An Act

ENROLLED SENATE
BILL NO. 1973

By: Coffee, Jolley, Coates and Brogdon of the Senate

and

Sullivan, McCullough, Derby, Walker and Tibbs of the House

An Act relating to workers' compensation claim process; amending 85 O.S. 2001, Sections 3.6, 3.9, as amended by Section 11, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 3.10, as amended by Section 12, Chapter 1, 1st Extraordinary Session, O.S.L. 2005, 93, 93.2 and 201 (85 O.S. Supp. 2009, Sections 3.9 and 3.10), which relate to appellate procedure, counselors, mediation, collection and payment of fees, and review of medical practices; requiring recording of certain proceedings; requiring specific findings for certain reversal; increasing certain fees and deposits; adding fee for certain appeal; specifying party responsible for payment of certain fee; directing deposit of certain fee to specified fund; authorizing Supreme Court to take certain actions; requiring notice to injured worker of availability of certain programs; requiring attendance of claimant at certain proceeding; requiring certain representation to have specified authority; authorizing assessment of certain costs, fees and sanctions; increasing certain fees and deposits; requiring waiver of payment to certain health care providers; and providing an effective date.

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

SECTION 1. 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. 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 shall consist of three (3) Judges of the Court, none of whom shall have presided over any of the previous hearings on the claim. The Court en banc may reverse or modify the decision only if it determines that such decision was against the clear weight of the evidence or contrary to law. Upon completion of the appeal, the members of the Court sitting en banc shall issue such order, decision or award as is proper, just and equitable. <u>All proceedings of the Court sitting en banc shall be recorded by a court reporter of the Workers' Compensation Court. Any order of the Court sitting en banc which reverses a decision of the trial judge shall contain specific findings to explain such reversal.</u> Only those members participating in the hearing on appeal shall participate in the making of the order, decision or award. All orders, decisions or awards shall be approved by a majority of the members of the Court sitting en banc. Provided, there may be more than one Court en banc sitting at the same time for purposes of hearing the appeals provided for herein. Appeals shall be allowed on a question of law or a question of fact, or a mixed question of law and fact, and shall be determined on the record made before the Judge. Provided, when the order of the Judge of the Court making an award to a claimant is appealed by the employer or the insurance carrier, interest shall be allowed on the accrued amounts of the award due from the date the award was filed, if the award is not modified or vacated on appeal.

B. In each case filed ~~in~~ with the Court en banc, and at the time of filing same, the appellant shall deposit with the clerk as costs ~~One Hundred Twenty five Dollars ($125.00)~~ One Hundred Seventy-five Dollars ($175.00) 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)~~ One Hundred Fifty Dollars ($150.00) 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 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 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 as hereinbefore provided. Any party litigant desiring to appeal directly from such order, decision or award to the Supreme Court, shall, within twenty (20) days after a copy of the order, decision or award has been sent by the Administrator to the parties affected, commence an action in the Supreme Court of the state to review such order, decision or award. The Supreme Court shall have original jurisdiction of such action, and shall prescribe rules for the commencement and trial of the same. The Supreme Court may modify, reverse, remand for rehearing, or set aside the order or award upon any of the following grounds:

1. The Court acted without or in excess of its powers;

2. The order or award was contrary to law;

3. The order or award was procured by fraud; or

4. The order or award was against the clear weight of the evidence.

Such action shall be commenced by filing with the Clerk of the Supreme Court a certified copy of the order, decision or award of the Workers' Compensation Court sitting en banc or the judge attached to the petition by the complaint wherein the complainant or petitioner shall make his assignments or specifications as to wherein said order, decision or award is erroneous or illegal. Provided, however, no proceeding to reverse, vacate or modify any order, decision or award of the Workers' Compensation Court sitting en banc or judge of the Court wherein compensation has been awarded an injured employee shall be entertained by the Supreme Court unless the Administrator shall take a written undertaking to the claimant executed on the part of the respondent or insurance carrier, or both, with one or more sureties to be approved by the Administrator, to the effect that the appellant will pay the amount of the award rendered therein, together with interest thereon from the date of the award by the judge of the Court and all costs of the proceeding, or on the further order of the Workers' Compensation Court sitting en banc 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. A fee of One Hundred Dollars ($100.00) per appeal to the Supreme Court shall be collected by the Administrator and taxed as costs for preparing, assembling, indexing and transmitting the record for appellate review. This fee shall be paid by the party taking the appeal. If more than one party to the action shall prosecute an appeal from the same order, decision or award, the fee shall be paid by the party whose petition in error is determined by the Workers' Compensation Court or by the appellate court to commence the principal appeal. The fees collected shall be deposited to the credit of the Administrator of the Workers' Compensation Revolving Fund created by Section 95 of this title.

