

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 58th Legislature (2022)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 3897

By: Kannady

8 COMMITTEE SUBSTITUTE

9 An Act relating to workers' compensation; amending
10 85A O.S. 2021, Sections 2, 3, 5, 13, 35, 45, 46, 47,
11 50, 69, 80 and 112, which relate to administration of
12 the workers' compensation system; modifying
13 definitions; modifying terms related to compensable
14 injury; modifying terms related to accidents;
15 modifying provisions related to exclusive nature of
16 remedy; modifying reference to certain publication;
17 modifying provisions related to liability for
18 intentional acts; modifying provisions related to
19 permanent partial disability; modifying provisions
20 related to compensation for loss of certain scheduled
21 members; modifying provisions related to computation
22 of certain benefit amounts; modifying provisions
23 related to computation of certain time periods;
24 modifying provisions related to certain beneficiary
 payments; modifying provisions related to travel
 reimbursement process; imposing certain time limits;
 providing for computation of amounts; modifying
 provisions related to filing of claims; modifying
 provisions related to final order for permanent
 disability; authorizing review by Workers'
 Compensation Commission; authorizing process for
 independent medical examiner in certain
 circumstances; and providing an effective date.

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

1 SECTION 1. AMENDATORY 85A O.S. 2021, Section 2, is
2 amended to read as follows:

3 Section 2. As used in the Administrative Workers' Compensation
4 Act:

5 1. "Actually dependent" means a surviving spouse, a child or
6 any other person who receives one-half (1/2) or more of his or her
7 support from the employee;

8 2. "Carrier" means any stock company, mutual company, or
9 reciprocal or interinsurance exchange authorized to write or carry
10 on the business of workers' compensation insurance in this state.
11 Whenever required by the context, the term "carrier" shall be deemed
12 to include duly qualified self-insureds or self-insured groups;

13 3. "Case management" means the ongoing coordination, by a case
14 manager, of health care services provided to an injured or disabled
15 worker, including but not limited to systematically monitoring the
16 treatment rendered and the medical progress of the injured or
17 disabled worker; ensuring that any treatment plan follows all
18 appropriate treatment protocols, utilization controls and practice
19 parameters; assessing whether alternative health care services are
20 appropriate and delivered in a cost-effective manner based upon
21 acceptable medical standards; and ensuring that the injured or
22 disabled worker is following the prescribed health care plan;

23 4. "Case manager" means a person who is a registered nurse with
24 a current, active unencumbered license from the Oklahoma Board of

1 Nursing, or possesses one or more of the following certifications
2 which indicate the individual has a minimum number of years of case
3 management experience, has passed a national competency test and
4 regularly obtains continuing education hours to maintain
5 certification:

- 6 a. Certified Disability Management Specialist (CDMS),
- 7 b. Certified Case Manager (CCM),
- 8 c. Certified Rehabilitation Registered Nurse (CRRN),
- 9 d. Case Manager - Certified (CMC),
- 10 e. Certified Occupational Health Nurse (COHN), or
- 11 f. Certified Occupational Health Nurse Specialist (COHN-
12 S);

13 5. "Certified workplace medical plan" means an organization of
14 health care providers or any other entity, certified by the State
15 Commissioner of Health, that is authorized to enter into a
16 contractual agreement with an employer, group self-insurance
17 association plan, an employer's workers' compensation insurance
18 carrier, third-party administrator or an insured to provide medical
19 care under the Administrative Workers' Compensation Act. Certified
20 plans shall only include plans which provide medical services and
21 payment for services on a fee-for-service basis to medical
22 providers;

23 6. "Child" means a natural or adopted son or daughter of the
24 employee under eighteen (18) years of age; or a natural or adopted

1 son or daughter of an employee eighteen (18) years of age or over
2 who is physically or mentally incapable of self-support; or any
3 natural or adopted son or daughter of an employee eighteen (18)
4 years of age or over who is actually dependent; or any natural or
5 adopted son or daughter of an employee between eighteen (18) and
6 twenty-three (23) years of age who is enrolled as a full-time
7 student in any accredited educational institution. The term "child"
8 includes a posthumous child, a child legally adopted or one for whom
9 adoption proceedings are pending at the time of death, an actually
10 dependent stepchild or an actually dependent acknowledged child born
11 out of wedlock;

12 7. "Claimant" means a person who claims benefits for an injury
13 or occupational disease pursuant to the provisions of the
14 Administrative Workers' Compensation Act;

15 8. "Commission" means the Workers' Compensation Commission;

16 9. a. "Compensable injury" means damage or harm to the
17 physical structure of the body, or damage or harm to
18 prosthetic appliances, including eyeglasses, contact
19 lenses, or hearing aids, of which the major cause is
20 either an accident, cumulative trauma or occupational
21 disease arising out of the course and scope of
22 employment. An "accident" means an event involving
23 factors external to the employee that:
24

- (1) was unintended, unanticipated, unforeseen,
unplanned and unexpected,
- (2) occurred at a specifically identifiable time and
place,
- (3) occurred by chance or from unknown causes, ~~or~~
- (4) was independent of sickness, mental incapacity,
bodily infirmity or any other cause, and
- (5) was not as the result of an intentional act.

b. "Compensable injury" does not include:

- (1) injury to any active participant in assaults or
combats which, although they may occur in the
workplace, are the result of non-employment-
related hostility or animus of one, both, or all
of the combatants and which assault or combat
amounts to a deviation from customary duties;
provided, however, injuries caused by horseplay
shall not be considered to be compensable
injuries, except for innocent victims,
- (2) injury incurred while engaging in or performing
or as the result of engaging in or performing any
recreational or social activities for the
employee's personal pleasure,
- (3) injury which was inflicted on the employee at a
time when employment services were not being

