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3 ENGROSSED SENATE  
4 BILL NO. 1973

5 By: Coffee and Jolley of the  
6 Senate

7 and

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10  
11 Sullivan of the House

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

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18 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:  
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20 SECTION 7. NEW LAW A new section of law to be codified  
21 in the Oklahoma Statutes as Section 51-114 of Title 11, unless there  
22 is created a duplication in numbering, reads as follows:

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

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30 SECTION 7. NEW LAW A new section of law to be codified  
31 in the Oklahoma Statutes as Section 608.1 of Title 36, unless there  
32 is created a duplication in numbering, reads as follows:

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

SECTION 7. AMENDATORY 85 O.S. 2001, Section 1.2, is amended to read as follows:

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

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

Position 1 shall expire 7-1-84.

Position 2 shall expire 7-1-84.

Position 3 shall expire 7-1-84.

Position 4 shall expire 7-1-82.

Position 5 shall expire 7-1-82.

Position 6 shall expire 7-1-80.

Position 7 shall expire 7-1-80.

Position 8 shall expire 7-1-88.

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

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3 Position 10 shall expire 7-1-96 after being appointed under the  
4 provisions hereinafter set forth effective September 1, 1993.  
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7 Thereafter, each position shall be filled by a judge appointed  
8 to serve a six year term an eight-year term. A judge shall serve  
9 only one eight-year term.

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

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

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

D. The Governor shall appoint from among the judges of the Workers' Compensation Court a presiding judge of that Court who shall serve for a two-year term commencing with the initial appointment beginning January 1, 1987. Any judge so appointed shall not serve more than two times in succession. The presiding judge shall preside at all hearings held by the Court, preside at such meetings of the judges of the Court as may be necessary and perform such other supervisory duties as the needs of the Court may require. The presiding judge may designate one of the other judges to act as

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3 presiding judge in his or her place whenever necessary during the  
4 disqualification, disability, or absence of the presiding judge.

5 During the disqualification, disability, or absence of the presiding  
6 judge, the acting presiding judge shall exercise all of the powers  
7 of the presiding judge.

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

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

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

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

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

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

SECTION 7. AMENDATORY 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), is amended to read as follows:

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

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

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3 ~~effective date of this act.~~

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

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9 D. The salary of the Administrator shall be ninety percent  
10 (90%) of the authorized salary of a judge of the Court.  
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12 E. ~~The Administrator shall serve a six year term. During the~~  
13 ~~term, the Administrator may be removed from office only for cause,~~  
14 ~~as provided by law for the removal of officers not subject to~~  
15 ~~impeachment, pursuant to the provisions of Sections 1181 through~~  
16 ~~1197 of Title 22 of the Oklahoma Statutes.~~

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18 F. An Administrator who otherwise qualifies to serve as a judge  
19 of the Court shall not be eligible to serve as a judge of the Court  
20 for a period of one (1) year from the last date served as  
21 Administrator of the Court.  
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24 G. In addition to other duties set forth in Title 85 of the  
25 Oklahoma Statutes, the Administrator, subject to approval of the  
26 presiding judge, shall organize, direct and develop the  
27 administrative work of the Court, including the docketing, clerical,  
28 technical and financial work, establish hours of operation, and  
29 perform such other duties relating to matters within the purview of  
30 the Court as any judge of the Court may request.  
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32 H. The Administrator shall employ other employees of the Court,  
within budgetary limitation, necessary to carry out the work and

orders of the Court in an efficient and expedient manner.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1.4 of Title 85, unless there is created a duplication in numbering, reads as follows:

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

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

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

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

3. Advise on the disposition of complaints of a physician's failure to furnish adequate medical care as required by this law, the disposition of complaints concerning other aspects of the medical management of a workers' compensation case, and the disposition of complaints of any affected party as to unreasonable

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3 interference with the medical management of a workers' compensation  
4 case;

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

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

9 6. Expedite the submission and processing of medical reports  
10 necessary to the processing of claims; and

11 7. Undertake other functions that may be delegated to the  
12 Medical Director by the Administrator.

13 SECTION 7. AMENDATORY 85 O.S. 2001, Section 3, as last  
14 amended by Section 9, Chapter 1, 1st Extraordinary Session, O.S.L.  
15 2005 (85 O.S. Supp. 2009, Section 3), is amended to read as follows:

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

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

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

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

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

4. "Case manager" means a person who:

- a. is a registered nurse with a current, active unencumbered license from the Oklahoma Board of Nursing, or
- b. possesses one or more of the following certifications which indicate the individual has a minimum number of years of case management experience, has passed a national competency test and regularly obtains continuing education hours to maintain certification:
  - (1) Certified Disability Management Specialist (CDMS),
  - (2) Certified Case Manager (CCM),
  - (3) Certified Rehabilitation Registered Nurse (CRRN),

- (4) Case Manager - Certified (CMC),
- (5) Certified Occupational Health Nurse (COHN), or
- (6) Certified Occupational Health Nurse Specialist (COHN-S);

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

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

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

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

9. "Employee" means any person engaged in the employment of any person, firm, limited liability company or corporation covered by the terms of the Workers' Compensation Act, and shall include

workers associating themselves together under an agreement for the performance of a particular piece of work, in which event such persons so associating themselves together shall be deemed employees of the person having the work executed; provided, that if such associated workers shall employ a worker in the execution of such contract, then as to such employed worker, both the associated employees and the principal employer shall at once become subject to the provisions of the Workers' Compensation Act relating to independent contractors. Sole proprietors, members of a partnership, members of a limited liability company who own at least ten percent (10%) of the capital of the limited liability company or any stockholder-employees of a corporation who own ten percent (10%) or more stock in the corporation are specifically excluded from the foregoing definition of "employee", and shall not be deemed to be employees as respects the benefits of the Workers' Compensation Act. Provided, a sole proprietor, member of a partnership, member of a limited liability company who owns at least ten percent (10%) of the capital of the limited liability company or any stockholder-employee of a corporation who owns ten percent (10%) or more stock in the corporation who does not so elect to be covered by a policy of insurance covering benefits under the Workers' Compensation Act, when acting as a subcontractor, shall not be eligible to be covered under the prime contractor's policy of workers' compensation insurance; however, nothing herein shall relieve the entities enumerated from providing workers' compensation insurance coverage

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

"Employee" shall also include a participant in a sheltered workshop program which is certified by the United States Department of Labor.

"Employee" shall not include a person, commonly referred to as an owner-operator, who owns or leases a truck-tractor or truck for hire, if the owner-operator actually operates the truck-tractor or truck and if the person contracting with the owner-operator is not the lessor of the truck-tractor or truck. Provided, however, an owner-operator shall not be precluded from workers' compensation coverage under the Workers' Compensation Act if the owner-operator elects to participate as a sole proprietor. "Employee" shall not include a person referred to as a drive-away owner-operator who privately owns and utilizes a tow vehicle in drive-away operations and operates independently for hire, if the drive-away owner-operator actually utilizes the tow vehicle and if the person contracting with the drive-away owner-operator is not the lessor of the tow vehicle. Provided, however, a drive-away owner-operator shall not be precluded from workers' compensation coverage under the Workers' Compensation Act if the drive-away owner-operator elects to participate as a sole proprietor;

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

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

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

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

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23       b. "Compensable injury" includes heart-related or  
24           vascular injury, illness or death only if an accident  
25           or the claimant's employment is the major cause of the  
26           heart-related or vascular injury. Such injury shall  
27           be compensable only if it is demonstrated that the  
28           exertion necessary to produce the harm was  
29           extraordinary and unusual in comparison to other  
30           occupations and that the occupation was the major

cause of the harm. The injury must be established by objective medical evidence, as defined in this section.

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

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

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

16. "Major cause" means ~~the predominate cause of the resulting~~

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3 injury or illness more than fifty percent (50%) of the cause. A  
4 finding of major cause shall be established by a preponderance of  
5 the evidence;  
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7 17. "Objective medical evidence" means evidence which meets the  
8 criteria of Federal Rule of Evidence 702 and all U.S. Supreme Court  
9 case law applicable thereto. Objective findings are those findings  
10 which cannot come under the voluntary control of the patient. When  
11 determining physical or anatomical impairment, neither a physician,  
12 any other medical provider, a judge of the Workers' Compensation  
13 Court, nor the courts may consider complaints of pain. For the  
14 purpose of making physical or anatomical impairment ratings to the  
15 spine, straight-leg-raising tests or range-of-motion tests shall not  
16 be considered objective findings. Objective evidence necessary to  
17 prove physical or anatomical impairment in occupational hearing loss  
18 cases may be established by medically recognized and accepted  
19 clinical diagnostic methodologies, including, but not limited to,  
20 audiological tests that measure air and bone conduction thresholds  
21 and speech discrimination ability. Any difference in the baseline  
22 hearing levels must be confirmed with a subsequent test within the  
23 next four (4) weeks but not before five (5) days and being adjusted  
24 for presbycusis. Medical opinions addressing compensability and  
25 permanent impairment must be stated within a reasonable degree of  
26 medical certainty;  
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18. "Occupational disease" means only that disease or illness  
which is due to causes and conditions characteristic of or peculiar

to the particular trade, occupation, process or employment in which the employee is exposed to such disease. An occupational disease arises out of the employment only if the employment was the major cause of the resulting occupational disease and such is supported by objective medical evidence, as defined in this section;