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

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

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

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

SECTION 2. AMENDATORY 85 O.S. 2001, Section 3.9, as amended by Section 11, Chapter 1, 1st Extraordinary Session, O.S.L. 2005 (85 O.S. Supp. 2009, Section 3.9), is amended to read as follows:

Section 3.9. A. The Administrator shall establish a workers' compensation counselor program to assist injured workers, employers and persons claiming death benefits in obtaining benefits under the Workers' Compensation Act.

B. Workers' compensation counselors shall provide information to injured workers; investigate complaints; communicate with employers, insurance carriers, self-insurers, and health care providers; provide informational seminars and workshops on workers' compensation for medical providers, insurance adjustors, and employee and employer groups; and develop informational materials for employees, employers and medical providers. A workers' compensation counselor shall otherwise assist unrepresented claimants, employers, and other parties to enable them to protect their rights in the workers' compensation system.

C. The Administrator shall mail a notice to ~~a claimant~~ the injured worker within thirty (30) days of the filing of an ~~Employee's First Notice of Accidental Injury and Claim for Compensation~~ Employer's First Notice of Injury (Form 2). The notice shall advise the ~~claimant~~ injured worker of the availability of the services of ~~workers' compensation counselors~~ the Workers' Compensation Court's counselor program and of the availability of mediation to assist the ~~claimant in resolution of the claimant's claim, how to contact the counselor program~~ injured worker. The Administrator shall provide contact information for the Court's counselor program and all such additional information as the Administrator may determine necessary.

SECTION 3. AMENDATORY 85 O.S. 2001, Section 3.10, as amended by Section 12, Chapter 1, 1st Extraordinary Session, O.S.L. 2005 (85 O.S. Supp. 2009, Section 3.10), is amended to read as follows:

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

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

E. Once a request has been made, the Administrator shall contact the opposing party. Upon order of the Court, the parties shall complete mediation within thirty (30) days of the notification.

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

G. Mediation is confidential and no part of the proceeding shall be considered a matter of public record. Recommendations of the mediator are not binding unless the parties enter into a settlement agreement. If an agreement is not reached, the results

and statements made during the mediation are not admissible in any following proceeding.

H. Upon receipt of the consent form or upon order of the Court, the Administrator shall provide the parties with a list of certified mediators. Both parties shall agree to a mediator. If the parties are unable to agree, the Administrator shall assign a certified mediator.

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

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

L. 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.

M. At the time of a mediation, the claimant shall be in attendance unless all parties agree, and all parties shall be represented during the entire mediation session by a person with full settlement authority to settle any issue of the claim. If a party does not have full settlement authority, the mediator shall

report to the assigned Judge of the Workers' Compensation Court who may for good cause shown assess costs, attorney's fees, and sanctions.

SECTION 4. AMENDATORY 85 O.S. 2001, Section 93, is amended to read as follows:

Section 93. A. The following fee shall be collected by the Administrator and taxed as costs to be paid by the party against whom any award becomes final:

A fee of ~~Seventy five Dollars ($75.00)~~ One Hundred Forty Dollars ($140.00) per case to be deposited as follows:

1. ~~Forty Dollars ($40.00)~~ One Hundred Five Dollars ($105.00) to the credit of the Administrator of Workers' Compensation Revolving Fund created by Section 95 of this title;

2. Ten Dollars ($10.00) to the credit of the Office of the Attorney General's Workers' Compensation Fraud Unit Revolving Fund created by Section 19.2 of Title 74 of the Oklahoma Statutes; and

3. Twenty-five Dollars ($25.00) to the credit of the Administrator of Workers' Compensation Revolving Fund, created by Section 95 of this title, 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.

