

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 HOUSE BILL 5002

By: Cargill

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5
6 AS INTRODUCED

7 An Act relating to workers' compensation; amending 85
8 O.S. 2001, Section 3, as last amended by Section 9,
9 Chapter 1, 1st Extraordinary Session of the 50th
10 Oklahoma Legislature (85 O.S. Supp. 2007, Section 3),
11 which relates to definitions; modifying definition to
12 certain applicable laws and interpretations; and
13 providing an effective date.

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

15 SECTION 1. AMENDATORY 85 O.S. 2001, Section 3, as last
16 amended by Section 9, Chapter 1, 1st Extraordinary Session of the
17 50th Oklahoma Legislature (85 O.S. Supp. 2007, Section 3), is
18 amended to read as follows:

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

20 1. "Administrator" means the Administrator of workers'
21 compensation laws, regulations and binding judicial interpretations
22 of such laws and regulations as provided for in the Workers'
23 Compensation Act;

24 2. "Amount in dispute" means the dollar value of any permanent
disability award granted to the employee by the Court for a

1 disability claim which is greater than the dollar amount offered by
2 the employer to the employee for such disability claim if the
3 employer admits compensability within twenty (20) days of the filing
4 of the Employee's First Notice of Accidental Injury and Claim for
5 Compensation, has not disputed medical treatment, and has made a
6 written settlement offer within fifteen (15) days of the employee
7 reaching maximum medical improvement;

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

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

22 4. "Case manager" means a person who:
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- 1 a. is a registered nurse with a current, active
2 unencumbered license from the Oklahoma Board of
3 Nursing, or
- 4 b. possesses one or more of the following certifications
5 which indicate the individual has a minimum number of
6 years of case management experience, has passed a
7 national competency test and regularly obtains
8 continuing education hours to maintain certification:
- 9 (1) Certified Disability Management Specialist
10 (CDMS),
 - 11 (2) Certified Case Manager (CCM),
 - 12 (3) Certified Rehabilitation Registered Nurse (CRRN),
 - 13 (4) Case Manager - Certified (CMC),
 - 14 (5) Certified Occupational Health Nurse (COHN), or
 - 15 (6) Certified Occupational Health Nurse Specialist
16 (COHN-S);

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

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

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

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

11 9. "Employee" means any person engaged in the employment of any
12 person, firm, limited liability company or corporation covered by
13 the terms of the Workers' Compensation Act, and shall include
14 workers associating themselves together under an agreement for the
15 performance of a particular piece of work, in which event such
16 persons so associating themselves together shall be deemed employees
17 of the person having the work executed; provided, that if such
18 associated workers shall employ a worker in the execution of such
19 contract, then as to such employed worker, both the associated
20 employees and the principal employer shall at once become subject to
21 the provisions of the Workers' Compensation Act relating to
22 independent contractors. Sole proprietors, members of a
23 partnership, members of a limited liability company who own at least
24 ten percent (10%) of the capital of the limited liability company or

1 any stockholder-employees of a corporation who own ten percent (10%)
2 or more stock in the corporation are specifically excluded from the
3 foregoing definition of "employee", and shall not be deemed to be
4 employees as respects the benefits of the Workers' Compensation Act.
5 Provided, a sole proprietor, member of a partnership, member of a
6 limited liability company who owns at least ten percent (10%) of the
7 capital of the limited liability company or any stockholder-employee
8 of a corporation who owns ten percent (10%) or more stock in the
9 corporation who does not so elect to be covered by a policy of
10 insurance covering benefits under the Workers' Compensation Act,
11 when acting as a subcontractor, shall not be eligible to be covered
12 under the prime contractor's policy of workers' compensation
13 insurance; however, nothing herein shall relieve the entities
14 enumerated from providing workers' compensation insurance coverage
15 for their employees. Sole proprietors, members of a partnership,
16 members of a limited liability company who own at least ten percent
17 (10%) of the capital of the limited liability company or any
18 stockholder-employees of a corporation who own ten percent (10%) or
19 more stock in the corporation may elect to include the sole
20 proprietors, any or all of the partnership members, any or all of
21 the limited liability company members or any or all stockholder-
22 employees as employees, if otherwise qualified, by endorsement to
23 the policy specifically including them under any policy of insurance
24 covering benefits under the Workers' Compensation Act. When so