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

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3 combination with the American Medical Association's "Guides to the  
4 Evaluation of Permanent Impairment" shall be subject to disapproval  
5 in whole or in part by joint or concurrent resolution of the  
6 Legislature during the legislative session in which submitted. Such  
7 method or system shall be operative one hundred twenty (120) days  
8 after the last day of the month in which the Administrator submits  
9 the adopted method or system to the Legislature if the Legislature  
10 takes no action or one hundred twenty (120) days after the last day  
11 of the month in which the Legislature disapproves it in part. If  
12 adopted, permanent impairment shall be evaluated only in accordance  
13 with the latest version of the alternative method or system in  
14 effect at the time of injury. Except as otherwise provided in  
15 Section 11 of this title, all evaluations shall include an  
16 apportionment of injury causation. However, revisions to the guides  
17 made by the American Medical Association which are published after  
18 January 1, 1989, and before January 1, 1995, shall be operative one  
19 hundred twenty (120) days after the last day of the month of  
20 publication. Revisions to the guides made by the American Medical  
21 Association which are published after December 31, 1994, may be  
22 adopted in whole or in part by the Administrator following  
23 recommendation by the Physician Advisory Committee. Revisions  
24 adopted by the Administrator shall be submitted by the Administrator  
25 to the Governor, the Speaker of the House of Representatives and the  
26 President Pro Tempore of the Senate within the first ten (10)  
27 legislative days of a regular session of the Legislature. Such  
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revisions shall be subject to disapproval in whole or in part by joint or concurrent resolution of the Legislature during the legislative session in which submitted. Revisions shall be operative one hundred twenty (120) days after the last day of the month in which the Administrator submits the revisions to the Governor and the Legislature if the Legislature takes no action or one hundred twenty (120) days after the last day of the month in which the Legislature disapproves them in part. The examining physician shall not follow the guides based on race or ethnic origin. The examining physician shall not deviate from said guides or any alternative thereto except as may be specifically provided for in the guides or modifications to the guides or except as may be specifically provided for in any alternative or modifications thereto, adopted by the Administrator of the Workers' Compensation Court as provided for in Section 201.1 of this title. These officially adopted guides or modifications thereto or alternative system or method of evaluating permanent impairment or modifications thereto shall be the exclusive basis for testimony and conclusions with regard to permanent impairment with the exception of paragraph 3 of Section 22 of this title, relating to scheduled member injury or loss; and impairment, including pain or loss of strength, may be awarded with respect to those injuries or areas of the body not specifically covered by said guides or alternative to said guides. All evaluations of permanent impairment must be supported by objective medical evidence;

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

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

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

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

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24       24. "Certified workplace medical plan" means an organization of  
25       health care providers or any other entity, certified by the State  
26       Commissioner of Health pursuant to Section 14.3 of this title, that  
27       is authorized to enter into a contractual agreement with a self-  
28       insured employer, group self-insurance association plan, an  
29       employer's workers' compensation insurance carrier or an insured,  
30       which shall include any member of an approved group self-insured  
31       association, policyholder or public entity, regardless of whether  
32       such entity is insured by CompSource Oklahoma, to provide medical

care under the Workers' Compensation Act. Certified plans shall only include such plans which provide medical services and payment for services on a fee-for-service basis to medical providers and shall not include other plans which contract in some other manner, such as capitated or pre-paid plans; and

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

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

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

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3 (5) years of workers' compensation experience. The ~~Court en banc~~  
4 panel of Special Magistrates may reverse or modify the decision only  
5 if it determines that such decision was against the clear weight of  
6 the evidence or contrary to law. Upon completion of the appeal, the  
7 members of the ~~Court sitting en banc~~ panel of Special Magistrates  
8 shall issue such order, decision or award as is proper, just and  
9 equitable. Only those members participating in the hearing on  
10 appeal shall participate in the making of the order, decision or  
11 award. All orders, decisions or awards shall be approved by a  
12 majority of the members of the ~~Court sitting en banc~~ panel of  
13 Special Magistrates. ~~Provided, there may be more than one Court en~~  
14 ~~banc sitting at the same time for purposes of hearing the appeals~~  
15 ~~provided for herein.~~ Appeals shall be allowed on a question of law  
16 or a question of fact, or a mixed question of law and fact, and  
17 shall be determined on the record made before the Judge. ~~Provided,~~  
18 when the order of the Judge of the Court making an award to a  
19 claimant is appealed by the employer or the insurance carrier,  
20 interest shall be allowed on the accrued amounts of the award due  
21 from the date the award was filed, if the award is not modified or  
22 vacated on appeal.  
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24

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

C. The order, decision or award of the ~~Court panel of Special Magistrates~~ shall be final and conclusive upon all questions within its jurisdiction between the parties, unless, within twenty (20) days after a copy of such order, decision or award has been sent by the Administrator to the parties affected, an action is commenced in the Supreme Court of the state, to review such order, decision or award. Any order, decision or award made by a judge of the Court shall be considered as final under the provisions of this section unless appealed to the Workers' Compensation ~~Court sitting en banc~~ Court's panel of Special Magistrates as provided for in subsection A of this section. The order, decision or award of a judge of the Court shall be final and conclusive upon all questions within his jurisdiction between the parties unless appealed directly to the Supreme Court or to the Workers' Compensation ~~Court sitting en banc~~ Court's panel of Special Magistrates as hereinbefore provided. Any

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3 party litigant desiring to appeal directly from such order, decision  
4 or award to the Supreme Court, shall, within twenty (20) days after  
5 a copy of the order, decision or award has been sent by the  
6 Administrator to the parties affected, commence an action in the  
7 Supreme Court of the state to review such order, decision or award.  
8 The Supreme Court shall have original jurisdiction of such action,  
9 and shall prescribe rules for the commencement and trial of the  
10 same. Such action shall be commenced by filing with the Clerk of  
11 the Supreme Court a certified copy of the order, decision or award  
12 of the Workers' Compensation ~~Court sitting en bane~~ Court's panel of  
13 Special Magistrates or the judge attached to the petition by the  
14 complaint wherein the complainant or petitioner shall make his  
15 assignments or specifications as to wherein said order, decision or  
16 award is erroneous or illegal. Provided, however, no proceeding to  
17 reverse, vacate or modify any order, decision or award of the  
18 Workers' Compensation ~~Court sitting en bane~~ Court's panel of Special  
19 Magistrates or judge of the Court wherein compensation has been  
20 awarded an injured employee shall be entertained by the Supreme  
21 Court unless the Administrator shall take a written undertaking to  
22 the claimant executed on the part of the respondent or insurance  
23 carrier, or both, with one or more sureties to be approved by the  
24 Administrator, to the effect that the appellant will pay the amount  
25 of the award rendered therein, together with interest thereon from  
26 the date of the award by the judge of the Court and all costs of the  
27 proceeding, or on the further order of the Workers' Compensation  
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~~Court sitting en banc~~ Court's panel of Special Magistrates or judge of the Court after the appeal has been decided by the Supreme Court, except that municipalities and other political subdivisions of the State of Oklahoma are exempt from making such written undertakings. Before the Clerk of the Supreme Court shall accept the action for filing, a certificate from the Administrator shall be required, showing that this provision has been complied with. Said proceedings shall be heard in a summary manner and shall have precedence over all other civil cases in the Supreme Court, except preferred Corporation Commission appeals. The Supreme Court shall require the appealing party to file within forty-five (45) days from the date of the filing of an appeal or an order appealed from, a transcript of the record of the proceedings before the Workers' Compensation Court, or upon application and for good cause shown, the Supreme Court may extend the time for filing said transcript of the record for a period of time not to exceed ninety (90) days from said date, and such action shall be subject to the law and practice applicable to other civil actions cognizable in said Supreme Court. The Court whose action was appealed shall enter any order directed by the Supreme Court under the final determination.

D. When the only controverted issue in a death claim is the determination of proper beneficiaries entitled to receive death benefits, and the parties-beneficiary appeal the decision of the Court, the employer or insurance carrier may pay the proceeds, as they accrue, to the Administrator. The Administrator shall hold the

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

10  
11 E. An action to reopen any case under the provisions of the  
12 Workers' Compensation Act shall be assigned in the same manner as  
13 original assignments made hereunder.  
14

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

19 G. For purposes of this section, interest shall be computed  
20 pursuant to Section 727 of Title 12 of the Oklahoma Statutes.  
21

22 SECTION 8. AMENDATORY 85 O.S. 2001, Section 3.10, as  
23 amended by Section 12, Chapter 1, 1st Extraordinary Session, O.S.L.  
24 2005 (85 O.S. Supp. 2009, Section 3.10), is amended to read as  
25 follows:  
26

27 Section 3.10. A. Mediation shall be ~~available to any party to~~  
28 mandatory for a claim arising pursuant to the provisions of the  
29 Workers' Compensation Act, subject to the limitation provisions of  
30 Section 14.3 of this title and except for claims against the  
31 Multiple Injury Trust Fund.  
32

33 B. ~~Unless ordered by the Workers' Compensation Court, mediation~~  
34 ~~shall be voluntary, and shall not be conducted without the consent~~  
35

~~of both parties~~

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

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

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

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

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

E. ~~Once a request has been made, the Administrator shall contact the opposing party. Upon order of the Court, the~~ The

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3 parties shall complete mediation within thirty (30) days of the  
4 ~~notification reply from the responding party.~~

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

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

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22 ~~H. Upon receipt of the consent form or upon order of the Court,~~  
23 ~~the D.~~ The Administrator shall provide the parties with a list of  
24 certified mediators. Both parties shall agree to a mediator. If  
25 the parties are unable to agree, the Administrator shall assign a  
26 certified mediator.

