

**EXCERPTS FROM THE WORKERS' COMPENSATION ACT
TITLE 85 OF THE OKLAHOMA STATUTES**

§85-3. Definitions.

As used in the Workers' Compensation Act:

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

2. "Amount in dispute" means the dollar value of any permanent disability award granted to the employee by the Court for a disability claim which is greater than the dollar amount offered by the employer to the employee for such disability claim if the employer admits compensability within twenty (20) days of the filing of the Employee's First Notice of Accidental Injury and Claim for Compensation, has not disputed medical treatment, and has made a written settlement offer within fifteen (15) days of the employee 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 for their employees. 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 may elect to include the sole proprietors, any or all of the partnership members, any or all of the limited liability company members or any or all stockholder-employees as employees, if otherwise qualified, by endorsement to the policy specifically including them under any policy of insurance covering benefits under the Workers' Compensation Act. When so included, the sole proprietors, members of a partnership, members of a limited liability company or any or all stockholder-employees shall be deemed to be employees as respects the benefits of the Workers' Compensation Act. "Employee" shall also include any person who is employed by the 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. "Employee" shall also include a member of the Oklahoma National Guard while in the performance of duties only while in response to state orders and any authorized voluntary or uncompensated worker, rendering services as a firefighter, peace officer or emergency management worker. Provided, "employee" shall not include any other person providing or performing voluntary service who receives no wages for the services other than meals, drug or alcohol rehabilitative therapy, 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;

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

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

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

b. "Compensable injury" includes heart-related or vascular injury, illness or death only if an accident or the claimant's employment is

the major cause of the heart-related or vascular injury. Such injury shall be compensable only if it is demonstrated that the exertion necessary to produce the harm was extraordinary and unusual in comparison to other 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 injury or illness;

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

18. "Occupational disease" means only that disease or illness which is due to causes and conditions characteristic of or peculiar to the particular trade, occupation, process or employment in which the employee is exposed to such disease. An occupational disease arises out of the employment only if the employment was the major

cause of the resulting occupational disease and such is supported by objective medical evidence, as defined in this section;

19. "Permanent impairment" means any anatomical abnormality after maximum medical improvement has been achieved, which abnormality or loss the physician considers to be capable of being evaluated at the time the rating is made. Except as otherwise provided herein, any examining physician shall only evaluate impairment in accordance with the latest publication of the American Medical Association's "Guides to the Evaluation of Permanent Impairment" in effect at the time of the injury. The Physician Advisory Committee may, pursuant to Section 201.1 of this title, recommend the adoption of a method or system to evaluate permanent impairment that shall be used in place of or in combination with the American Medical Association's "Guides to the Evaluation of Permanent Impairment". Such recommendation shall be made to the Administrator of the Workers' Compensation Court who may adopt the recommendation in part or in whole. The adopted method or system shall be submitted by the Administrator to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such method or system to evaluate permanent impairment that shall be used in place of or in 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 of the month in which the Legislature disapproves it in part. If adopted, permanent impairment shall be evaluated only in accordance with the latest version of the alternative method or system in effect at the time of injury. Except as otherwise provided in Section 11 of this title, all evaluations shall include an apportionment of injury causation. However, revisions to the guides made by the American Medical Association which are published after 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 the 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 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;

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

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

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

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

24. "Certified workplace medical plan" means an organization of health care providers or any other entity, certified by the State Commissioner of Health pursuant to Section 14.3 of this title, that is authorized to enter into a contractual agreement with 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, 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.