1 performed or before the employee was hired or
2 after the employment relationship was terminated,
3 (4) injury if the accident was caused by the use of
4 alcohol, illegal drugs, or prescription drugs
5 used in contravention of physician's orders. If
6 a biological specimen is collected within twenty-
7 four (24) hours of the employee being injured or
8 reporting an injury, or if at any time after the
9 injury a biological specimen is collected by the
10 Oklahoma Office of the Chief Medical Examiner if
11 the injured employee does not survive for at
12 least twenty-four (24) hours after the injury and
13 the employee tests positive for intoxication, an
14 illegal controlled substance, or a legal
15 controlled substance used in contravention to a
16 treating physician's orders, or refuses to
17 undergo the drug and alcohol testing, there shall
18 be a rebuttable presumption that the injury was
19 caused by the use of alcohol, illegal drugs, or
20 prescription drugs used in contravention of
21 physician's orders. This presumption may only be
22 overcome if the employee proves by clear and
23 convincing evidence that his or her state of
24

1 intoxication had no causal relationship to the
2 injury,

3 (5) any strain, degeneration, damage or harm to, or
4 disease or condition of, the eye or
5 musculoskeletal structure or other body part
6 resulting from the natural results of aging,
7 osteoarthritis, arthritis, or degenerative
8 process including, but not limited to,
9 degenerative joint disease, degenerative disc
10 disease, degenerative
11 spondylosis/spondylolisthesis and spinal
12 stenosis, ~~or~~

13 (6) any preexisting condition except when the
14 treating physician clearly confirms an
15 identifiable and significant aggravation incurred
16 in the course and scope of employment,

17 (7) any injury resulting from an idiopathic injury or
18 condition, or

19 (8) any injury resulting from an intentional act.

20 c. Where compensation is payable for an injury resulting
21 from cumulative trauma, the last employer in whose
22 employment the employee was last injuriously exposed
23 to the trauma during a period of at least ninety (90)
24 days or more, and the insurance carrier, if any, on

1 the risk when the employee was last so exposed under
2 such employer, shall alone be liable therefor, without
3 right to contribution from any prior employer or
4 insurance carrier. If there is no employer in whose
5 employment the employee was injuriously exposed to the
6 trauma for a period of at least ninety (90) days, then
7 the last employer in whose employment the employee was
8 last injuriously exposed to the trauma and the
9 insurance carrier, if any, on the risk when such
10 employee was last so exposed under such employer,
11 shall be liable therefor, with right to contribution
12 from any prior employer or insurance carrier.

13 d. A compensable injury shall be established by medical
14 evidence supported by objective findings as defined in
15 paragraph ~~34~~ 33 of this section.

16 ~~d.~~ e. The injured employee shall prove by a preponderance of
17 the evidence that he or she has suffered a compensable
18 injury.

19 ~~e.~~ f. Benefits shall not be payable for a condition which
20 results from a non-work-related independent
21 intervening cause following a compensable injury which
22 causes or prolongs disability, aggravation, or
23 requires treatment. A non-work-related independent
24

1 intervening cause does not require negligence or
2 recklessness on the part of a claimant.

3 ~~f.~~ g. An employee who suffers a compensable injury shall be
4 entitled to receive compensation as prescribed in this
5 act. Notwithstanding other provisions of law, if it
6 is determined that a compensable injury did not occur,
7 the employee shall not be entitled to compensation
8 under this act;

9 10. "Compensation" means the money allowance payable to the
10 employee or to his or her dependents and includes the medical
11 services and supplies provided for in Section 50 of this title and
12 funeral expenses;

13 11. "Consequential injury" means injury or harm to a part of
14 the body that is a direct result of the injury or medical treatment
15 to the part of the body originally injured in the claim. The
16 Commission shall not make a finding of a consequential injury unless
17 it is established by objective medical evidence that medical
18 treatment for such part of the body is required;

19 12. "Continuing medical maintenance" means medical treatment
20 that is reasonable and necessary to maintain claimant's condition
21 resulting from the compensable injury or illness after reaching
22 maximum medical improvement. Continuing medical maintenance shall
23 not include diagnostic tests, surgery, injections, counseling,
24 physical therapy, or pain management devices or equipment;

1 13. "Course and scope of employment" means an activity of any
2 kind or character for which the employee was hired and that relates
3 to and derives from the work, business, trade or profession of an
4 employer, and is performed by an employee in the furtherance of the
5 affairs or business of an employer. The term includes activities
6 conducted on the premises of an employer or at other locations
7 designated by an employer and travel by an employee in furtherance
8 of the affairs of an employer that is specifically directed by the
9 employer. This term does not include:

- 10 a. an employee's transportation to and from his or her
11 place of employment,
- 12 b. travel by an employee in furtherance of the affairs of
13 an employer if the travel is also in furtherance of
14 personal or private affairs of the employee,
- 15 c. any injury occurring in a parking lot or other common
16 area adjacent to an employer's place of business
17 before the employee clocks in or otherwise begins work
18 for the employer or after the employee clocks out or
19 otherwise stops work for the employer unless the
20 employer owns or maintains exclusive control over the
21 area, or
- 22 d. any injury occurring while an employee is on a work
23 break, unless the injury occurs while the employee is
24 on a work break inside the employer's facility or in

1 an area owned by or exclusively controlled by the
2 employer and the work break is authorized by the
3 employee's supervisor;