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28  
29 ~~I. E.~~ The Workers' Compensation Court shall be responsible for  
30 certifying those persons who are eligible and qualified to serve as  
31 mediators. An individual may be certified as a mediator if; the  
32 applicant meets the qualifications as required by the Court.

~~J. F.~~ Each certified mediator shall remain on the list for five

(5) years, unless removed. Mediators shall be required to complete at least six (6) hours of continuing education per two-year period in the areas of mediation and workers' compensation. Proof of compliance with this requirement shall be submitted to the Administrator. This continuing education requirement shall be in addition to any other such general requirement which may be required by the Oklahoma State Bar Association. Cost of continuing education is to be borne by the applicant.

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

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

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

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

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

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

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

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

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

5. An injury which occurs outside the course of employment.

Employment shall be deemed to commence when an employee arrives at the employer's place of employment to report for work and shall terminate when the employee leaves the employer's place of employment, excluding areas not under the control of the employer; provided, however, when the employee is required by the employer to be away from the employer's place of employment, the employee shall be deemed to be in the course of employment when the employee is engaged in the direct performance of duties assigned or directed by the employer; but the employment of employee paid travel time by an employer for time spent traveling to and from a job site or of any employee who utilizes an employer-authorized vehicle shall commence and terminate with the time spent traveling to and from a job site or the authorized operation of a vehicle on business authorized by the employer. Travel by a policeman, fireman, or a member of a first aid or rescue squad, in responding to and returning from an emergency, shall be deemed to be in the course of employment.

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

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3       "Ridesharing" means the transportation of persons in a motor  
4        vehicle, with a maximum carrying capacity of not more than fifteen  
5        (15) passengers, including the driver, where such transportation is  
6        incidental to the purpose of the driver. This term shall include  
7        such ridesharing arrangements known as carpools and vanpools.  
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10       B. Liability of any person, firm, or corporation having an  
11        interest in the subject matter, employers and contracting employers,  
12        general or intermediate, for compensation under the Workers'  
13        Compensation Act, when other than the immediate employer of the  
14        injured employee, shall be as follows:  
15

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

2. The person entitled to such compensation shall have the right to recover the same directly from the person's immediate employer, the independent contractor or intermediate contractor, and such claims may be presented against all such persons in one proceeding. If it appears in such proceeding that the principal employer has failed to require a compliance with the Workers' Compensation Act of this state, by the independent contractor, then such employee may proceed against such principal employer without regard to liability of any independent, intermediate or other contractor; provided, however, if a principal employer relies in good faith on proof of a valid workers' compensation insurance policy issued to an independent contractor of the employer or to a subcontractor of the independent contractor or on proof of an Affidavit of Exempt Status Under the Workers' Compensation Act properly executed by the independent contractor or subcontractor under Section 75 924.4 of ~~this act~~ Title 36 of the Oklahoma Statutes, then the principal employer shall not be liable for injuries of any employees of the independent contractor or subcontractor. Provided further, such principal employer shall not be liable for injuries of any independent contractor of the employer or of any subcontractor of the independent contractor unless an

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3 employer-employee relationship is found to exist by the Workers'  
4 Compensation Court despite the execution of an Affidavit of Exempt  
5 Status Under the Workers' Compensation Act. Provided, however, in  
6 any proceeding where compensation is awarded against the principal  
7 employer under the provisions hereof, such award shall not preclude  
8 the principal employer from recovering the same, and all expense in  
9 connection with said proceeding from any independent contractor,  
10 intermediate contractor or subcontractor whose duty it was to  
11 provide security for the payment of such compensation, and such  
12 recovery may be had by supplemental proceedings in the cause before  
13 the Court or by an independent action in any court of competent  
14 jurisdiction to enforce liability of contracts.  
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17       3. Where work is performed on a single family residential  
18 dwelling or its premises occupied by the owner, or for a farmer  
19 whose cash payroll for wages, excluding supplies, materials and  
20 equipment, for the preceding calendar year did not exceed One  
21 Hundred Thousand Dollars (\$100,000.00), such owner or farmer shall  
22 not be liable for compensation under the Workers' Compensation Act.  
23 Such owner or farmer shall not be liable to the employee of any  
24 independent contractor or subcontractor, where applicable, or the  
25 farmer's own employee.  
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27

28       4. Where compensation is payable for an occupational disease,  
29 the employer in whose employment the employee was last injuriously  
30 exposed to the hazards of such disease and the insurance carrier, if  
31 any, on the risk when such employee was last so exposed under such  
32

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

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

SECTION 10. AMENDATORY 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), is amended to read as follows:  
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3       Section 12. The liability prescribed in Section 11 of this  
4 title shall be exclusive and in place of all other liability of the  
5 employer and any of his employees, any architect, professional  
6 engineer, or land surveyor retained to perform professional services  
7 on a construction project, at common law or otherwise, for such  
8 injury, loss of services, or death, to the employee, or the spouse,  
9 personal representative, parents, or dependents of the employee, or  
10 any other person, except in the case of an intentional tort, or  
11 where the employer has failed to secure the payment of compensation  
12 for the injured employee as provided for in this title. An  
13 intentional tort shall exist only when the employee is injured as a  
14 result of willful, deliberate, specific intent of the employer to  
15 cause such injury. The issue of whether an act is an intentional  
16 tort shall be a question of law for the court. If an employer has  
17 failed to secure the payment of compensation for his injured  
18 employee, as provided for in this title, an injured employee, or his  
19 legal representatives if death results from the injury, may maintain  
20 an action in the courts for damages on account of such injury, and  
21 in such action the defendant may not plead or prove as a defense  
22 that the injury was caused by the negligence of a fellow servant, or  
23 that the employee assumed the risk of his employment, or that the  
24 injury was due to the contributory negligence of the employee;  
25 provided:  
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28                   (i) The immunity created by the provisions of this section shall  
29 not extend to action by an employee, or the spouse, personal  
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representative, parents, or dependents of the employee, or any other person against another employer, or its employees, on the same job as the injured or deceased worker where such other employer does not stand in the position of an intermediate or principal employer to the immediate employer of the injured or deceased worker;

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

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

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

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3 specifications.

4 (v) Nothing contained herein shall abrogate any rights arising  
5 under the Oklahoma Constitution.  
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7 SECTION 11. AMENDATORY 85 O.S. 2001, Section 14, as last  
8 amended by Section 15, Chapter 1, 1st Extraordinary Session, O.S.L.  
9 2005 (85 O.S. Supp. 2009, Section 14), is amended to read as follows:  
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11 Section 14. A. 1. The employer shall promptly provide for an  
12 injured employee such medical, surgical or other attendance or  
13 treatment, nurse and hospital service, medicine, crutches, and  
14 apparatus as may be necessary after the injury. The treating  
15 physician shall supply the injured employee and the employer with a  
16 full examining report of injuries found at the time of examination  
17 and proposed treatment, this report to be supplied within seven (7)  
18 days after the examination; also, at the conclusion of the treatment  
19 the treating physician shall supply a full report of the treatment  
20 to the employer of the injured employee.  
21

22 2. The treating physician who renders treatment to the employee  
23 at any time shall promptly notify the employee and employer or the  
24 employer's insurer in writing after the employee has reached maximum  
25 medical improvement and is released from active medical care. If  
26 the employee is capable of returning to modified light duty work,  
27 the treating physician shall promptly notify the employee and the  
28 employer or the employer's insurer thereof in writing ~~and shall also~~  
29 ~~specify what restrictions, if any, must be followed by the employer~~  
30 ~~in order to return the employee to work. In the event the treating~~  
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32

~~physician provides such notification to the employer's insurer, the insurer shall promptly notify the employer. If the employer refuses to make a good faith effort to provide light duty work upon receipt of a written report from the treating physician that releases the claimant for light duty work and provides restrictions from normal work duties, the insurance carrier is entitled to make a motion with the Court to collect from the employer fifty percent (50%) of any temporary total disability payment paid during a time in which the claimant was determined by the treating physician to be capable of light duty work with restrictions. If an injured employee, only partially disabled, refuses employment consistent with any restrictions ordered by the treating physician, the employee shall not be entitled to temporary benefits during the continuance of such refusal unless in the opinion of the treating physician such refusal was justifiable. In the event that the treating physician releases a claimant for light duty work and provides written restrictions from normal work duties, the employer shall make a good faith effort to provide a light duty position at the same rate of pay that the claimant was receiving on the date of the injury. If such light duty is offered to the claimant, and the claimant refuses to accept the light duty assignment, the claimant is not entitled to temporary total disability; provided, before compensation may be denied, the employee shall be served with a notice setting forth the consequences of the refusal of employment and that temporary benefits will be discontinued fifteen (15) days after the date of~~

