

ENGROSSED SENATE
BILL NO. 1973

By: Coffee and Jolley of the
Senate

and

Sullivan of the House

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

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

SECTION 7. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 51-114 of Title 11, unless there
is created a duplication in numbering, reads as follows:

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

SECTION 7. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 608.1 of Title 36, unless there
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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6 Thereafter, each position shall be filled by a judge appointed
7 to serve ~~a six-year term~~ an eight-year term. A judge shall serve
8 only one eight-year term.

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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
29 sixty (60) days, the Chief Justice of the Supreme Court shall

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

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.

9 D. The salary of the Administrator shall be ninety percent
10 (90%) of the authorized salary of a judge of the Court.

11 E. ~~The Administrator shall serve a six year term. During the~~
12 ~~term,~~ the Administrator may be removed from office only for cause,
13 as provided by law for the removal of officers not subject to
14 impeachment, pursuant to the provisions of Sections 1181 through
15 1197 of Title 22 of the Oklahoma Statutes.

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

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

27 H. The Administrator shall employ other employees of the Court,
28 within budgetary limitation, necessary to carry out the work and
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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;

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

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11 6. Expedite the submission and processing of medical reports
12 necessary to the processing of claims; and

13 7. Undertake other functions that may be delegated to the
14 Medical Director by the Administrator.
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16 SECTION 7. AMENDATORY 85 O.S. 2001, Section 3, as last
17 amended by Section 9, Chapter 1, 1st Extraordinary Session, O.S.L.
18 2005 (85 O.S. Supp. 2009, Section 3), is amended to read as follows:
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20 Section 3. As used in the Workers' Compensation Act:

21 1. "Administrator" means the Administrator of workers'
22 compensation as provided for in the Workers' Compensation Act;
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24 2. "Amount in dispute" means the dollar value of any permanent
25 disability award granted to the employee by the Court for a
26 disability claim which is greater than the dollar amount offered by
27 the employer to the employee for such disability claim if the
28 employer admits compensability within twenty (20) days of the filing
29 of the Employee's First Notice of Accidental Injury and Claim for
30 Compensation, has not disputed medical treatment, and has made a
31 written settlement offer within fifteen (15) days of the employee
32 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
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7 firefighter, peace officer or emergency management worker;

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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25 b. "Compensable injury" includes heart-related or
26 vascular injury, illness or death only if an accident
27 or the claimant's employment is the major cause of the
28 heart-related or vascular injury. Such injury shall
29 be compensable only if it is demonstrated that the
30 exertion necessary to produce the harm was
31 extraordinary and unusual in comparison to other
32 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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29 18. "Occupational disease" means only that disease or illness
30 which is due to causes and conditions characteristic of or peculiar
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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 banc~~ 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 banc~~ 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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29 B. In each case filed ~~in~~ with the ~~Court en banc~~ panel of
30 Special Magistrates, and at the time of filing same, the appellant
31 shall deposit with the clerk as costs One Hundred Twenty-five
32 Dollars (\$125.00) of which no rebate of any part thereof shall be
made. The fee collected under this subsection shall be deposited as

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 banc~~ 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 banc~~ 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

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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

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

~~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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21
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.

~~H.~~ 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:
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12

13 1. An injury occasioned by the willful intention of the injured
14 employee to bring about injury to himself or herself, or another;
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16 2. An injury resulting directly from the willful failure of the
17 injured employee to use a guard or protection against accident
18 furnished for use pursuant to any statute or by order of the
19 Commissioner of Labor;
20

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

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

14 1. The independent contractor shall, at all times, be liable
15 for compensation due to his or her direct employees, or the
16 employees of any subcontractor of such independent contractor, and
17 the principal employer shall also be liable in the manner
18 hereinafter specified for compensation due all direct employees,
19 employees of the independent contractors, subcontractors, or other
20 employees engaged in the general employer's business; provided,
21 however, if an independent contractor relies in good faith on proof
22 of a valid workers' compensation insurance policy issued to a
23 subcontractor of the independent contractor or on proof of an
24 Affidavit of Exempt Status Under the Workers' Compensation Act
25 properly executed by the subcontractor under Section ~~75~~ 924.4 of
26 ~~this act~~ Title 36 of the Oklahoma Statutes, then the independent
27 contractor shall not be liable for injuries of any employees of the
28 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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18 3. Where work is performed on a single family residential
19 dwelling or its premises occupied by the owner, or for a farmer
20 whose cash payroll for wages, excluding supplies, materials and
21 equipment, for the preceding calendar year did not exceed One
22 Hundred Thousand Dollars (\$100,000.00), such owner or farmer shall
23 not be liable for compensation under the Workers' Compensation Act.
24 Such owner or farmer shall not be liable to the employee of any
25 independent contractor or subcontractor, where applicable, or the
26 farmer's own employee.
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30 4. Where compensation is payable for an occupational disease,
31 the employer in whose employment the employee was last injuriously
32 exposed to the hazards of such disease and the insurance carrier, if
any, on the risk when such employee was last so exposed under such