B. A fee of ~~Seventy five Dollars ($75.00)~~ One Hundred Thirty Dollars ($130.00) per action to reopen any case pursuant to Section 28 of this title shall be collected by the Administrator and taxed as costs to be paid by the party that reopens the case. The fee collected pursuant to this subsection shall be deposited to the credit of the Administrator of Workers' Compensation Revolving Fund, created by Section 95 of this title, 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.

SECTION 5. AMENDATORY 85 O.S. 2001, Section 93.2, is amended to read as follows:

Section 93.2 A. All group self-insureds allowed pursuant to the provisions of subsection A of Section 149.1 of ~~Title 85 of the Oklahoma Statutes~~ this title shall pay an annual application fee of ~~Five Hundred Dollars ($500.00)~~ One Thousand Dollars ($1,000.00) to the Administrator.

B. All individual own-risk or self-insured risk employers shall pay an annual application fee of ~~Five Hundred Dollars ($500.00)~~ One Thousand Dollars ($1,000.00) to the Administrator.

C. All court approved servicing companies shall pay an annual application fee of ~~Five Hundred Dollars ($500.00)~~ One Thousand Dollars ($1,000.00) to the Administrator.

D. Each individual own-risk or self-insured risk employer whose financial statements or loss runs, or both, are subject to interim review by Court personnel shall pay an additional fee to the Administrator of Five Hundred Dollars ($500.00) per review, not to exceed One Thousand Dollars ($1,000.00) per state fiscal year.

E. All fees collected pursuant to the provisions of this section shall be deposited to the credit of the Administrator of the Workers' Compensation Revolving Fund created by Section 95 of ~~Title 85 of the Oklahoma Statutes~~ this title.

SECTION 6. 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

charges of abusive practices by health care providers under the workers' compensation system to the Physician Advisory Committee for review and recommendation. The findings and recommendation of the Committee shall be only advisory to the Administrator and shall not be binding or conclusive upon him. If the Administrator determines that a health care provider has, on an aggregate basis, established a pattern of over or under treating, failing to adhere to the AMA Guides or modifications thereto when evaluating permanent impairment, or overcharging, the Administrator shall impose administrative penalties for abusive practices and ~~may~~ shall waive payment for medical services or evaluations of permanent impairment of the health care provider rendered under the Workers' Compensation Act, Section 1 et seq. of this title, for a period not to exceed five (5) years. A pattern of abusive practices shall include, but not be limited to, a pattern of referral to a medical facility for treatment found to be in excess of treatment guidelines adopted by the Administrator under Section 201.1 of this title. Physicians providing treatment under the Workers' Compensation Act shall disclose to the Administrator of the Workers' Compensation Court, on a form prescribed by the Administrator, any ownership or interest in any health care facility that is not the physician's primary place of business. Such disclosure shall include, but not be limited to, any employee leasing arrangement between the physician and any health care facility that is not the physician's primary place of business.

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

1. A statement that a health care provider aggrieved by the decision of the Administrator shall have ten (10) days after the decision is filed within which to request a hearing before a judge of the Workers' Compensation Court to determine the propriety of the Administrator's decision; and that 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; and

2. Directions for remitting the penalty, if any.

SECTION 7. This act shall become effective November 1, 2010.

Passed the Senate the 26th day of May, 2010.

Presiding Officer of the Senate

Passed the House of Representatives the 27th day of May, 2010.

Presiding Officer of the House of Representatives

OFFICE OF THE GOVERNOR

Received by the Governor this 27th

day of May, **20** 10,

at 4:45 **o'clock** P **M.**

By:

Approved by the Governor of the State of Oklahoma the 8th **day of** June, **20** 10, **at** 12:34 **o'clock** A **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this 8th **day of** June, **20** 10,

at 4:38 **o'clock** P. **M.**

By: M. Susan Savage