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3 such notice. The employee, upon receipt of such notice, may seek a  
4 hearing before the Workers' Compensation Court. The Court shall  
5 grant an expedited hearing within five (5) days of any such  
6 application by the employee. At such hearing, the Court may enter  
7 an order allowing the discontinuation of such benefits, denying the  
8 discontinuance of such benefits or temporarily denying the  
9 discontinuance of such benefits pending further hearing. An order  
10 denying or temporarily denying the discontinuation of temporary  
11 benefits shall be based on a finding by the Court that probable  
12 cause exists to believe the work does not meet the conditions of the  
13 treating physician's restrictions or that the restrictions are  
14 unreasonable. The good faith requirement set forth herein shall not  
15 constitute an independent cause of action.  
16  
17

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

24 C. If the employer fails or neglects to provide medical  
25 treatment within three (3) days after actual knowledge of the injury  
26 is received by the employer, the injured employee, during the period  
27 of such neglect or failure, may select a physician to provide  
28 medical treatment at the expense of the employer; provided, however,  
29 that the injured employee, or another in the employee's behalf, may  
30 obtain emergency treatment at the expense of the employer where such  
31 emergency treatment is not provided by the employer. The attending  
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physician so selected by the employee shall notify the employer and the insurance carrier within seven (7) days after examination or treatment was first rendered. Once the employer has selected a treating physician and has offered the employee treatment, the physician selected by the employer shall become the treating physician.

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

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

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

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3 entitled to such benefits may enforce charges therefor as though the  
4 employee had survived.

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

10  
11 2. Such charges and duration of treatment shall be limited to  
12 the usual, customary and reasonable payments and duration of  
13 treatment as prescribed and limited by a schedule of fees and  
14 treatment for all medical providers to be adopted, after notice and  
15 public hearing, by the Administrator. Beginning January 1, 2006,  
16 the fee and treatment schedule for physician services shall be based  
17 on the most current Relative Value Units (RVU) produced by the  
18 Centers for Medicare and Medicaid Services (CMS) for the Medicare  
19 Physician Fee Schedule as of January 1 of the prior year. These  
20 relative values shall be multiplied by appropriate conversion  
21 factors to be determined by the Administrator. The conversion  
22 factors shall be adjusted by the Consumer Price Index and shall be  
23 adequate to reflect the usual and customary rates for treatment of  
24 workers' compensation patients taking into consideration all  
25 relevant factors including, but not limited to, the additional time  
26 required to provide disability management. The Current Procedural  
27 Terminology (CPT) codes shall be adjusted to reflect any changes or  
28 additions to the CPT codes and coding of supplies and materials as  
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published by the American Medical Association (AMA) or CMS. If the AMA adds a new CPT code, the Administrator shall review the procedure contemplated by the new CPT code, and after such review, and notice and public hearing, the Administrator may add the new CPT code and set the base fee for the CPT code to ensure the adequacy of the physician's fee and treatment schedule. For services not valued by CMS, the Administrator shall establish values based on the usual, customary and reasonable medical payments to health care providers in the same trade area for comparable treatment of a person with similar injuries and the duration of treatment prevailing in this state for persons with similar injuries. The fee and treatment schedule shall be reviewed biennially by the Administrator and, after such review, and notice and public hearing, the Administrator shall be empowered to amend or alter the fee and treatment schedule to ensure its adequacy. The Administrator shall not increase the overall maximum reimbursement levels for health care providers, including hospitals and ambulatory surgical centers, in an amount exceeding the cumulative percentage of change of the Consumer Price Index - Urban (CPI-U) for all costs since the last biennial review. The fee schedule adopted by the Administrator as of January 1, 2006, shall be structured so as to result in at least a four-percent savings in workers' compensation medical costs. In no event shall the reimbursement rate for any single procedure be equal to an amount which is less than one hundred fifteen percent (115%) of the current Medicare reimbursement rate for the procedure.

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3       3. The Administrator shall adopt a new fee and treatment  
4       schedule to be effective not later than January 1, 1998, which  
5       establishes maximum allowable reimbursement levels for preparation  
6       for or testimony at a deposition or court appearance which shall not  
7       exceed Two Hundred Dollars (\$200.00) per hour and for work-related  
8       or medical disability evaluation services.  
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11       4. An invoice for the actual cost to the hospital of an  
12       implantable device shall be adjusted by the hospital to reflect all  
13       applicable discounts, rebates, considerations and product  
14       replacement programs and must be provided to the payor by the  
15       hospital as a condition of payment for the implantable device.  
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18       5. The Administrator's review of medical and treatment charges  
19       pursuant to this section shall be conducted pursuant to the fee and  
20       treatment schedule in existence at the time the medical care or  
21       treatment was provided. The order of the approving medical and  
22       treatment charges pursuant to this section shall be enforceable by  
23       the Court in the same manner as provided in the Workers'  
24       Compensation Act for the enforcement of other compensation payments.  
25       Any party feeling aggrieved by the order, decision or award of the  
26       Administrator shall, within ten (10) days, have the right to request  
27       a hearing on such medical and treatment charges by a judge of the  
28       Workers' Compensation Court. The judge of the Court may affirm the  
29       decision of the Administrator, or reverse or modify said decision  
30       only if it is found to be contrary to the fee and treatment schedule  
31       existing at the time the said medical care or treatment was  
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provided. The order of the judge shall be subject to the same appellate procedure set forth in Section 3.6 of this title for all other orders of the Court. The right to recover charges for every type of medical care for personal injuries arising out of and in the course of covered employment as herein defined, shall lie solely with the Workers' Compensation Court, and all jurisdiction of the other trial courts of this state over such action is hereby abolished. The foregoing provision, relating to approval and enforcement of such charges and duration of treatment, shall not apply where a written contract exists between the employer or insurance carrier and the person who renders such medical, surgical or other attendance or treatment, nurse and hospital service, or furnishes medicine, crutches or apparatus. When a medical care provider has brought a claim in the Workers' Compensation Court to obtain payment for services, a party who prevails in full on the claim shall be entitled to a reasonable attorney fee.

6. Charges for prescription drugs shall be limited to ninety percent (90%) of the average wholesale price of the prescription, plus a dispensing fee of Five Dollars (\$5.00) per prescription. "Average wholesale price" means the amount determined from the latest publication of the blue book, a universally subscribed pharmacist reference guide annually published by the Hearst Corporation. "Average wholesale price" may also be derived electronically from the drug pricing database synonymous with the latest publication of the blue book and furnished in the National

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3 Drug Data File (NDDF) by First Data Bank (FDB), a service of the  
4 Hearst Corporation. Physicians shall prescribe and pharmacies shall  
5 dispense generic equivalent drugs when available.  
6

7 G. Where the employee is not covered by a certified workplace  
8 medical plan, the employer shall select the treating physician. The  
9 Court on application of the employee shall order one change of  
10 treating physician. In the event the employee makes application for  
11 such a change, the employee shall list on such application three (3)  
12 proposed physicians who are qualified to treat the body part  
13 affected. The employer may agree to one of the physicians listed by  
14 the employee or submit its own list of three (3) physicians. If the  
15 employee and employer do not agree on the physician, the Court shall  
16 select from the list of independent medical examiners maintained by  
17 the Court a treating physician who is qualified to treat the body  
18 part affected and who can see the employee within a reasonable time.  
19 Additionally, a change of physician shall be allowed for each  
20 individual body part injured if the treating physician determines  
21 that the employee's injured body parts cannot be treated by the same  
22 physician.  
23

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

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

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

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

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

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

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

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

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3 becomes eligible for Medicare.

4       2. Temporary Total Disability. (a) With respect to injuries  
5 occurring before November 4, 1994, in cases of temporary total  
6 disability, seventy percent (70%) of the employee's average weekly  
7 wages shall be paid to the employee during the continuance thereof,  
8 but not in excess of one hundred fifty (150) weeks, except as  
9 otherwise provided in the Workers' Compensation Act. Provided,  
10 after compensation has been paid for a period of one hundred forty  
11 (140) weeks, the employee may request a review of the case by a  
12 judge of the Workers' Compensation Court for continued temporary  
13 total disability benefits provided by the Workers' Compensation Act.  
14 Upon a finding that benefits should be extended beyond the initial  
15 one-hundred-fifty-week period, compensation may be continued for an  
16 additional one hundred fifty (150) weeks.  
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19       (b) With respect to injuries occurring on or after November 4,  
20 1994, in cases of temporary total disability, seventy percent (70%)  
21 of the employee's average weekly wages shall be paid to the employee  
22 during the continuance thereof, but not in excess of fifty-two (52)  
23 weeks, except as otherwise provided in the Workers' Compensation  
24 Act. Provided, after compensation has been paid for a period of  
25 forty-two (42) weeks, the employee may request a review of the case  
26 by a judge of the Court for continued temporary total disability  
27 benefits provided by the Workers' Compensation Act. Upon a finding  
28 that benefits should be extended beyond the initial fifty-two-week  
29 period, compensation may be continued for additional successive  
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fifty-two-week periods, provided the employee has requested review of the case at forty-two (42) weeks during each period involved, and upon a finding by the Court that benefits should be extended. Total payments of compensation for temporary total disability may not exceed a maximum of three hundred (300) weeks in the aggregate.

