

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1762

By: Justice

4
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, O.S.L. 2005 (85 O.S. Supp. 2007, Section
10 3), which relates to definitions; modifying certain
11 language; and providing an effective date.

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

13 SECTION 1. AMENDATORY 85 O.S. 2001, Section 3, as last
14 amended by Section 9, Chapter 1, O.S.L. 2005 (85 O.S. Supp. 2007,
15 Section 3), is amended to read as follows:

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

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

19 2. "Amount in dispute" means the dollar value of any permanent
20 disability award granted to the employee by the Court for a
21 disability claim which is greater than the dollar amount offered by
22 the employer to the employee for such disability claim if the
23 employer admits compensability within twenty (20) days of the filing
24 of the Employee's First Notice of Accidental Injury and Claim for

1 Compensation, has not disputed medical treatment, and has made a
2 written settlement offer within fifteen (15) days of the employee
3 reaching maximum medical improvement;

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

7 a. systematically monitoring the treatment rendered and
8 the medical progress of the injured or disabled
9 worker,

10 b. ensuring that any treatment plan follows all
11 appropriate treatment protocols, utilization controls
12 and practice parameters,

13 c. assessing whether alternative health care services are
14 appropriate and delivered in a cost-effective manner
15 based upon acceptable medical standards, and

16 d. ensuring that the injured or disabled worker is
17 following the prescribed health care plan;

18 4. "Case manager" means a person who:

19 a. is a registered nurse with a current, active
20 unencumbered license from the Oklahoma Board of
21 Nursing, or

22 b. possesses one or more of the following certifications
23 which indicate the individual has a minimum number of
24 years of case management experience, has passed a

1 national competency test and regularly obtains
2 continuing education hours to maintain certification:

- 3 (1) Certified Disability Management Specialist
- 4 (CDMS),
- 5 (2) Certified Case Manager (CCM),
- 6 (3) Certified Rehabilitation Registered Nurse (CRRN),
- 7 (4) Case Manager - Certified (CMC),
- 8 (5) Certified Occupational Health Nurse (COHN), or
- 9 (6) Certified Occupational Health Nurse Specialist
- 10 (COHN-S);

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

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

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

19 8. "Employer", except when otherwise expressly stated, means a
20 person, partnership, association, limited liability company,
21 corporation, and the legal representatives of a deceased employer,
22 or the receiver or trustee of a person, partnership, association,
23 corporation, or limited liability company, departments,
24 instrumentalities and institutions of this state and divisions

1 | thereof, counties and divisions thereof, public trusts, boards of
2 | education and incorporated cities or towns and divisions thereof,
3 | employing a person included within the term "employee" as herein
4 | defined;

5 | 9. "Employee" means any person engaged in the employment of any
6 | person, firm, limited liability company or corporation covered by
7 | the terms of the Workers' Compensation Act, and shall include
8 | workers associating themselves together under an agreement for the
9 | performance of a particular piece of work, in which event such
10 | persons so associating themselves together shall be deemed employees
11 | of the person having the work executed; provided, ~~that~~ if such
12 | associated workers ~~shall~~ employ a worker in the execution of such
13 | contract, then as to such employed worker, both the associated
14 | employees and the principal employer shall at once become subject to
15 | the provisions of the Workers' Compensation Act relating to
16 | independent contractors. Sole proprietors, members of a
17 | partnership, members of a limited liability company who own at least
18 | ten percent (10%) of the capital of the limited liability company or
19 | any stockholder-employees of a corporation who own ten percent (10%)
20 | or more stock in the corporation are specifically excluded from the
21 | foregoing definition of "employee", and shall not be deemed to be
22 | employees as respects the benefits of the Workers' Compensation Act.
23 | Provided, a sole proprietor, member of a partnership, member of a
24 | limited liability company who owns at least ten percent (10%) of the