4 14. "Cumulative trauma" means an injury to an employee that is
5 caused by the combined effect of repetitive physical activities
6 extending over a period of time in the course and scope of
7 employment. Cumulative trauma shall not mean fatigue, soreness or
8 general aches and pain that may have been caused, aggravated,
9 exacerbated or accelerated by the employee's course and scope of
10 employment. Cumulative trauma shall have resulted directly and
11 independently of all other causes;

12 15. "Death" means only death resulting from compensable injury
13 as defined in paragraph 9 of this section;

14 16. "Disability" means incapacity because of compensable injury
15 to earn, in the same or any other employment, substantially the same
16 amount of wages the employee was receiving at the time of the
17 compensable injury;

18 17. "Drive-away operations" includes every person engaged in
19 the business of transporting and delivering new or used vehicles by
20 driving, either singly or by towbar, saddle-mount or full-mount
21 method, or any combination thereof, with or without towing a
22 privately owned vehicle;

23 18. a. "Employee" means any person, including a minor, in the
24 service of an employer under any contract of hire or

1 apprenticeship, written or oral, expressed or implied,
2 but excluding one whose employment is casual and not
3 in the course of the trade, business, profession, or
4 occupation of his or her employer and excluding one
5 who is required to perform work for a municipality or
6 county or the state or federal government on having
7 been convicted of a criminal offense or while
8 incarcerated. "Employee" shall also include a member
9 of the Oklahoma National Guard while in the
10 performance of duties only while in response to state
11 orders and any authorized voluntary or uncompensated
12 worker, rendering services as a firefighter, law
13 enforcement officer or emergency management worker.
14 Travel by a police officer, fireman, or a member of a
15 first aid or rescue squad, in responding to and
16 returning from an emergency, shall be deemed to be in
17 the course of employment.

18 b. The term "employee" shall not include:

19 (1) any person for whom an employer is liable under
20 any Act of Congress for providing compensation to
21 employees for injuries, disease or death arising
22 out of and in the course of employment including,
23 but not limited to, the Federal Employees'
24 Compensation Act, the Federal Employers'

Liability Act, the Longshore and Harbor Workers' Compensation Act and the Jones Act, to the extent his or her employees are subject to such acts,

(2) any person who is employed in agriculture, ranching or horticulture by an employer who had a gross annual payroll in the preceding calendar year of less than One Hundred Thousand Dollars (\$100,000.00) wages for agricultural, ranching or horticultural workers, or any person who is employed in agriculture, ranching or horticulture who is not engaged in operation of motorized machines. This exemption applies to any period of time for which such employment exists, irrespective of whether or not the person is employed in other activities for which the exemption does not apply. If the person is employed for part of a year in exempt activities and for part of a year in nonexempt activities, the employer shall be responsible for providing workers' compensation only for the period of time for which the person is employed in nonexempt activities,

(3) any person who is a licensed real estate sales associate or broker, paid on a commission basis,

- 1 (4) any person employed by an employer with five or
2 fewer total employees, all of whom are related
3 within the second degree by blood or marriage to
4 the employer, all of whom are dependents living
5 in the household of the employer, or all of whom
6 are a combination of such relatives and
7 dependents. If the employer is not a natural
8 person such relative shall be related within the
9 second degree by blood or marriage to a person
10 who owns fifty percent (50%) or more of the
11 employer, or such dependent shall be in the
12 household of a person who owns fifty percent
13 (50%) or more of the employer,
- 14 (5) any person employed by an employer which is a
15 youth sports league which qualifies for exemption
16 from federal income taxation pursuant to federal
17 law,
- 18 (6) sole proprietors, members of a partnership,
19 individuals who are party to a franchise
20 agreement as set out by the Federal Trade
21 Commission franchise disclosure rule, 16 CFR
22 436.1 through 436.11, members of a limited
23 liability company who own at least ten percent
24 (10%) of the capital of the limited liability

1 company or any stockholder-employees of a
2 corporation who own ten percent (10%) or more
3 stock in the corporation, unless they elect to be
4 covered by a policy of insurance covering
5 benefits under the Administrative Workers'
6 Compensation Act,

7 (7) any person providing or performing voluntary
8 service who receives no wages for the services
9 other than meals, drug or alcohol rehabilitative
10 therapy, transportation, lodging or reimbursement
11 for incidental expenses except for volunteers
12 specifically provided for in subparagraph a of
13 this paragraph,

14 (8) a person, commonly referred to as an owner-
15 operator, who owns or leases a truck-tractor or
16 truck for hire, if the owner-operator actually
17 operates the truck-tractor or truck and if the
18 person contracting with the owner-operator is not
19 the lessor of the truck-tractor or truck.

20 Provided, however, an owner-operator shall not be
21 precluded from workers' compensation coverage
22 under the Administrative Workers' Compensation
23 Act if the owner-operator elects to participate
24 as a sole proprietor,

1 (9) a person referred to as a drive-away owner-
2 operator who privately owns and utilizes a tow
3 vehicle in drive-away operations and operates
4 independently for hire, if the drive-away owner-
5 operator actually utilizes the tow vehicle and if
6 the person contracting with the drive-away owner-
7 operator is not the lessor of the tow vehicle.
8 Provided, however, a drive-away owner-operator
9 shall not be precluded from workers' compensation
10 coverage under the Administrative Workers'
11 Compensation Act if the drive-away owner-operator
12 elects to participate as a sole proprietor, and
13 (10) any person who is employed as a domestic servant
14 or as a casual worker in and about a private home
15 or household, which private home or household had
16 a gross annual payroll in the preceding calendar
17 year of less than Fifty Thousand Dollars
18 (\$50,000.00) for such workers;