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

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

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

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

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

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

Fourth Finger: For the loss of a fourth finger, commonly called

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3 the little finger, fifteen (15) weeks.

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

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

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

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

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

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

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

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

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

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

accident or sudden trauma, one hundred (100) weeks. Except as otherwise provided herein, any examining physician shall only evaluate deafness or hearing impairment in accordance with the latest publication of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time of the injury. The Physician Advisory Committee may, pursuant to Section 201.1 of this title, recommend the adoption of a method or system to evaluate permanent impairment that shall be used in place of or in combination with the American Medical Association's "Guides to the Evaluation of Permanent Impairment". Such recommendation shall be made to the Administrator of the Workers' Compensation Court who may adopt the recommendation in part or in whole. The adopted method or system shall be submitted by the Administrator to the Governor, the Speaker of the House of Representatives and President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such method or system to evaluate permanent impairment that shall be used in place of or in combination with the American Medical Association's "Guides to the Evaluation of Permanent Impairment" shall be subject to disapproval in whole or in part by joint or concurrent resolution of the Legislature during the legislative session in which submitted. Such method or system shall be operative one hundred twenty (120) days after the last day of the month in which the Administrator submits the adopted method or system to the Legislature if the Legislature takes no action or one hundred twenty (120) days after the last day

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

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

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

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

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3       The compensation for the foregoing specific injuries shall be in  
4       lieu of all other compensation except the benefits provided in  
5       Section 14 of this title and Section 16 of this title.  
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8       In case of an injury resulting in serious and permanent  
9       disfigurement, compensation shall be payable in an amount to be  
10      determined by the Court, but not in excess of Twenty Thousand  
11      Dollars (\$20,000.00); provided, that compensation for permanent  
12      disfigurement shall not be in addition to the other compensation  
13      provided for in this section, but shall be taken into consideration  
14      in fixing the compensation otherwise provided.  
15

16      Hernia: In case of an injury resulting in hernia, temporary  
17      total compensation for fourteen (14) weeks, and the cost of an  
18      operation shall be payable; provided, in any case where the injured  
19      employee has been twice previously operated for hernia in the same  
20      area and it is established by opinion of a competent surgeon that  
21      further surgery in the same area will not result in full relief of  
22      the condition, the Court may then award compensation for disability  
23      resulting therefrom under paragraph 1 of this section, or, if not  
24      totally and permanently disabled, then under the "Other Cases"  
25      subdivision following, and, after a second surgical attempt to  
26      repair hernia, the injured may not be required to submit to further  
27      surgery in an effort to relieve the disability thereafter existing;  
28      provided, further, the use of any artificial reinforcement or  
29      device, with or without surgery, shall not be the basis of reducing  
30      extent of disability to be awarded.  
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**Other Cases:** In all other classes of disabilities, excluding only those heretofore referred to in paragraph 3 of this section, which disabilities result in loss of use of any portion of an employee's body, and which disabilities are permanent in quality but partial in character, disability shall mean the percentage of permanent impairment. The compensation ordered paid shall be seventy percent (70%) of the employee's average weekly wage for the number of weeks which the partial disability of the employee bears to five hundred (500) weeks.

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

- (1) For each percent of the first nine percent (9%) of disability, eighty percent (80%) of the number of weeks of compensation provided by law prior to November 4, 1994;
- (2) For each percent of the next eleven percent (11%) of disability, the identical number of weeks of compensation provided by law prior to November 4, 1994;
- (3) For each percent of the next thirty percent (30%) of disability, one hundred twenty percent (120%) of the number of weeks of compensation provided by law prior to November 4, 1994; and
- (4) For each remaining percent of disability, the identical

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3 number of weeks of compensation provided by law prior to November 4,  
4 1994.

5 (c) With respect to injuries occurring on or after January 1,  
6 2002, through December 31, 2002, in case of disability, partial in  
7 character but permanent in quality, the compensation shall be  
8 seventy percent (70%) of the employee's average weekly wages, and  
9 shall be paid to the employee for the period prescribed by the  
10  
11 following schedule:

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

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

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

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

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

25       Phalange of Thumb or Finger: The loss of the first phalange of  
26 the thumb or finger shall be considered equal to the loss of one-  
27 half (1/2) of such thumb or finger, and compensation shall be one-  
28 half (1/2) of the amount above specified; the loss of more than one  
29 phalange shall be considered as the loss of the entire thumb or  
30 finger; provided, however, that in no case shall the amount received  
31 for more than one finger exceed the amount provided in this schedule  
32 for the loss of a hand.

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

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

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

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

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

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

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

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

Deafness: Deafness from industrial cause, including occupations which are hazardous to hearing, accident or sudden trauma, three hundred fifteen (315) weeks, and total deafness of one ear from industrial cause, including occupations which are hazardous to hearing, accident or sudden trauma, one hundred five (105) weeks. Except as otherwise provided herein, any examining physician shall only evaluate deafness or hearing impairment in accordance with the latest publication of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time of the injury. The Physician Advisory Committee may, pursuant to Section 201.1 of this title, recommend the adoption of a method or system to evaluate permanent impairment that shall be used in place of or in combination with the American Medical Association's "Guides to the

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3 Evaluation of Permanent Impairment". Such recommendation shall be  
4 made to the Administrator of the Workers' Compensation Court who may  
5 adopt the recommendation in part or in whole. The adopted method or  
6 system shall be submitted by the Administrator to the Governor, the  
7 Speaker of the House of Representatives and President Pro Tempore of  
8 the Senate within the first ten (10) legislative days of a regular  
9 session of the Legislature. Such method or system to evaluate  
10 permanent impairment that shall be used in place of or in  
11 combination with the American Medical Association's "Guides to the  
12 Evaluation of Permanent Impairment" shall be subject to disapproval  
13 in whole or in part by joint or concurrent resolution of the  
14 Legislature during the legislative session in which submitted. Such  
15 method or system shall be operative one hundred twenty (120) days  
16 after the last day of the month in which the Administrator submits  
17 the adopted method or system to the Legislature if the Legislature  
18 takes no action or one hundred twenty (120) days after the last day  
19 of the month in which the Legislature disapproves it in part. If  
20 adopted, permanent impairment shall be evaluated only in accordance  
21 with the latest version of the alternative method or system in  
22 effect at the time of injury. Except as otherwise provided in  
23 Section 11 of this title, all evaluations shall include an  
24 apportionment of injury causation. However, revisions to the guides  
25 made by the American Medical Association which are published after  
26 January 1, 1989, and before January 1, 1995, shall be operative one  
27 hundred twenty (120) days after the last day of the month of  
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publication. Revisions to the guides made by the American Medical Association which are published after December 31, 1994, may be adopted in whole or in part by the Administrator following recommendation by the Physician Advisory Committee. Revisions adopted by the Administrator shall be submitted by the Administrator to the Governor, the Speaker of the House of Representatives and President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such revisions shall be subject to disapproval in whole or in part by joint or concurrent resolution of the Legislature during the legislative session in which submitted. Revisions shall be operative one hundred twenty (120) days after the last day of the month in which the Administrator submits the revisions to the Legislature if the Legislature takes no action or one hundred twenty (120) days after the last day of the month in which the Legislature disapproves them in part. The examining physician shall not follow the guides based on race or ethnic origin. The examining physician shall not deviate from such guides or any alternative thereof except as may be specifically provided for in the guides or modifications to the guides or except as may be specifically provided for in any alternative or modifications thereto adopted by the Administrator of the Workers' Compensation Court as provided in Section 201.1 of this title. The guides or modifications thereto or alternative system or method of evaluating permanent impairment or modifications thereto shall be the exclusive basis for testimony and conclusions with

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3 regard to deafness or hearing impairment.

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

7       For the permanent partial loss of use of a member, loss of  
8 hearing or sight of an eye, seventy percent (70%) of the employee's  
9 average weekly wage during that portion of the number of weeks in  
10 the foregoing schedule provided for the loss of such member or sight  
11 of an eye which the partial loss of use thereof bears to the total  
12 loss of use of such member, loss of hearing or sight of an eye.  
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15       Amputations: Amputation between the elbow and the wrist shall be  
16 considered as the equivalent of the loss of a hand. Amputation  
17 between the knee and the ankle shall be considered as the loss of a  
18 foot. Amputation at or above the elbow shall be considered as the  
19 loss of an arm. Amputation at or above the knee shall be considered  
20 as the loss of a leg.  
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23       The compensation for the foregoing specific injuries shall be in  
24 lieu of all other compensation except the benefits provided in  
25 Section 14 of this title and Section 16 of this title.  
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28       In case of an injury resulting in serious and permanent  
29 disfigurement, compensation shall be payable in an amount to be  
30 determined by the Court, but not in excess of Twenty Thousand  
31 Dollars (\$20,000.00); provided, that compensation for permanent  
32 disfigurement shall not be in addition to the other compensation  
provided for in this section but shall be taken into consideration

in fixing the compensation otherwise provided.