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

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

1 contracting with the drive-away owner-operator is not the lessor of
2 the tow vehicle. Provided, however, a drive-away owner-operator
3 shall not be precluded from workers' compensation coverage under the
4 Workers' Compensation Act if the drive-away owner-operator elects to
5 participate as a sole proprietor;

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

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

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

17 13. a. "Compensable injury" means any injury or occupational
18 illness, causing internal or external harm to the
19 body, which arises out of and in the course of
20 employment if such employment was the major cause of
21 the specific injury or illness. An injury, other than
22 cumulative trauma, is compensable only if it is caused
23 by a specific incident and is identifiable by time,
24 place and occurrence unless it is otherwise defined as

1 compensable in this title. A compensable injury must
2 be established by objective medical evidence, as
3 defined in this section.

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

15 c. "Injury" or "personal injury" shall not include mental
16 injury that is unaccompanied by physical injury,
17 except in the case of rape which arises out of and in
18 the course of employment.

19 d. "Compensable injury" shall not include the ordinary,
20 gradual deterioration or progressive degeneration
21 caused by the aging process, unless the employment is
22 a major cause of the deterioration or degeneration and
23 is supported by objective medical evidence, as defined
24 in this section; nor shall it include injury incurred

1 while engaging in, performing or as the result of
2 engaging in or performing any recreational or social
3 activities;

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

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

13 16. "Major cause" means the predominate cause of the resulting
14 injury or illness;

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

18 18. "Occupational disease" means only that disease or illness
19 which is due to causes and conditions characteristic of or peculiar
20 to the particular trade, occupation, process or employment in which
21 the employee is exposed to such disease. An occupational disease
22 arises out of the employment only if the employment was the major
23 cause of the resulting occupational disease and such is supported by
24 objective medical evidence, as defined in this section;

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

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

1 operative one hundred twenty (120) days after the last day of the
2 month in which the Administrator submits the revisions to the
3 Governor and the Legislature if the Legislature takes no action or
4 one hundred twenty (120) days after the last day of the month in
5 which the Legislature disapproves them in part. The examining
6 physician shall not follow the guides based on race or ethnic
7 origin. The examining physician shall not deviate from said guides
8 or any alternative thereto except as may be specifically provided
9 for in the guides or modifications to the guides or except as may be
10 specifically provided for in any alternative or modifications
11 thereto, adopted by the Administrator of the Workers' Compensation
12 Court as provided for in Section 201.1 of this title. These
13 officially adopted guides or modifications thereto or alternative
14 system or method of evaluating permanent impairment or modifications
15 thereto shall be the exclusive basis for testimony and conclusions
16 with regard to permanent impairment with the exception of paragraph
17 3 of Section 22 of this title, relating to scheduled member injury
18 or loss; and impairment, including pain or loss of strength, may be
19 awarded with respect to those injuries or areas of the body not
20 specifically covered by said guides or alternative to said guides.
21 All evaluations of permanent impairment must be supported by
22 objective medical evidence;

23 20. "Permanent total disability" means incapacity because of
24 accidental injury or occupational disease to earn any wages in any

1 employment for which the employee may become physically suited and
2 reasonably fitted by education, training or experience, including
3 vocational rehabilitation; loss of both hands, or both feet, or both
4 legs, or both eyes, or any two thereof, shall constitute permanent
5 total disability;

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

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

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

15 24. "Certified workplace medical plan" means an organization of
16 health care providers or any other entity, certified by the State
17 Commissioner of Health pursuant to Section 14.3 of this title, that
18 is authorized to enter into a contractual agreement with a self-
19 insured employer, group self-insurance association plan, an
20 employer's workers' compensation insurance carrier or an insured,
21 which shall include any member of an approved group self-insured
22 association, policyholder or public entity, regardless of whether
23 such entity is insured by CompSource Oklahoma, to provide medical
24 care under the Workers' Compensation Act. Certified plans shall

1 only include such plans which provide medical services and payment
2 for services on a fee-for-service basis to medical providers and
3 shall not include other plans which contract in some other manner,
4 such as capitated or pre-paid plans; and

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

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

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