19 19. "Employer" means a natural person, partnership,
20 association, limited liability company, corporation, and the legal
21 representatives of a deceased employer, or the receiver or trustee
22 of a person, partnership, association, corporation, or limited
23 liability company, departments, instrumentalities and institutions
24 of this state and divisions thereof, counties and divisions thereof,

1 public trusts, boards of education and incorporated cities or towns
2 and divisions thereof, employing a person included within the term
3 "employee" as defined in this section. Employer may also mean the
4 employer's workers' compensation insurance carrier, if applicable.
5 Except as provided otherwise, this act applies to all public and
6 private entities and institutions;

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

11 21. "Evidence-based" means expert-based, literature-supported
12 and outcomes validated by well-designed randomized trials when such
13 information is available and which uses the best available evidence
14 to support medical decision making;

15 22. "Gainful employment" means the capacity to perform
16 employment for wages for a period of time that is not part-time,
17 occasional or sporadic;

18 23. "Idiopathic" means an injury or condition, where neither
19 the cause, nor the resulting injury bears any special relation to
20 the work or to the conditions under which the act was being
21 performed and though it occurs in the course of the employment, does
22 not arise out of the employment;

23 24. "Impaired self-insurer" means a private self-insurer or
24 group self-insurance association that fails to pay its workers'

1 compensation obligations, or is financially unable to do so and is
2 the subject of any proceeding under the Federal Bankruptcy Reform
3 Act of 1978, and any subsequent amendments or is the subject of any
4 proceeding in which a receiver, custodian, liquidator,
5 rehabilitator, trustee or similar officer has been appointed by a
6 court of competent jurisdiction to act in lieu of or on behalf of
7 the self-insurer;

8 ~~24.~~ 25. "Incapacity" means inadequate strength or ability to
9 perform a work-related task;

10 ~~25.~~ 26. "Insurance Commissioner" means the Insurance
11 Commissioner of the State of Oklahoma;

12 ~~26.~~ 27. "Insurance Department" means the Insurance Department
13 of the State of Oklahoma;

14 ~~27.~~ 28. "Intentional act" means an injury occurring only when
15 the employee is injured as a result of a willful, deliberate, and
16 specific intent to cause such injury and only when the act that was
17 the proximate cause of the injury was not normally within the
18 employer-employee relationship and was not an employment risk
19 related to the business of the employer. Knowledge that the injury
20 was substantially certain to result from the conduct shall not
21 constitute an intentional act;

22 29. "Major cause" means more than fifty percent (50%) of the
23 resulting injury, disease or illness. A finding of major cause
24 shall be established by a preponderance of the evidence. A finding

1 that the workplace was not a major cause of the injury, disease or
2 illness shall not adversely affect the exclusive remedy provisions
3 of this act and shall not create a separate cause of action outside
4 this act;

5 ~~28.~~ 30. "Maximum medical improvement" means that no further
6 material improvement would reasonably be expected from medical
7 treatment or the passage of time;

8 ~~29.~~ 31. "Medical services" means those services specified in
9 Section 50 of this title;

10 ~~30.~~ 32. "Misconduct" shall include the following:

- 11 a. unexplained absenteeism or tardiness,
- 12 b. willful or wanton indifference to or neglect of the
13 duties required,
- 14 c. willful or wanton breach of any duty required by the
15 employer,
- 16 d. the mismanagement of a position of employment by
17 action or inaction,
- 18 e. actions or omissions that place in jeopardy the
19 health, life, or property of self or others,
- 20 f. dishonesty,
- 21 g. wrongdoing,
- 22 h. violation of a law, or
- 23 i. a violation of a policy or rule adopted to ensure
24 orderly work or the safety of self or others;

1 ~~31.~~ 33.

2 a. (1) "Objective findings" are those findings which
3 cannot come under the voluntary control of the
4 patient.

5 (2) (a) When determining permanent disability, a
6 physician, any other medical provider, an
7 administrative law judge, the Commission or
8 the courts shall not consider complaints of
9 pain.

10 (b) For the purpose of making permanent
11 disability ratings to the spine, physicians
12 shall use criteria established by the Sixth
13 Edition of the American Medical Association
14 "Guides to the Evaluation of Permanent
15 Impairment".

16 (3) (a) Objective evidence necessary to prove
17 permanent disability in occupational hearing
18 loss cases may be established by medically
19 recognized and accepted clinical diagnostic
20 methodologies, including, but not limited
21 to, audiological tests that measure air and
22 bone conduction thresholds and speech
23 discrimination ability.

(b) Any difference in the baseline hearing levels shall be confirmed by subsequent testing; provided, however, such test shall be given within four (4) weeks of the initial baseline hearing level test but not before five (5) days after being adjusted for presbycusis.

b. Medical opinions addressing compensability and permanent disability shall be stated within a reasonable degree of medical certainty;

~~32.~~ 34. "Official Disability Guidelines" or "ODG" means the current edition of the Official Disability Guidelines and the ODG Treatment in Workers' Comp as published by the Work Loss Data Institute;

~~33.~~ 35. "Permanent disability" means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the Sixth Edition of the American Medical Association "Guides to the Evaluation of Permanent Impairment", if the impairment is contained therein;

~~34.~~ 36. "Permanent partial disability" means a permanent disability or loss of use after maximum medical improvement has been reached ~~which prevents the injured employee, who has been released to return to work by the treating physician, from returning to his~~