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

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

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3 (70%) of the employee's average weekly wage for the number of weeks  
4 which the partial disability of the employee bears to five hundred  
5 (500) weeks.  
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7 (d) With respect to injuries occurring on or after January 1,  
8 2003, in case of disability, partial in character but permanent in  
9 quality, the compensation shall be seventy percent (70%) of the  
10 employee's average weekly wages, and shall be paid to the employee  
11 for the period prescribed by the following schedule:  
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13       Thumb: For the loss of thumb, sixty-six (66) weeks.  
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15       First Finger: For the loss of the first finger, commonly called  
16 the index finger, thirty-nine (39) weeks.  
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18       Second Finger: For the loss of a second finger, thirty-three  
19 (33) weeks.  
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21       Third Finger: For the loss of a third finger, twenty-two (22)  
22 weeks.  
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24       Fourth Finger: For the loss of a fourth finger, commonly called  
25 the little finger, seventeen (17) weeks.  
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27       Phalange of Thumb or Finger: The loss of the first phalange of  
28 the thumb or finger shall be considered equal to the loss of one-  
29 half (1/2) of such thumb or finger, and compensation shall be one-  
30 half (1/2) of the amount above specified; the loss of more than one  
31 phalange shall be considered as the loss of the entire thumb or  
32 finger; provided, however, that in no case shall the amount received  
for more than one finger exceed the amount provided in this schedule  
for the loss of a hand.  
33

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

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

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

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

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

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

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

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

Deafness: Deafness from industrial cause, including occupations which are hazardous to hearing, accident or sudden trauma, three hundred thirty (330) weeks, and total deafness of one ear from industrial cause, including occupations which are hazardous to hearing, accident or sudden trauma, one hundred ten (110) weeks. Except as otherwise provided herein, any examining physician shall only evaluate deafness or hearing impairment in accordance with the latest publication of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time of the injury. The Physician Advisory Committee may, pursuant to Section 201.1 of this title, recommend the adoption of a method or system to

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3 evaluate permanent impairment that shall be used in place of or in  
4 combination with the American Medical Association's "Guides to the  
5 Evaluation of Permanent Impairment". Such recommendation shall be  
6 made to the Administrator of the Workers' Compensation Court who may  
7 adopt the recommendation in part or in whole. The adopted method or  
8 system shall be submitted by the Administrator to the Governor, the  
9 Speaker of the House of Representatives and President Pro Tempore of  
10 the Senate within the first ten (10) legislative days of a regular  
11 session of the Legislature. Such method or system to evaluate  
12 permanent impairment that shall be used in place of or in  
13 combination with the American Medical Association's "Guides to the  
14 Evaluation of Permanent Impairment" shall be subject to disapproval  
15 in whole or in part by joint or concurrent resolution of the  
16 Legislature during the legislative session in which submitted. Such  
17 method or system shall be operative one hundred twenty (120) days  
18 after the last day of the month in which the Administrator submits  
19 the adopted method or system to the Legislature if the Legislature  
20 takes no action or one hundred twenty (120) days after the last day  
21 of the month in which the Legislature disapproves it in part. If  
22 adopted, permanent impairment shall be evaluated only in accordance  
23 with the latest version of the alternative method or system in  
24 effect at the time of injury. Except as otherwise provided in  
25 Section 11 of this title, all evaluations shall include an  
26 apportionment of injury causation. However, revisions to the guides  
27 made by the American Medical Association which are published after  
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January 1, 1989, and before January 1, 1995, shall be operative one hundred twenty (120) days after the last day of the month of publication. Revisions to the guides made by the American Medical Association which are published after December 31, 1994, may be adopted in whole or in part by the Administrator following recommendation by the Physician Advisory Committee. Revisions adopted by the Administrator shall be submitted by the Administrator to the Governor, the Speaker of the House of Representatives and President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such revisions shall be subject to disapproval in whole or in part by joint or concurrent resolution of the Legislature during the legislative session in which submitted. Revisions shall be operative one hundred twenty (120) days after the last day of the month in which the Administrator submits the revisions to the Legislature if the Legislature takes no action or one hundred twenty (120) days after the last day of the month in which the Legislature disapproves them in part. The examining physician shall not follow the guides based on race or ethnic origin. The examining physician shall not deviate from such guides or any alternative thereof except as may be specifically provided for in the guides or modifications to the guides or except as may be specifically provided for in any alternative or modifications thereto adopted by the Administrator of the Workers' Compensation Court as provided in Section 201.1 of this title. The guides or modifications thereto or alternative system or

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3 method of evaluating permanent impairment or modifications thereto  
4 shall be the exclusive basis for testimony and conclusions with  
5 regard to deafness or hearing impairment.  
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7       Loss of Use: Permanent loss of use of a thumb, finger, toe, arm,  
8 hand, foot, leg or eye shall be considered as the equivalent of the  
9 loss of such thumb, finger, toe, hand, arm, foot, leg or eye.  
10

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

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

25       The compensation for the foregoing specific injuries shall be in  
26 lieu of all other compensation except the benefits provided in  
27 Section 14 of this title and Section 16 of this title.  
28

29       In case of an injury resulting in serious and permanent  
30 disfigurement, compensation shall be payable in an amount to be  
31 determined by the Court, but not in excess of Twenty Thousand  
32 Dollars (\$20,000.00) for an injury occurring before November 1,

2005, and not in excess of Fifty Thousand Dollars (\$50,000.00) for an injury occurring on or after November 1, 2005; provided, that compensation for permanent disfigurement shall not be in addition to the other compensation provided for in this section but shall be taken into consideration in fixing the compensation otherwise provided.

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

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

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3 bones and joints. "Soft tissue injury" includes, but is not limited  
4 to: sprains, strains, contusions, tendonitis, and muscle tears.

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

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

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

10 a. sensory or motor disturbances,

11 b. communication disturbances,

12 c. complex integrated disturbances of cerebral function,

13 d. episodic neurological disorders, or

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

17 (3) Total knee replacement.

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

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

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

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

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

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

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

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

4       weeks.

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

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

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

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

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

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

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

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

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

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

weeks.

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

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

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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  
25 revisions shall be subject to disapproval in whole or in part by  
26 joint or concurrent resolution of the Legislature during the  
27 legislative session in which submitted. Revisions shall be

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

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

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

Amputations: Amputation between the elbow and the wrist shall be

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

8  
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  
13 In case of an injury resulting in serious and permanent  
14 disfigurement, compensation shall be payable in an amount to be  
15 determined by the Court, but not in excess of Twenty Thousand  
16 Dollars (\$20,000.00) for an injury occurring before November 1,  
17 2005, and not in excess of Fifty Thousand Dollars (\$50,000.00) for  
18 an injury occurring on or after November 1, 2005; provided, that  
19 compensation for permanent disfigurement shall not be in addition to  
20 the other compensation provided for in this section but shall be  
21 taken into consideration in fixing the compensation otherwise  
22 provided.

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25 Hernia: In case of an injury resulting in hernia, temporary  
26 total compensation for six (6) weeks, and all necessary medical  
27 costs including, but not limited to, the cost of an operation shall  
28 be payable. A claimant who has had surgery for a hernia may  
29 petition the court for one extension of temporary total compensation  
30 and the court may order such an extension, not to exceed six (6)  
31 additional weeks, if the treating physician indicates such an

extension is appropriate, or as agreed to by all parties.

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

- (1) Injury to or disease of the spine, spinal disks, spinal nerves or spinal cord, where corrective surgery is performed;
- (2) Brain or closed-head injury as evidenced by:
  - a. sensory or motor disturbances,
  - b. communication disturbances,
  - c. complex integrated disturbances of cerebral function,
  - d. episodic neurological disorders, or
  - e. other brain and closed-head injury conditions at least as severe in nature as any condition provided in

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3 subdivisions a through d of this division; or

4 (3) Total knee replacement.