Added by Laws 1915, c. 246, art. 1, § 3. Amended by Laws 1919, c. 14, p. 15, §§ 2, 3; Laws 1923, c. 61, p. 119, § 2; Laws 1941, p. 477, § 2; Laws 1945, pp. 414, 415, §§ 1, 2, emerg. eff. May 7, 1945; Laws 1953, p. 427, §§ 1, 2, emerg. eff. June 6, 1953; Laws 1957, p. 571, § 1, emerg. eff. May 15, 1957; Laws 1959, p. 397, § 1, emerg. eff. July 15, 1959; Laws 1961, p. 638, § 2, emerg. eff. April 26, 1961; Laws 1977, c. 234, § 6, eff. July 1, 1978; Laws 1985, c. 266, § 1, eff. Nov. 1, 1985; Laws 1986, c. 222, § 5, eff. Nov. 1, 1986; Laws 1988, c. 2, § 1, emerg. eff. Feb. 3, 1988; Laws 1990, c. 283, § 3, eff. Sept. 1, 1990; Laws 1992, c. 294, § 2, eff. Sept. 1, 1992; Laws 1993, c. 366, § 51, eff. Sept. 1, 1993; Laws 1994, c. 2, § 33, emerg. eff. March 2, 1994; Laws 1994, 2nd Ex. Sess., c. 1, § 17, emerg. eff. Nov. 4, 1994; Laws 1996, c. 105, § 1, eff. Nov. 1, 1996; Laws 1996, c. 363, § 1, eff. Nov. 1, 1996; Laws 1997, c. 188, § 1, eff. Nov. 1, 1997; Laws 1997, c. 361, § 3, eff. Nov. 1, 1997; Laws 2001, 1st Ex. Sess., c. 3, § 4, emerg. eff. Oct. 23, 2001; Laws 2003, c. 329, § 60, emerg. eff. May 29, 2003; Laws 2005, 1st Ex.Sess., c. 1, § 9, eff. July 1, 2005.

NOTE: Laws 1993, c. 349, § 2 repealed by Laws 1994, c. 2, § 34, emerg. eff. March 2, 1994.

§85-14. Medical attention - Refusal of employment with restrictions.

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

2. The treating physician who renders treatment to the employee at any time shall promptly notify the employee and employer or the employer's insurer in writing after the employee has reached maximum medical improvement and is released from active medical care. If the employee is capable of returning to modified light duty work, the treating physician shall promptly notify the employee and the employer or the employer's insurer thereof in writing and shall also specify what restrictions, if any, must be followed by the employer 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 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; 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 such notice. The employee, upon receipt of such notice, may seek a hearing before the Workers' Compensation Court. The Court shall grant an expedited hearing within five (5) days of any such application by the employee. At such hearing, the Court may enter an order allowing the discontinuation of such benefits, denying the discontinuance of such benefits or temporarily denying the discontinuance of such benefits pending further hearing. An order denying or temporarily denying the discontinuation

of temporary benefits shall be based on a finding by the Court that probable cause exists to believe the work does not meet the conditions of the treating physician's restrictions or that the restrictions are unreasonable.

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

C. If the employer fails or neglects to provide medical treatment within three (3) days after actual knowledge of the injury is received by the employer, the injured employee, during the period of such neglect or failure, may select a physician to provide medical treatment at the expense of the employer; provided, however, that the injured employee, or another in the employee's behalf, may obtain emergency treatment at the expense of the employer where such 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 entitled to such benefits may enforce charges therefor as though the employee had survived.

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

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

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

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

5. The Administrator's review of medical and treatment charges pursuant to this section shall be conducted pursuant to the fee and treatment schedule in existence at the time the medical care or treatment was provided. The order of the approving medical and treatment charges pursuant to this section shall be enforceable by the Court in the same manner as provided in the Workers' Compensation Act for the enforcement of other compensation payments. Any party feeling aggrieved by the order, decision or award of the Administrator shall, within ten (10) days, have the right to request a hearing on such medical and treatment charges by a judge of the Workers' Compensation Court. The judge of the Court may affirm the decision of the Administrator, or reverse or modify said decision only if it is found to be contrary to the fee and treatment schedule existing at the time the said medical care or treatment was 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 Drug Data File (NDDF) by First Data Bank (FDB), a service of the Hearst Corporation. Physicians shall prescribe and pharmacies shall dispense generic equivalent drugs when available.

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

H. 1. For cases not covered by a certified workplace medical plan, and where the insurance company does not provide case management, case management may be granted by

the Workers' Compensation Court on the request of any party, or when the Court determines that case management is appropriate. The Court shall appoint a case manager from a list of qualified case managers 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.