1 ~~or her pre-injury or equivalent job.~~ All evaluations of permanent
2 partial disability must be supported by objective findings;

3 ~~35.~~ 37. "Permanent total disability" means, based on objective
4 findings, incapacity, based upon accidental injury or occupational
5 disease, to earn wages in any employment for which the employee may
6 become physically suited and reasonably fitted by education,
7 training, experience or vocational rehabilitation provided under
8 this act. Loss of both hands, both feet, both legs, or both eyes,
9 or any two thereof, shall constitute permanent total disability;

10 ~~36.~~ 38. "Preexisting condition" means any illness, injury,
11 disease, or other physical or mental condition, whether or not work-
12 related, for which medical advice, diagnosis, care or treatment was
13 recommended or received preceding the date of injury;

14 ~~37.~~ 39. "Pre-injury or equivalent job" means the job that the
15 claimant was working for the employer at the time the injury
16 occurred or any other employment offered by the claimant's employer
17 that pays at least one hundred percent (100%) of the employee's
18 average weekly wage;

19 ~~38.~~ 40. "Private self-insurer" means a private employer that
20 has been authorized to self-insure its workers' compensation
21 obligations pursuant to this act, but does not include group self-
22 insurance associations authorized by this act, or any public
23 employer that self-insures pursuant to this act;

1 ~~39.~~ 41. "Prosthetic" means an artificial device used to replace
2 a part or joint of the body that is lost or injured in an accident
3 or illness covered by this act;

4 ~~40.~~ 42. "Scheduled member" or "member" means hands, fingers,
5 arms, legs, feet, toes, and eyes. In addition, for purposes of the
6 Multiple Injury Trust Fund only, "scheduled member" means hearing
7 impairment;

8 ~~41.~~ 43. "Scientifically based" involves the application of
9 rigorous, systematic, and objective procedures to obtain reliable
10 and valid knowledge relevant to medical testing, diagnoses and
11 treatment; is adequate to justify the general conclusions drawn; and
12 has been accepted by a peer-review journal or approved by a panel of
13 independent experts through a comparably rigorous, objective, and
14 scientific review;

15 ~~42.~~ 44. "State average weekly wage" means the state average
16 weekly wage determined by the Oklahoma Employment Security
17 Commission in the preceding calendar year. If such determination is
18 not available, the Commission shall determine the wage annually
19 after reasonable investigation;

20 ~~43.~~ 45. "Subcontractor" means a person, firm, corporation or
21 other legal entity hired by the general or prime contractor to
22 perform a specific task for the completion of a work-related
23 activity;

1 ~~44.~~ 46. "Surgery" does not include an injection, or the forcing
2 of fluids beneath the skin, for treatment or diagnosis;

3 ~~45.~~ 47. "Surviving spouse" means the employee's spouse by
4 reason of a legal marriage recognized by the State of Oklahoma or
5 under the requirements of a common law marriage in this state, as
6 determined by the Workers' Compensation Commission;

7 ~~46.~~ 48. "Temporary partial disability" means an injured
8 employee who is temporarily unable to perform his or her job, but
9 may perform alternative work offered by the employer;

10 ~~47.~~ 49. "Time of accident" or "date of accident" means the time
11 or date of the occurrence of the accidental incident from which
12 compensable injury, disability, or death results; and

13 ~~48.~~ 50. "Wages" means money compensation received for
14 employment at the time of the accident, including the reasonable
15 value of board, rent, housing, lodging, or similar advantage
16 received from the employer and includes the amount of tips required
17 to be reported by the employer under Section 6053 of the Internal
18 Revenue Code and the regulations promulgated pursuant thereto or the
19 amount of actual tips reported, whichever amount is greater.

20 SECTION 2. AMENDATORY 85A O.S. 2021, Section 3, is
21 amended to read as follows:

22 Section 3. A. Every employer and every employee, unless
23 otherwise specifically provided in this act, shall be subject and
24 bound to the provisions of the Administrative Workers' Compensation

1 Act and every employer shall pay or provide benefits according to
2 the provisions of this act for the ~~accidental~~ compensable injury or
3 death of an employee arising out of and in the course of his or her
4 employment, without regard to fault for such injury, if the
5 employee's contract of employment was made or if the injury occurred
6 within this state. If an employee makes a claim for an injury in
7 another jurisdiction, the employee is precluded from his or her
8 right of action under the Administrative Workers' Compensation Act
9 unless the Workers' Compensation Commission determines that there is
10 a change in circumstances that creates a good cause to bring the
11 claim under the Administrative Workers' Compensation Act; provided,
12 however, that the employee may not receive duplicate benefits to
13 those received in the foreign jurisdiction and the employee's right
14 to bring a claim under this act shall be subject to the limitations
15 period for bringing a claim pursuant to paragraph 1 of subsection A
16 of Section 69 of this title. Nothing in this act shall be construed
17 to conflict with any valid Act of Congress governing the liability
18 of employers for injuries received by their employees.

19 B. The State of Oklahoma accepts the provisions of the Acts of
20 Congress designated as 40 U.S.C., Section 3172, formerly 40 U.S.C.,
21 Section 290, and hereby extends the territorial jurisdiction of the
22 Administrative Workers' Compensation Act of this state to all lands
23 and premises within the exterior boundaries of this state which the
24 Government of the United States of America owns or holds by deed or

1 act of cession, and to all purchases, projects, buildings,
2 constructions, improvements and property within the exterior
3 boundaries of this state belonging to the Government of the United
4 States of America, in the same manner and to the same extent as if
5 the premises were under the exclusive jurisdiction of this state,
6 subject only to the limitations placed thereon by the Acts of
7 Congress.