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

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

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

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

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3 for continued temporary partial disability benefits provided by the  
4 Workers' Compensation Act. Upon a finding that benefits should be  
5 extended beyond the initial fifty-two-week period, compensation may  
6 be continued for additional successive fifty-two-week periods  
7 provided the employee has requested review of the case at forty-two  
8 (42) weeks during each period involved, and upon a finding by the  
9 Court that benefits should be extended. Total payments of  
10 compensation for temporary partial disability may not exceed a  
11 maximum of three hundred (300) weeks in the aggregate.  
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14 (c) With respect to injuries occurring on or after November 1,  
15 1997, total payments of compensation for temporary partial  
16 disability may not exceed a maximum of one hundred fifty-six (156)  
17 weeks in the aggregate except for good cause shown, as determined by  
18 the Court. Total payments of compensation for temporary partial  
19 disability, inclusive of consequential injuries, may not exceed a  
20 maximum of three hundred (300) weeks in the aggregate.  
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23 5. Notwithstanding any other section of the Workers'  
24 Compensation Act, temporary disability shall be payable without an  
25 award by the Court. The first payment of temporary disability  
26 compensation shall become due on the tenth day after the employer  
27 has received notice of injury as specified in Section 24.2 of this  
28 title. All compensation owed on that date shall be paid and  
29 thereafter payments shall be made weekly except when otherwise  
30 ordered by the Court.  
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If any compensation payments owed without an award are not paid

within ten (10) days after becoming due, there shall be added to such owed payments an amount equal to ten percent (10%) of the amount due which shall be paid at the same time in addition to the owed payments unless such nonpayment is excused by the Court after a showing by the employer that conditions exist over which the employer had no control in that either payments were not made within the prescribed time or the employer denies coverage within the time specified for the employer to respond.

6. Limitation. The compensation payments under the provisions of the Workers' Compensation Act shall not exceed the sum of seventy-five percent (75%) of the state's average weekly wage as determined by the Oklahoma Employment Security Commission, the sum of ninety percent (90%) of the state's average weekly wage beginning January 1, 1995, for injuries occurring after December 31, 1994, and the sum of one hundred percent (100%) of the state's average weekly wage beginning January 1, 1996, for injuries occurring after December 31, 1995, for temporary disability; Sixty Dollars (\$60.00) per week beginning as of the effective date of the Workers' Compensation Act, and Seventy Dollars (\$70.00) per week beginning January 1, 1979, and Eighty Dollars (\$80.00) per week beginning January 1, 1980, and Ninety Dollars (\$90.00) per week beginning January 1, 1981, and to fifty percent (50%) of the state's average weekly wage beginning January 1, 1982, for permanent partial disability; Seventy-five Dollars (\$75.00) per week beginning as of the effective date of the Workers' Compensation Act, and Ninety

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

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26 The average weekly wage in this state shall be determined by the  
27 Oklahoma Employment Security Commission every year beginning July 1,  
28 1984, and shall be used to establish maximum benefits under the  
29 Workers' Compensation Act for injuries occurring during a one-year  
30 period, which period shall begin on the first day of November after  
31 publication by the Oklahoma Employment Security Commission. For the  
32 purpose of computing benefits payable under the Workers'

Compensation Act, the state's average weekly wage shall be rounded to the nearest dollar amount.

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

7. Previous Disability. The fact that an employee has suffered previous disability or impairment or received compensation therefore shall not preclude the employee from compensation for a later accidental personal injury or occupational disease; but in determining compensation for the later accidental personal injury or occupational disease the employee's average weekly wages shall be such sum as will reasonably represent the employee's earning capacity at the time of the later accidental personal injury or occupational disease. In the event there exists a previous impairment, including a previous non-work-related injury or condition which produced permanent disability and the same is aggravated or accelerated by an accidental personal injury or occupational disease, compensation for permanent disability shall be only for such amount as was caused by such accidental personal injury or occupational disease and no additional compensation shall be allowed for the pre-existing disability or impairment. The sum of all permanent partial disability awards, excluding awards against the Multiple Injury Trust Fund and awards for amputations, and

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3 surgeries, shall not exceed one hundred percent (100%) permanent  
4 partial disability for any individual. An individual may not  
5 receive more than five hundred twenty (520) weeks' compensation for  
6 permanent partial disability, but may receive other benefits under  
7 the Workers' Compensation Act if otherwise eligible as provided in  
8 the Workers' Compensation Act.  
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11 8. Income benefits for death. If the injury or occupational  
12 disease causes death, income benefits shall be payable in the amount  
13 and for the benefit of the persons following, subject to the maximum  
14 limits specified hereafter:  
15

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

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

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

28 (3) In addition to the benefits theretofore paid or due, two (2)  
29 years' indemnity benefit in one lump sum shall be payable to a  
30 surviving spouse upon remarriage.  
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(4) To the children, if there is no surviving spouse, fifty percent (50%) of the average weekly wages the deceased was earning for one child, and twenty percent (20%) of such wage for each additional child, divided among all children, to share and share alike, subject to the provisions of subparagraphs (c) and (d) of this paragraph.

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

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

physically or mentally incapable of self-support, actually dependent, or enrolled in an accredited educational institution or being educated by other means, including education at home pursuant to Section 4 of Article XIII of the Oklahoma Constitution.

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

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

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

(9) A person ceases to be actually dependent when the person's income from all sources exclusive of workers' compensation income benefits is such that, if it had existed at the time the original

determination of actual dependency was made, it would not have supported a finding of dependency. If the present annual income of an actually dependent person including workers' compensation income benefits at any time exceeds the total annual support received by the person from the deceased employee, the workers' compensation benefits shall be reduced so that the total annual income is no greater than such amount of annual support received from the deceased employee. In all cases, a person found to be actually dependent shall be presumed to be no longer actually dependent three (3) years after the time as of which the person was found to be actually dependent. This presumption may be overcome by proof of continued actual dependency as defined in this paragraph and paragraph (1) of Section 3.1 of this title.

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

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

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

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

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

11. (a) For deaths occurring before January 1, 1995, if there is a surviving spouse and surviving children entitled to receive death benefits herein, such survivors shall be entitled to an immediate lump-sum payment of Ten Thousand Dollars (\$10,000.00) to the spouse and Two Thousand Five Hundred Dollars (\$2,500.00) to each

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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).  
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20 (b) For deaths occurring before November 1, 2005, if there is no  
21 surviving spouse but there are surviving children entitled to  
22 receive death benefits herein, such surviving children shall be  
23 entitled to a lump-sum payment of Ten Thousand Dollars (\$10,000.00)  
24 to be divided among all the children to share and share alike. For  
25 deaths occurring on or after November 1, 2005, if there is no  
26 surviving spouse but there are surviving children entitled to  
27 receive death benefits herein, each surviving child shall be  
28 entitled to a lump-sum payment of Twenty-five Thousand Dollars  
29 (\$25,000.00), provided the total amount of lump-sum payments shall  
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not exceed One Hundred Fifty Thousand Dollars (\$150,000.00), to be divided among all the children to share and share alike. The survivors shall also be entitled to receive funeral benefits in an amount not to exceed Ten Thousand Dollars (\$10,000.00).

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

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

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3 numbered receipt to the person paying the benefits into trust and  
4 deliver a copy of the receipt to the Administrator. Each banking  
5 institution receiving trust funds for deposit shall receive a  
6 schedule of disbursements and shall monthly pay said disbursements  
7 to the beneficiary as ordered by the Court. An annual accounting of  
8 all such trust funds received and deposited shall be rendered by  
9 each banking institution to the Court granting the judgment.  
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12. 12. No payments on any permanent impairment order shall start  
13 until payments on any pre-existing permanent impairment orders have  
14 been completed.  
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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 forfeited by order of the Court on motion of the employer or  
21 the employer's insurer after confirmation of the employee's  
22 incarceration. The Court also may order the forfeiture of such  
23 benefits on its own motion upon receipt of notice from the Director  
24 of the Department of Corrections that the person awarded the  
25 benefits is incarcerated as an inmate in a facility operated by or  
26 under contract with the Department. The provisions of this  
27 subparagraph shall not apply to any benefits awarded to an inmate  
28 for compensable injuries sustained by the inmate while in the employ  
29 of a private for-profit employer or while employed in private prison  
30 industries, involving a for-profit employer, which deal in  
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interstate commerce or which sell products or services to the federal government.

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

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

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

B. The Administrator shall adopt rules to establish a system of review of medical practices of health care providers through the workers' compensation system to evaluate on an aggregate basis the quantity and quality of treatment, charges and evaluations of permanent impairment by such providers. The Administrator may refer

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

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

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

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

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

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

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3 by first-class mail together with a notice which shall contain the  
4 following:

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

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

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

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

20           a. the Governor shall appoint three members, one of whom  
21               shall be licensed in this state as a doctor of  
22               medicine and surgery, one of whom shall be engaged in  
23               the practice of family medicine in a rural community  
24               of the state, and one of whom shall be an osteopathic  
25               physician,

26           b. the President Pro Tempore of the Senate shall appoint  
27               three members, one of whom shall be licensed in this

state as a doctor of medicine and surgery, one of whom shall be licensed in this state either as a doctor of medicine or a doctor of osteopathy and shall be engaged in the practice of occupational medicine, and one of whom shall be licensed in this state as a podiatric physician,

- c. the Speaker of the House of Representatives shall appoint three members, one of whom shall be licensed in this state as an osteopathic physician, one of whom shall be licensed in this state either as a doctor of medicine or a doctor of osteopathy, and one of whom shall be licensed in this state as a chiropractic physician.
- 2. a. To fill the positions for which the term of office expires on January 1, 1996, the Governor shall appoint a resident of the Fifth Congressional District, the President Pro Tempore of the Senate shall appoint a resident of the First Congressional District and the Speaker of the House of Representatives shall appoint a resident of the Second Congressional District.
- b. To fill the positions for which the term of office expires on January 1, 1997, the Governor shall appoint a resident of the Sixth Congressional District, the President Pro Tempore of the Senate shall appoint a resident of the Third Congressional District and the