Added by Laws 1915, c. 246, art. 2, § 4. Amended by Laws 1919, c. 14, p. 17, § 7; Laws 1923, c. 61, p. 122, § 5; Laws 1968, c. 256, § 1, emerg. eff. April 29, 1968; Laws 1973, c. 77, § 1; Laws 1977, c. 234, § 18, eff. July 1, 1978; Laws 1986, c. 222, § 12, eff. Nov. 1, 1986; Laws 1990, c. 283, § 7, eff. Sept. 1, 1990; Laws 1992, c. 294, § 4, eff. Sept. 1, 1992; Laws 1993, c. 349, § 7, eff. Sept. 1, 1993; Laws 1994, 2nd Ex.Sess., c. 1, § 23, emerg. eff. Nov. 4, 1994; Laws 1996, c. 105, § 2, eff. Nov. 1, 1996; Laws 1996, c. 363, § 3, eff. Nov. 1, 1996; Laws 1997, c. 361, § 6, eff. Nov. 1, 1997; Laws 1998, c. 353, § 3, eff. Nov. 1, 1998; Laws 2000, c. 248, § 2, eff. Sept. 1, 2000; Laws 2001, 1st Ex.Sess., c. 3, § 8, emerg. eff. Oct. 23, 2001; Laws 2002, c. 215, § 1, eff. Nov. 1, 2002; Laws 2005, 1st Ex.Sess., c. 1, § 15, eff. July 1, 2005.

§85-14.2. Certified workplace medical plans - Selection of treating physician.

A. 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, has contracted with a workplace medical plan that is certified by the State Commissioner of Health as provided in Section 14.3 of this title, the employer shall select for the injured employee a treating physician from the physicians listed within the network of the certified workplace medical plan. The claimant may apply to the certified workplace medical plan for a one-time change of physician to another appropriate

physician within the network of the certified workplace medical plan by utilizing the dispute resolution process set out in the certified workplace medical plan on file with the State Department of Health.

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

B. The provisions of this section shall not preclude:

1. An employee, who has exhausted the dispute resolution process of the certified workplace medical plan, from petitioning the Workers' Compensation Court or the Administrator of the Workers' Compensation Court for a change of treating physician within the certified workplace medical plan or, if a physician who is qualified to treat the employee's injuries is not available within the plan, for a change of physician outside the plan, if the physician agrees to comply with all the rules, terms and conditions of the certified workplace medical plan; or

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

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

Added by Laws 1994, 2nd Ex. Sess., c. 1, § 24, emerg. eff. Nov. 4, 1994. Amended by Laws 1996, c. 105, § 3, eff. Nov. 1, 1996; Laws 1996, c. 363, § 4, eff. Nov. 1, 1996; Laws 1998, c. 353, § 4, eff. Nov. 1, 1998; Laws 2001, 1st Ex. Sess., c. 3, § 9, emerg. eff. Oct. 23, 2001; Laws 2005, 1st Ex.Sess., c. 1, § 16, eff. July 1, 2005.

§85-14.3. Application for certification of workplace medical plans - Independent insurance contracts - Exhaustion requirement - Inspection of plans.

A. Any person or entity may make written application to the Commissioner of Health of the State of Oklahoma to have a workplace medical plan certified that provides management of quality treatment to injured employees for injuries and diseases compensable under the Workers' Compensation Act. Each application for certification shall be accompanied by a fee of One Thousand Five Hundred Dollars (\$1,500.00). A workplace medical plan may be certified to provide services to a limited geographic area. A certificate is valid for a five-year period, unless revoked or suspended. Application for certification shall be made in the form and manner and shall set forth

information regarding the proposed program for providing services as the Commissioner may prescribe. The information shall include, but not be limited to:

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

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

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

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

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

(2) utilizes medical treatment guidelines and protocols substantially similar to those established for use by medical service providers, which have been recommended by the Physician Advisory Committee and adopted by the Administrator pursuant to subsection B of Section 201.1 of this title. If the Administrator has not adopted medical treatment guidelines and protocols, the Commissioner may certify a plan that utilizes medical guidelines and protocols established by the plan if, in the discretion of the Commissioner, the guidelines and protocols are reasonable and will carry out the intent of the Workers' Compensation Act. Certified plans must utilize medical treatment guidelines and protocols substantially similar to those adopted by the Administrator pursuant to Section 201.1 of this title, as such guidelines and protocols become adopted,

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

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

- d. provides adequate methods of peer review, utilization review and dispute resolution to prevent inappropriate, excessive or medically unnecessary treatment, and excludes participation in the plan by those providers who violate these treatment standards,
- e. requires the dispute resolution procedure of the plan to include a requirement that disputes on an issue, including a subsequent change of physician as described in the provisions of Section 14 of this title and this section, related to medical care under the plan be attempted to be resolved within ten (10) days of the time the dispute arises and if not resolved within ten (10) days, the employee may pursue remedies in the Workers' Compensation Court,
- f. provides aggressive case management for injured employees and a program for early return to work,
- g. provides workplace health and safety consultative services,
- h. provides a timely and accurate method of reporting to the Commissioner necessary information regarding medical service costs and utilization to enable the Commissioner to determine the effectiveness of the plan,
- i. authorizes necessary emergency medical treatment for an injury provided by a provider of medical, surgical, and hospital services who is not a part of the plan,
- j. does not discriminate against or exclude from participation in the plan any category of providers of medical, surgical, or hospital services and includes an adequate number of each category of providers of medical, surgical, and hospital services to give participants access to all categories of providers and does not discriminate against ethnic minority providers of medical services, and
- k. complies with any other requirement the Commissioner determines is necessary to provide quality medical services and health care to injured employees.

2. The Commissioner may accept findings, licenses or certifications of other state agencies as satisfactory

evidence of compliance with a particular requirement of this section.

C. If any insurer, except CompSource Oklahoma, fails to contract with or provide access to a certified workplace medical plan, an insured, after sixty (60) days' written notice to its insurance carrier, shall be authorized to contract independently with a plan of his or her choice for a period of one (1) year, to provide medical care under the Workers' Compensation Act. The insured shall be authorized to contract, after sixty (60) days' written notice to its insurance carrier, for additional one-year periods if his or her insurer has not contracted with or provided access to a certified workplace medical plan.

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

E. An employee shall exhaust the dispute resolution procedure of the certified workplace medical plan before seeking legal relief on an issue related to medical care under the plan, including a subsequent change of physician as described in the provisions of Section 14 of this title and this section, provided the dispute resolution procedure shall create a process which shall attempt to resolve the dispute within ten (10) days of the time the dispute arises and if not resolved within ten (10) days, the employee may pursue remedies in the Workers' Compensation Court.

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

G. On or before November 1, 2005, the Commissioner of Health shall implement a site visit protocol for employees of the State Department of Health to perform an inspection of a certified workplace medical plan to ensure that medical services to a claimant and the medical management

of the claimant's needs are adequately met in a timely manner and that the certified workplace medical plan is complying with all other applicable provisions of this act and the rules of the State Department of Health. Such protocol shall include, but not be limited to:

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

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

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

- a. timely and effective medical services are available with reasonable geographic convenience,
- b. use of appropriate treatment guidelines and protocols, and
- c. effective programs for utilization review, case management, grievances, and dispute resolution;

4. Performance of a site visit shall include:

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

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

6. If a deficient practice is identified during a site visit, the State Department of Health shall require a certified workplace medical plan to submit a timely and acceptable written plan of correction, and then may perform

a follow-up visit(s) to ensure that the deficient practice has been eliminated;

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

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

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

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

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

Added by Laws 1994, 2nd Ex. Sess., c. 1, § 25, emerg. eff. Nov. 4, 1994. Amended by Laws 1996, c. 363, § 5, eff. Nov. 1, 1996; Laws 2001, 1st Ex. Sess., c. 3, § 10, emerg. eff. Oct. 23, 2001; Laws 2005, 1st Ex.Sess., c. 1, § 17, eff. July 1, 2005.