8 C. The Administrative Workers' Compensation Act shall apply
9 only to claims for injuries and death ~~based on accidents~~ which occur
10 on or after February 1, 2014.

11 D. The Workers' Compensation Code in effect before February 1,
12 2014, shall govern all rights in respect to claims for injuries and
13 death ~~based on accidents~~ occurring before February 1, 2014.

14 SECTION 3. AMENDATORY 85A O.S. 2021, Section 5, is
15 amended to read as follows:

16 Section 5. A. The rights and remedies granted to an employee
17 subject to the provisions of the Administrative Workers'
18 Compensation Act shall be exclusive of all other rights and remedies
19 of the employee, his legal representative, dependents, next of kin,
20 or anyone else claiming rights to recovery on behalf of the employee
21 against the employer, or any principal, officer, director, employee,
22 stockholder, partner, or prime contractor of the employer on account
23 of injury, illness, or death. Negligent acts of a co-employee may
24 not be imputed to the employer. No role, capacity, or persona of

1 any employer, principal, officer, director, employee, or stockholder
2 other than that existing in the role of employer of the employee
3 shall be relevant for consideration for purposes of this act, and
4 the remedies and rights provided by this act shall be exclusive
5 regardless of the multiple roles, capacities, or personas the
6 employer may be deemed to have.

7 B. Exclusive remedy shall not apply if:

8 1. An employer fails to secure the payment of compensation due
9 to the employee as required by this act. An injured employee, or
10 his or her legal representative in case death results from the
11 injury, may, at his or her option, elect to claim compensation under
12 this act or to maintain a legal action in court for damages on
13 account of the injury or death; or

14 2. The injury was caused by an intentional ~~tort~~ act committed
15 by the employer. ~~An intentional tort shall exist only when the~~
16 ~~employee is injured as a result of willful, deliberate, specific~~
17 ~~intent of the employer to cause such injury. Allegations or proof~~
18 ~~that the employer had knowledge that the injury was substantially~~
19 ~~certain to result from the employer's conduct shall not constitute~~
20 ~~an intentional tort. The employee shall plead facts that show it is~~
21 ~~at least as likely as it is not that the employer acted with the~~
22 ~~purpose of injuring the employee~~ An intentional act shall exist only
23 when an employer who owns at least ten percent (10%) of the business
24 engages in or specifically directs the act that is the proximate

1 cause of the injury to the employee. An employee or owner of less
2 than ten percent (10%) of the business shall not be released from
3 liability pursuant to this section if he or she engaged in an
4 intentional act that was the proximate cause of the injury. The
5 issue of whether an act is ~~an~~ intentional ~~act~~ shall be a question
6 of law.

7 C. The immunity from civil liability described in subsection A
8 of this section shall apply regardless of whether the injured
9 employee is denied compensation or deemed ineligible to receive
10 compensation under this act.

11 D. If an employer has failed to secure the payment of
12 compensation for his or her injured employee as provided for in this
13 act, an injured employee, or his or her legal representative if
14 death results from the injury, may maintain an action in the
15 district court for damages on account of such injury.

16 E. The immunity created by the provisions of this section shall
17 not extend to action against another employer, or its employees, on
18 the same job as the injured or deceased worker where such other
19 employer does not stand in the position of an intermediate or
20 principal employer to the immediate employer of the injured or
21 deceased worker.

22 F. The immunity created by the provisions of this section shall
23 not extend to action against another employer, or its employees, on
24 the same job as the injured or deceased worker even though such

1 other employer may be considered as standing in the position of a
2 special master of a loaned servant where such special master neither
3 is the immediate employer of the injured or deceased worker nor
4 stands in the position of an intermediate or principal employer to
5 the immediate employer of the injured or deceased worker.

6 G. This section shall not be construed to abrogate the loaned
7 servant doctrine in any respect other than that described in
8 subsection F of this section. Nothing in this act shall be
9 construed to relieve the employer from any other penalty provided
10 for in this act for failure to secure the payment of compensation
11 under this act.

12 H. For the purpose of extending the immunity of this section,
13 any architect, professional engineer, or land surveyor shall be
14 deemed an intermediate or principal employer for services performed
15 at or on the site of a construction project, but this immunity shall
16 not extend to the negligent preparation of design plans and
17 specifications.

18 I. If the employer has failed to secure the payment of
19 compensation as provided in this act or in the case of an
20 intentional ~~tort~~ act, the injured employee or his or her legal
21 representative may maintain an action either before the Commission
22 or in the district court, but not both.

23 SECTION 4. AMENDATORY 85A O.S. 2021, Section 13, is
24 amended to read as follows:

1 Section 13. A. 1. A mental injury or illness is not a
2 compensable injury unless caused by a physical injury to the
3 employee, and shall not be considered an injury arising out of and
4 in the course and scope of employment or compensable unless
5 demonstrated by a preponderance of the evidence; provided, however,
6 that this physical injury limitation shall not apply to any victim
7 of a crime of violence.

8 2. No mental injury or illness under this section shall be
9 compensable unless it is also diagnosed by a licensed psychiatrist
10 or psychologist and unless the diagnosis of the condition meets the
11 criteria established in the ~~most current issue of the~~ Diagnostic and
12 Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).

13 B. 1. Notwithstanding any other provision of this act, where a
14 claim is for mental injury or illness, the employee shall be limited
15 to twenty-six (26) weeks of disability benefits unless it is shown
16 by clear and convincing evidence that benefits should continue for a
17 set period of time, not to exceed a total of fifty-two (52) weeks.