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3 Speaker of the House of Representatives shall appoint  
4 a resident of the Fourth Congressional District.  
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7 c. To fill the positions for which the term of office  
8 expires on January 1, 1998, the Governor, the  
9 President Pro Tempore of the Senate and the Speaker of  
10 the House of Representatives shall appoint residents  
11 of the state at large.  
12  
13 d. Thereafter, appointments shall be made from the  
14 Congressional District numbered the same as the  
15 district from which the original appointment was made  
16 pursuant to this paragraph, if a Congressional  
17 District so numbered exists. When congressional  
18 districts are redrawn, each member appointed prior to  
19 July 1 of the year in which such modification becomes  
20 effective shall complete the current term of office  
21 and appointments made after July 1 of the year in  
22 which such modification becomes effective shall be  
23 based on the redrawn districts. Appointments that  
24 were to be made from a numbered Congressional District  
25 which no longer exists shall be appointed from the  
26 state at large.  
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28 e. Effective July 1, 2005, all members of the Physicians  
29 Advisory Committee shall be subject to reappointment  
30 regardless of their appointment date, with any new  
31 appointee to serve out the remainder of the unexpired  
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term of the committee member so replaced.

B. The Committee shall:

1. Assist and advise the Administrator of the Workers' Compensation Court regarding utilization review as it relates to the medical practice and treatment of work-related injuries. Such utilization review shall include a review of reasonable and necessary treatment; abusive practices; needless treatments, testing, or procedures; or a pattern of billing in excess of or in violation of the Schedule of Medical Fees. The Physician Advisory Committee shall review and make findings and recommendations to the Administrator of the Workers' Compensation Court with respect to charges of inappropriate or unnecessary treatment or procedures, abusive practices, or excessive billing disclosed through utilization review. All findings of the Administrator shall be based upon the most recent edition of the American Medical Association's "Guides to the Evaluation of Permanent Impairment";

2. Assist the Administrator of the Workers' Compensation Court in reviewing medical practices of health care providers, including evaluations of permanent impairment provided by health care providers, as provided for in Section 201 of this title. The Committee shall review and make findings and recommendations to the Administrator with respect to charges of abusive practices by health care providers providing medical services or evaluations of permanent impairment through the workers' compensation system. All findings of the Administrator shall be based upon the most recent

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3 edition of the American Medical Association's "Guides to the  
4 Evaluation of Permanent Impairment";

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

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14 ~~4. After public hearing, review and make recommendations for an~~  
15 ~~alternative method or system to evaluate permanent impairment that~~  
16 ~~shall be used in place of or in combination with the American~~  
17 ~~Medical Association's "Guides to the Evaluation of Permanent~~  
18 ~~Impairment". Appropriate and scientific data shall be considered.~~  
19 ~~The alternative method or system to evaluate permanent impairment~~  
20 ~~may be adopted, in part or in whole, by the Administrator to be used~~  
21 ~~as provided for in paragraph 11 of Section 3 and Section 22 of this~~  
22 ~~title. Revisions, deviations and alternatives to the American~~  
23 ~~Medical Association's "Guides to the Evaluation of Permanent~~  
24 ~~Impairment" shall become effective as provided in paragraph 11 of~~  
25 ~~Section 3 and Section 22 of this title;~~

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30 ~~5. After public hearing, adopt treatment Treatment guidelines~~  
31 ~~and protocols for treatment of injuries, including, but not limited~~  
32 ~~to, injuries to the hand, wrist, back, knee, neck and shoulder and~~  
utilization controls for all treatments, including, but not limited

to, x-ray and imaging technology for diagnostic purposes, ~~for~~  
~~adoption by the Administrator. Treatment guidelines and protocols~~  
shall be based upon ~~nationally accepted practice standards~~ the  
Official Disability Guidelines promulgated by the Work Loss Data  
Institute and shall indicate when surgery is indicated and the  
appropriate surgical procedure for the condition. ~~Among the~~  
~~standards that must be considered are the Occupational Medicine~~  
~~Practice Guidelines promulgated by the American College of~~  
~~Occupational and Environmental Medicine.~~ Compliance with treatment  
guidelines shall be mandatory and an employer or insurer for an  
employer shall not be required to pay for treatment which is not in  
compliance with the guidelines, unless prior authorization is  
received. If an employer or insurer for an employer refuses to give  
such prior authorization, the employee may request the case be  
reviewed by an independent medical examiner pursuant to the  
provisions of subsection B of Section 17 of this title. Provided,  
however, if the employer and employee are unable to agree on the  
appointment of an independent medical examiner for prior  
authorization purposes, the Court shall randomly select an  
independent medical examiner within seven (7) days of receipt of a  
written request by the employee. The independent medical examiner  
shall review the medical records of the employee, examine the  
employee, or both, as necessary to render an opinion as to whether  
prior authorization should be given. If prior authorization is  
granted, the employer shall pay the costs of the independent medical

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3 examiner subject to limits established by the Administrator. If  
4 prior authorization is denied, the employee shall pay the costs of  
5 the independent medical examiner subject to the limits established  
6 by the Administrator;

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8 6. 4. After public hearing, adopt guidelines for the  
9 prescription and dispensing of any controlled substance included in  
10 Schedule II of the Uniform Controlled Dangerous Substances Act;

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12 7. 5. Review utilization on cases or of providers when  
13 requested by any employer, injured employee or insurer. The  
14 Committee may issue a public or private censure to any provider for  
15 utilization which is excessive or inadequate, or recommend the Court  
16 order treatment within the treatment guidelines;

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18 8. 6. Provide general recommendations to the judges of the  
19 Workers' Compensation Court on the issues of injury causation and  
20 apportionment;

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22 9. 7. Conduct educational seminars for the judges of the  
23 Workers' Compensation Court, employers, employees, and other  
24 interested parties;

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26 10. 8. Assist the judges of the Workers' Compensation Court in  
27 accessing medical information from scientific literature; and

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29 11. 9. Report its progress annually to the Governor, the  
30 President Pro Tempore of the Senate, and the Speaker of the House of  
31 Representatives.

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

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

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

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

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

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

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

E. Meetings of the Physician Advisory Committee shall be called by the Administrator but held at least quarterly. The presence of a simple majority of the members constitutes a quorum. No action

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3 shall be taken by the Physician Advisory Committee without the  
4 affirmative vote of at least a simple majority of the members.  
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7 F. The Administrator shall provide office supplies and  
8 personnel of the Workers' Compensation Court to assist the Committee  
9 in the performance of its duties.  
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12 G. Upon written request, the State Insurance Commissioner,  
13 CompSource Oklahoma, and every approved self-insured employer in  
14 Oklahoma shall provide the Committee with data necessary to the  
15 performance of its duties.  
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18 H. Any health care provider acting in good faith and within the  
19 scope of the provider's duties as a member of the Physician Advisory  
20 Committee shall be immune from civil liability for making any report  
21 or other information available to the judges of the Workers'  
22 Compensation Court or to the Administrator of the Workers'  
23 Compensation Court or for assisting in the origination,  
24 investigation, or preparation of the report or other information so  
provided.  
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27 SECTION 15. NEW LAW A new section of law to be codified  
28 in the Oklahoma Statutes as Section 201.1a of Title 85, unless there  
29 is created a duplication in numbering, reads as follows:  
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32 A. Notwithstanding any other section of law, the Court shall  
33 adopt rules requiring express written prior authorization from the  
34 employer's insurer to the treating physician forty-eight (48) hours  
35 prior to the recommended treatment or services for an employee's  
36 injuries including, but not limited to:  
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1. Spinal surgery;
2. Work-hardening or work-conditioning services;
3. Inpatient, nonemergency hospitalization, including any procedure and length of stay;
4. Transfers between facilities;
5. Physical and occupational therapy;
6. Outpatient services expected to exceed One Thousand Dollars (\$1,000.00) in billed charges for a single date of service or ambulatory surgical services, as defined by Court rule; and
7. Any investigational or experimental services or devices.

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

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

1. Within three (3) working days of the treating physician's request for prior authorization, the insurer's designee shall give notification to the physician, by telephone or transmission of a facsimile, of the decision to grant or deny prior authorization. When the insurer approves prior authorization, the insurer shall send written approval, or if denying prior authorization, shall send written documentation identifying the reasons for denial to the injured employee, the injured employee's representative if known, and the treating physician, or the treating physician's designee,

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3 within twenty-four (24) hours after notification of denial or  
4 approval;

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

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

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

25       If a specified treatment or service has prior authorization as  
26 provided by this section, that treatment or service is not subject  
27 to retrospective review of the medical necessity of the treatment or

service.

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

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

Passed the Senate the 9th day of March, 2010.

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Presiding Officer of the Senate

Passed the House of Representatives the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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Presiding Officer of the House  
of Representatives