1 included, the sole proprietors, members of a partnership, members of
2 a limited liability company or any or all stockholder-employees
3 shall be deemed to be employees as respects the benefits of the
4 Workers' Compensation Act. "Employee" shall also include any person
5 who is employed by the departments, instrumentalities and
6 institutions of this state and divisions thereof, counties and
7 divisions thereof, public trusts, boards of education and
8 incorporated cities or towns and divisions thereof. "Employee"
9 shall also include a member of the Oklahoma National Guard while in
10 the performance of duties only while in response to state orders and
11 any authorized voluntary or uncompensated worker, rendering services
12 as a firefighter, peace officer or emergency management worker.
13 Provided, "employee" shall not include any other person providing or
14 performing voluntary service who receives no wages for the services
15 other than meals, drug or alcohol rehabilitative therapy,
16 transportation, lodging or reimbursement for incidental expenses.
17 "Employee" shall also include a participant in a sheltered workshop
18 program which is certified by the United States Department of Labor.
19 "Employee" shall not include a person, commonly referred to as an
20 owner-operator, who owns or leases a truck-tractor or truck for
21 hire, if the owner-operator actually operates the truck-tractor or
22 truck and if the person contracting with the owner-operator is not
23 the lessor of the truck-tractor or truck. Provided, however, an
24 owner-operator shall not be precluded from workers' compensation

1 coverage under the Workers' Compensation Act if the owner-operator
2 elects to participate as a sole proprietor. "Employee" shall not
3 include a person referred to as a drive-away owner-operator who
4 privately owns and utilizes a tow vehicle in drive-away operations
5 and operates independently for hire, if the drive-away owner-
6 operator actually utilizes the tow vehicle and if the person
7 contracting with the drive-away owner-operator is not the lessor of
8 the tow vehicle. Provided, however, a drive-away owner-operator
9 shall not be precluded from workers' compensation coverage under the
10 Workers' Compensation Act if the drive-away owner-operator elects to
11 participate as a sole proprietor;

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

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

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

23 13. a. "Compensable injury" means any injury or occupational
24 illness, causing internal or external harm to the

1 body, which arises out of and in the course of
2 employment if such employment was the major cause of
3 the specific injury or illness. An injury, other than
4 cumulative trauma, is compensable only if it is caused
5 by a specific incident and is identifiable by time,
6 place and occurrence unless it is otherwise defined as
7 compensable in this title. A compensable injury must
8 be established by objective medical evidence, as
9 defined in this section.

10 b. "Compensable injury" includes heart-related or
11 vascular injury, illness or death only if an accident
12 or the claimant's employment is the major cause of the
13 heart-related or vascular injury. Such injury shall
14 be compensable only if it is demonstrated that the
15 exertion necessary to produce the harm was
16 extraordinary and unusual in comparison to other
17 occupations and that the occupation was the major
18 cause of the harm. The injury must be established by
19 objective medical evidence, as defined in this
20 section.

21 c. "Injury" or "personal injury" shall not include mental
22 injury that is unaccompanied by physical injury,
23 except in the case of rape which arises out of and in
24 the course of employment.