18 2. a. In cases where death results directly from the mental
19 injury or illness within a period of one (1) year,
20 compensation shall be paid the dependents as provided
21 in other death cases under this act.

22 b. Death directly or indirectly related to the mental
23 injury or illness occurring one (1) year or more from
24

1 the incident resulting in the mental injury or illness
2 shall not be a compensable injury.

3 SECTION 5. AMENDATORY 85A O.S. 2021, Section 35, is
4 amended to read as follows:

5 Section 35. A. 1. Every employer shall secure compensation as
6 provided under this act to its employees for compensable injuries
7 without regard to fault.

8 2. There shall be no liability for compensation under this act
9 where the injury or death was ~~substantially occasioned by the~~
10 ~~willful intention~~ as a result of an intentional act of the injured
11 employee ~~to bring about such compensable injury or death.~~

12 B. The primary obligation to pay compensation is on the
13 employer, and the procurement of a policy of insurance by an
14 employer to cover the obligation in respect to this act shall not
15 relieve the employer of the obligation.

16 SECTION 6. AMENDATORY 85A O.S. 2021, Section 45, is
17 amended to read as follows:

18 Section 45. A. Temporary Total Disability.

19 1. If the injured employee is temporarily unable to perform his
20 or her job or any alternative work offered by the employer, he or
21 she shall be entitled to receive compensation equal to seventy
22 percent (70%) of the injured employee's average weekly wage, but not
23 to exceed the state average weekly wage, for one hundred fifty-six
24 (156) weeks. Provided, there shall be no payment for the first

1 three (3) days of the initial period of temporary total disability.
2 If an administrative law judge finds that a consequential injury has
3 occurred and that additional time is needed to reach maximum medical
4 improvement, temporary total disability may continue for a period of
5 not more than an additional fifty-two (52) weeks. Such finding
6 shall be based upon a showing of medical necessity by clear and
7 convincing evidence. An employer shall have the right to recover
8 any overpayment of temporary total disability payments from a
9 subsequent permanent partial disability award if the offset is
10 deemed justified by the Workers' Compensation Commission.

11 2. When the injured employee is released from active medical
12 treatment by the treating physician for all body parts found by the
13 Commission to be injured, or in the event that the employee, without
14 a valid excuse, misses three consecutive medical treatment
15 appointments, fails to comply with medical orders of the treating
16 physician, or otherwise abandons medical care, the employer shall be
17 entitled to terminate temporary total disability by notifying the
18 employee, or if represented, his or her counsel. If, however, an
19 objection to the termination is filed by the employee within ten
20 (10) days of termination, the Commission shall set the matter within
21 twenty (20) days for a determination if temporary total disability
22 compensation shall be reinstated. The temporary total disability
23 shall remain terminated until such time as the employee complies
24 with medical orders of the treating physician. Notwithstanding the

1 provisions of this paragraph, benefits under this subsection shall
2 be permanently terminated by order of the Commission if the employee
3 is noncompliant or abandons treatment for sixty (60) days, or if
4 benefits under this subsection have been suspended under this
5 paragraph at least two times. The administrative law judge may
6 appoint an independent medical examiner to determine if further
7 medical treatment is reasonable and necessary. The independent
8 medical examiner shall not provide treatment to the injured worker,
9 unless agreed upon by the parties.

10 B. Temporary Partial Disability.

11 1. If the injured employee is temporarily unable to perform his
12 or her job, but may perform alternative work offered by the
13 employer, he or she shall be entitled to receive compensation equal
14 to seventy percent (70%) of the difference between the injured
15 employee's average weekly wage before the injury and his or her
16 weekly wage for performing alternative work after the injury, but
17 only if his or her weekly wage for performing the alternative work
18 is less than the temporary total disability rate. The injured
19 employee's actual earnings plus temporary partial disability
20 compensation shall not exceed the temporary total disability rate.

21 2. Compensation under this subsection may not exceed fifty-two
22 (52) weeks.
23
24

1 3. If the employee refuses to perform the alternative work
2 offered by the employee, he or she shall not be entitled to benefits
3 under subsection A of this section or under this section.

4 C. Permanent Partial Disability.

5 1. A permanent partial disability award or combination of
6 awards granted an injured worker may not exceed a permanent partial
7 disability rating of one hundred percent (100%) to any body part or
8 to the body as a whole. The determination of permanent partial
9 disability shall be the responsibility of the Commission through its
10 administrative law judges. Any claim by an employee for
11 compensation for permanent partial disability must be supported by
12 competent medical testimony of a medical doctor, osteopathic
13 physician, or chiropractor, and shall be supported by objective
14 medical findings, as defined in this act. The opinion of the
15 physician shall include employee's percentage of permanent partial
16 disability and whether or not the disability is job-related and
17 caused by the accidental injury or occupational disease. A
18 physician's opinion of the nature and extent of permanent partial
19 disability to parts of the body other than scheduled members must be
20 based solely on criteria established by the Sixth Edition of the
21 American Medical Association's "Guides to the Evaluation of
22 Permanent Impairment". A copy of any written evaluation shall be
23 sent to both parties within seven (7) days of issuance. Medical
24 opinions addressing compensability and permanent disability must be

1 stated within a reasonable degree of medical certainty. Any party
2 may submit the report of an evaluating physician.

3 2. Permanent partial disability shall not be allowed to a part
4 of the body for which no medical treatment has been received. A
5 determination of permanent partial disability made by the Commission
6 or administrative law judge which is not supported by objective
7 medical findings provided by a treating physician who is a medical
8 doctor, doctor of osteopathy, chiropractor or a qualified
9 independent medical examiner shall be considered an abuse of
10 discretion.

