11 surgery as a result of the change of condition. The Workers'
12 Compensation Court shall include a statement on all forms for
13 notices and instructions to employers and employees informing
14 employees that they shall promptly comply with the requirements of
15 this section.

16 SECTION 8. This act shall become effective November 1, 2012.
17
18
19
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23
24

1 Passed the Senate the 14th day of March, 2012.

2
3 _____
4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2012.

7
8 _____
9 Presiding Officer of the House
10 of Representatives