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 (SiO₂) 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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27 (i) The immunity created by the provisions of this section shall
28 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.
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24 2. The treating physician who renders treatment to the employee
25 at any time shall promptly notify the employee and employer or the
26 employer's insurer in writing after the employee has reached maximum
27 medical improvement and is released from active medical care. If
28 the employee is capable of returning to modified light duty work,
29 the treating physician shall promptly notify the employee and the
30 employer or the employer's insurer thereof in writing ~~and shall also~~
31 ~~specify what restrictions, if any, must be followed by the employer~~
32 ~~in order to return the employee to work. In the event the treating~~

~~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.
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20 B. The employer's selected physician shall have the right and
21 responsibility to treat the injured employee. A report of such
22 examination shall be furnished to the employer and the injured
23 employee within seven (7) days after such examination.
24

25 C. If the employer fails or neglects to provide medical
26 treatment within three (3) days after actual knowledge of the injury
27 is received by the employer, the injured employee, during the period
28 of such neglect or failure, may select a physician to provide
29 medical treatment at the expense of the employer; provided, however,
30 that the injured employee, or another in the employee's behalf, may
31 obtain emergency treatment at the expense of the employer where such
32 emergency treatment is not provided by the employer. The attending

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.
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12 2. Such charges and duration of treatment shall be limited to
13 the usual, customary and reasonable payments and duration of
14 treatment as prescribed and limited by a schedule of fees and
15 treatment for all medical providers to be adopted, after notice and
16 public hearing, by the Administrator. Beginning January 1, 2006,
17 the fee and treatment schedule for physician services shall be based
18 on the most current Relative Value Units (RVU) produced by the
19 Centers for Medicare and Medicaid Services (CMS) for the Medicare
20 Physician Fee Schedule as of January 1 of the prior year. These
21 relative values shall be multiplied by appropriate conversion
22 factors to be determined by the Administrator. The conversion
23 factors shall be adjusted by the Consumer Price Index and shall be
24 adequate to reflect the usual and customary rates for treatment of
25 workers' compensation patients taking into consideration all
26 relevant factors including, but not limited to, the additional time
27 required to provide disability management. The Current Procedural
28 Terminology (CPT) codes shall be adjusted to reflect any changes or
29 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.
9

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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.
16

17 5. The Administrator's review of medical and treatment charges
18 pursuant to this section shall be conducted pursuant to the fee and
19 treatment schedule in existence at the time the medical care or
20 treatment was provided. The order of the approving medical and
21 treatment charges pursuant to this section shall be enforceable by
22 the Court in the same manner as provided in the Workers'
23 Compensation Act for the enforcement of other compensation payments.
24 Any party feeling aggrieved by the order, decision or award of the
25 Administrator shall, within ten (10) days, have the right to request
26 a hearing on such medical and treatment charges by a judge of the
27 Workers' Compensation Court. The judge of the Court may affirm the
28 decision of the Administrator, or reverse or modify said decision
29 only if it is found to be contrary to the fee and treatment schedule
30 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.
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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

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25 H. 1. For cases not covered by a certified workplace medical
26 plan, and where the insurance company does not provide case
27 management, case management may be granted by the Workers'
28 Compensation Court on the request of any party, or when the Court
29 determines that case management is appropriate. The Court shall
30 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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18 (b) With respect to injuries occurring on or after November 4,
19 1994, in cases of temporary total disability, seventy percent (70%)
20 of the employee's average weekly wages shall be paid to the employee
21 during the continuance thereof, but not in excess of fifty-two (52)
22 weeks, except as otherwise provided in the Workers' Compensation
23 Act. Provided, after compensation has been paid for a period of
24 forty-two (42) weeks, the employee may request a review of the case
25 by a judge of the Court for continued temporary total disability
26 benefits provided by the Workers' Compensation Act. Upon a finding
27 that benefits should be extended beyond the initial fifty-two-week
28 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.
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14 Great Toe: For the loss of a great toe, thirty (30) weeks.

15 Other Toes: For the loss of one of the toes other than the great
16 toe, ten (10) weeks.
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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.
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24 Hand: For the loss of a hand, two hundred (200) weeks.