1 d. "Compensable injury" shall not include the ordinary,
2 gradual deterioration or progressive degeneration
3 caused by the aging process, unless the employment is
4 a major cause of the deterioration or degeneration and
5 is supported by objective medical evidence, as defined
6 in this section; nor shall it include injury incurred
7 while engaging in, performing or as the result of
8 engaging in or performing any recreational or social
9 activities;

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

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

19 16. "Major cause" means the predominate cause of the resulting
20 injury or illness;

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

1 18. "Occupational disease" means only that disease or illness
2 which is due to causes and conditions characteristic of or peculiar
3 to the particular trade, occupation, process or employment in which
4 the employee is exposed to such disease. An occupational disease
5 arises out of the employment only if the employment was the major
6 cause of the resulting occupational disease and such is supported by
7 objective medical evidence, as defined in this section;

8 19. "Permanent impairment" means any anatomical abnormality
9 after maximum medical improvement has been achieved, which
10 abnormality or loss the physician considers to be capable of being
11 evaluated at the time the rating is made. Except as otherwise
12 provided herein, any examining physician shall only evaluate
13 impairment in accordance with the latest publication of the American
14 Medical Association's "Guides to the Evaluation of Permanent
15 Impairment" in effect at the time of the injury. The Physician
16 Advisory Committee may, pursuant to Section 201.1 of this title,
17 recommend the adoption of a method or system to evaluate permanent
18 impairment that shall be used in place of or in combination with the
19 American Medical Association's "Guides to the Evaluation of
20 Permanent Impairment". Such recommendation shall be made to the
21 Administrator of the Workers' Compensation Court who may adopt the
22 recommendation in part or in whole. The adopted method or system
23 shall be submitted by the Administrator to the Governor, the Speaker
24 of the House of Representatives and the President Pro Tempore of the

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

1 adopted by the Administrator shall be submitted by the Administrator
2 to the Governor, the Speaker of the House of Representatives and the
3 President Pro Tempore of the Senate within the first ten (10)
4 legislative days of a regular session of the Legislature. Such
5 revisions shall be subject to disapproval in whole or in part by
6 joint or concurrent resolution of the Legislature during the
7 legislative session in which submitted. Revisions shall be
8 operative one hundred twenty (120) days after the last day of the
9 month in which the Administrator submits the revisions to the
10 Governor and the Legislature if the Legislature takes no action or
11 one hundred twenty (120) days after the last day of the month in
12 which the Legislature disapproves them in part. The examining
13 physician shall not follow the guides based on race or ethnic
14 origin. The examining physician shall not deviate from said guides
15 or any alternative thereto except as may be specifically provided
16 for in the guides or modifications to the guides or except as may be
17 specifically provided for in any alternative or modifications
18 thereto, adopted by the Administrator of the Workers' Compensation
19 Court as provided for in Section 201.1 of this title. These
20 officially adopted guides or modifications thereto or alternative
21 system or method of evaluating permanent impairment or modifications
22 thereto shall be the exclusive basis for testimony and conclusions
23 with regard to permanent impairment with the exception of paragraph
24 3 of Section 22 of this title, relating to scheduled member injury

1 or loss; and impairment, including pain or loss of strength, may be
2 awarded with respect to those injuries or areas of the body not
3 specifically covered by said guides or alternative to said guides.
4 All evaluations of permanent impairment must be supported by
5 objective medical evidence;

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

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

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;

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

22 24. "Certified workplace medical plan" means an organization of
23 health care providers or any other entity, certified by the State
24 Commissioner of Health pursuant to Section 14.3 of this title, that

1 is authorized to enter into a contractual agreement with a self-
2 insured employer, group self-insurance association plan, an
3 employer's workers' compensation insurance carrier or an insured,
4 which shall include any member of an approved group self-insured
5 association, policyholder or public entity, regardless of whether
6 such entity is insured by CompSource Oklahoma, to provide medical
7 care under the Workers' Compensation Act. Certified plans shall
8 only include such plans which provide medical services and payment
9 for services on a fee-for-service basis to medical providers and
10 shall not include other plans which contract in some other manner,
11 such as capitated or pre-paid plans; and

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

14 SECTION 2. This act shall become effective November 1, 2008.

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