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

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

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

28 Eye: For the loss of an eye, two hundred fifty (250) weeks.
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30 Deafness: Deafness from industrial cause, including occupations
31 which are hazardous to hearing, accident or sudden trauma, three
32 hundred (300) weeks, and total deafness of one ear from industrial
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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7 In case of an injury resulting in serious and permanent
8 disfigurement, compensation shall be payable in an amount to be
9 determined by the Court, but not in excess of Twenty Thousand
10 Dollars (\$20,000.00); provided, that compensation for permanent
11 disfigurement shall not be in addition to the other compensation
12 provided for in this section, but shall be taken into consideration
13 in fixing the compensation otherwise provided.
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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 following schedule:
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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.
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17 Second Finger: For the loss of a second finger, thirty-two (32)
18 weeks.
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20 Third Finger: For the loss of a third finger, twenty-one (21)
21 weeks.
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23 Fourth Finger: For the loss of a fourth finger, commonly called
24 the little finger, sixteen (16) weeks.
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26 Phalange of Thumb or Finger: The loss of the first phalange of
27 the thumb or finger shall be considered equal to the loss of one-
28 half ($1/2$) of such thumb or finger, and compensation shall be one-
29 half ($1/2$) of the amount above specified; the loss of more than one
30 phalange shall be considered as the loss of the entire thumb or
31 finger; provided, however, that in no case shall the amount received
32 for more than one finger exceed the amount provided in this schedule
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

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.

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

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

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

27
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.

14 First Finger: For the loss of the first finger, commonly called
15 the index finger, thirty-nine (39) weeks.
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17 Second Finger: For the loss of a second finger, thirty-three
18 (33) weeks.
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20 Third Finger: For the loss of a third finger, twenty-two (22)
21 weeks.
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23 Fourth Finger: For the loss of a fourth finger, commonly called
24 the little finger, seventeen (17) weeks.
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26 Phalange of Thumb or Finger: The loss of the first phalange of
27 the thumb or finger shall be considered equal to the loss of one-
28 half (1/2) of such thumb or finger, and compensation shall be one-
29 half (1/2) of the amount above specified; the loss of more than one
30 phalange shall be considered as the loss of the entire thumb or
31 finger; provided, however, that in no case shall the amount received
32 for more than one finger exceed the amount provided in this schedule
for the loss of a hand.

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.
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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.
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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.
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26 The compensation for the foregoing specific injuries shall be in
27 lieu of all other compensation except the benefits provided in
28 Section 14 of this title and Section 16 of this title.
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30 In case of an injury resulting in serious and permanent
31 disfigurement, compensation shall be payable in an amount to be
32 determined by the Court, but not in excess of Twenty Thousand
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

8 (1) Injury to or disease of the spine, spinal disks, spinal
9 nerves or spinal cord, where corrective surgery is performed;
10

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

- 12 a. sensory or motor disturbances,
13 b. communication disturbances,
14 c. complex integrated disturbances of cerebral function,
15 d. episodic neurological disorders, or
16 e. other brain and closed-head injury conditions at least
17 as severe in nature as any condition provided in
18 subdivisions a through d of this division; or
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21 (3) Total knee replacement.

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

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

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

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

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

26
27 Hand: For the loss of a hand, two hundred twenty (220) weeks.

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

30
31 Foot: For the loss of a foot, two hundred twenty (220) weeks.

32 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 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

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

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.

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.

26 Hernia: In case of an injury resulting in hernia, temporary
27 total compensation for six (6) weeks, and all necessary medical
28 costs including, but not limited to, the cost of an operation shall
29 be payable. A claimant who has had surgery for a hernia may
30 petition the court for one extension of temporary total compensation
31 and the court may order such an extension, not to exceed six (6)
32 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:
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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.
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22 (2) If there is a child or children, to such child or children
23 fifteen percent (15%) of the average weekly wages the deceased was
24 earning for each child. Where there are more than two such
25 children, the income benefits payable for the benefit of all
26 children shall be divided among all children, to share and share
27 alike, subject to the provisions of subparagraphs (c) and (d) of
28 this paragraph.
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31 (3) In addition to the benefits theretofore paid or due, two (2)
32 years' indemnity benefit in one lump sum shall be payable to a
surviving spouse upon remarriage.

(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

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3 physically or mentally incapable of self-support,
4 actually dependent, or enrolled in an accredited
5 educational institution or being educated by other
6 means, including education at home pursuant to Section
7 4 of Article XIII of the Oklahoma Constitution.
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9 (6) To each parent, if actually dependent, twenty-five percent
10 (25%) of the average weekly wages the deceased was earning subject
11 to the provisions of subparagraphs (c) and (d) of this paragraph.
12

13 (7) To the brothers, sisters, grandparents and grandchildren, if
14 actually dependent, twenty-five percent (25%) of the average weekly
15 wages the deceased was earning to each such dependent. If there
16 should be more than one of such dependents, the total income
17 benefits payable for the benefit of such dependents shall be divided
18 to share and share alike subject to the provisions of subparagraphs
19 (c) and (d) of this paragraph.
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22 (8) The income benefits of each beneficiary under divisions (6)
23 and (7) above shall be paid until the beneficiary, if a parent or
24 grandparent, dies, marries or ceases to be actually dependent, or,
25 if a brother, sister or grandchild, dies, marries or reaches the age
26 of eighteen (18), is over the age of eighteen (18) and ceases to be
27 physically or mentally incapable of self-support or ceases to be
28 actually dependent.
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31 (9) A person ceases to be actually dependent when the person's
32 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.
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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).

22 (b) For deaths occurring before November 1, 2005, if there is no
23 surviving spouse but there are surviving children entitled to
24 receive death benefits herein, such surviving children shall be
25 entitled to a lump-sum payment of Ten Thousand Dollars (\$10,000.00)
26 to be divided among all the children to share and share alike. For
27 deaths occurring on or after November 1, 2005, if there is no
28 surviving spouse but there are surviving children entitled to
29 receive death benefits herein, each surviving child shall be
30 entitled to a lump-sum payment of Twenty-five Thousand Dollars
31 (\$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
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14 2. Directions for remitting the penalty, if any.
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16 SECTION 14. AMENDATORY 85 O.S. 2001, Section 201.1, as
17 last amended by Section 31, Chapter 1, 1st Extraordinary Session,
18 O.S.L. 2005 (85 O.S. Supp. 2009, Section 201.1), is amended to read
19 as follows:
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21 Section 201.1. A. 1. There is hereby created a Physician
22 Advisory Committee comprised of nine (9) members to be appointed as
23 follows:
24

25 a. the Governor shall appoint three members, one of whom
26 shall be licensed in this state as a doctor of
27 medicine and surgery, one of whom shall be engaged in
28 the practice of family medicine in a rural community
29 of the state, and one of whom shall be an osteopathic
30 physician,
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32 b. the President Pro Tempore of the Senate shall appoint
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.

5 c. To fill the positions for which the term of office
6 expires on January 1, 1998, the Governor, the
7 President Pro Tempore of the Senate and the Speaker of
8 the House of Representatives shall appoint residents
9 of the state at large.
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12 d. Thereafter, appointments shall be made from the
13 Congressional District numbered the same as the
14 district from which the original appointment was made
15 pursuant to this paragraph, if a Congressional
16 District so numbered exists. When congressional
17 districts are redrawn, each member appointed prior to
18 July 1 of the year in which such modification becomes
19 effective shall complete the current term of office
20 and appointments made after July 1 of the year in
21 which such modification becomes effective shall be
22 based on the redrawn districts. Appointments that
23 were to be made from a numbered Congressional District
24 which no longer exists shall be appointed from the
25 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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28 5. ~~After public hearing, adopt treatment~~ Treatment guidelines
29 and protocols for treatment of injuries, including, but not limited
30 to, injuries to the hand, wrist, back, knee, neck and shoulder and
31 utilization controls for all treatments, including, but not limited
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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;
25

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.

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

9 G. Upon written request, the State Insurance Commissioner,
10 CompSource Oklahoma, and every approved self-insured employer in
11 Oklahoma shall provide the Committee with data necessary to the
12 performance of its duties.
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14 H. Any health care provider acting in good faith and within the
15 scope of the provider's duties as a member of the Physician Advisory
16 Committee shall be immune from civil liability for making any report
17 or other information available to the judges of the Workers'
18 Compensation Court or to the Administrator of the Workers'
19 Compensation Court or for assisting in the origination,
20 investigation, or preparation of the report or other information so
21 provided.
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25 SECTION 15. NEW LAW A new section of law to be codified
26 in the Oklahoma Statutes as Section 201.1a of Title 85, unless there
27 is created a duplication in numbering, reads as follows:
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29 A. Notwithstanding any other section of law, the Court shall
30 adopt rules requiring express written prior authorization from the
31 employer's insurer to the treating physician forty-eight (48) hours
32 prior to the recommended treatment or services for an employee's
injuries including, but not limited to:

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

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

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

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2010.

Presiding Officer of the House
of Representatives