11 3. The examining physician shall not deviate from the Guides
12 except as may be specifically provided for in the Guides.

13 4. In cases of permanent partial disability, the compensation
14 shall be seventy percent (70%) of the employee's average weekly
15 wage, not to exceed Three Hundred Fifty Dollars (\$350.00) per week
16 which shall increase to Three Hundred Sixty Dollars (\$360.00) per
17 week on July 1, 2021, for a term not to exceed a total of three
18 hundred sixty (360) weeks for the body as a whole. Beginning
19 January 1, 2023, compensation for permanent partial disability shall
20 be seventy percent (70%) of the employee's average weekly wage, not
21 to exceed an amount equal to forty percent (40%) of the state's
22 average weekly wage, rounded to the nearest dollar, to be adjusted
23 annually for a term not to exceed a total of three hundred sixty
24 (360) weeks for the body as a whole.

1 5. Assessments pursuant to Sections 31, 98 and 122 of this
2 title shall be calculated based upon the amount of the permanent
3 partial disability award.

4 6. Previous Disability: The fact that an employee has suffered
5 previous disability or received compensation therefor shall not
6 preclude the employee from compensation for a later accidental
7 personal injury or occupational disease. In the event there exists
8 a previous permanent partial disability, including a previous non-
9 work-related injury or condition which produced permanent partial
10 disability and the same is aggravated or accelerated by an
11 accidental personal injury or occupational disease, compensation for
12 permanent partial disability shall be only for such amount as was
13 caused by such accidental personal injury or occupational disease
14 and no additional compensation shall be allowed for the preexisting
15 disability or impairment. Any such reduction shall not apply to
16 temporary total disability, nor shall it apply to compensation for
17 medical treatment. If workers' compensation benefits have
18 previously been awarded through settlement or judicial or
19 administrative determination in Oklahoma, the percentage basis of
20 the prior settlement or award shall conclusively establish the
21 amount of permanent partial disability determined to be preexisting.
22 If workers' compensation benefits have not previously been awarded
23 through settlement or judicial or administrative determination in
24 Oklahoma, the amount of preexisting permanent partial disability

1 shall be established by competent evidence and determined by the
2 Commission.

3 7. No payments on any permanent partial disability order shall
4 begin until payments on any preexisting permanent partial disability
5 orders have been completed.

6 8. The whole body shall represent a maximum of three hundred
7 sixty (360) weeks.

8 9. The permanent partial disability rate of compensation for
9 amputation or permanent total loss of use of a scheduled member
10 specified in Section 46 of this title shall be seventy percent (70%)
11 of the employee's average weekly wage, not to exceed Three Hundred
12 Fifty Dollars (\$350.00), with an increase to Three Hundred Sixty
13 Dollars (\$360.00) on July 1, 2021, and beginning January 1, 2023, an
14 amount equal to forty percent (40%) of the state's average weekly
15 wage, rounded to the nearest dollar, to be adjusted annually,
16 multiplied by the number of weeks set forth for the member in
17 Section 46 of this title, regardless of whether the injured employee
18 is able to return to his or her pre-injury or equivalent job.

19 10. An injured employee who is eligible for permanent partial
20 disability under this subsection shall be entitled to receive
21 vocational rehabilitation services provided by a technology center
22 or public secondary school offering vocational-technical education
23 courses, or a member institution of The Oklahoma State System of
24 Higher Education, which shall include retraining and job placement

1 to restore the employee to gainful employment. Vocational
2 rehabilitation services or training shall not extend for a period of
3 more than fifty-two (52) weeks.

4 D. Permanent Total Disability.

5 1. In case of total disability adjudged to be permanent,
6 seventy percent (70%) of the employee's average weekly wages, but
7 not in excess of the state's average weekly wage, shall be paid to
8 the employee during the continuance of the disability until such
9 time as the employee reaches the age of maximum Social Security
10 retirement benefits or for a period of fifteen (15) years, whichever
11 is longer. In the event the claimant dies of causes unrelated to
12 the injury or illness, benefits shall cease on the date of death.
13 Provided, however, any person entitled to revive the action shall
14 receive a one-time lump-sum payment equal to twenty-six (26) weeks
15 of weekly benefits for permanent total disability awarded the
16 claimant. If more than one person is entitled to revive the claim,
17 the lump-sum payment shall be evenly divided between or among such
18 persons. In the event the Commission awards both permanent partial
19 disability and permanent total disability benefits, the permanent
20 total disability award shall not be due until the permanent partial
21 disability award is paid in full. If otherwise qualified according
22 to the provisions of this act, permanent total disability benefits
23 may be awarded to an employee who has exhausted the maximum period
24

1 of temporary total disability even though the employee has not
2 reached maximum medical improvement.

3 2. The Workers' Compensation Commission shall annually review
4 the status of any employee receiving benefits for permanent total
5 disability against the last employer. The Commission shall require
6 the employee to annually file an affidavit under penalty of perjury
7 stating that he or she is not and has not been gainfully employed
8 and is not capable of gainful employment. Failure to file such
9 affidavit shall result in suspension of benefits; provided, however,
10 reinstatement of benefits may occur after proper hearing before the
11 Commission.

12 E. 1. The Workers' Compensation Commission may hire or
13 contract for a Vocational Rehabilitation Director to oversee the
14 vocational rehabilitation program of the Commission.

15 2. Upon the request of either party, an administrative law
16 judge shall determine if it is appropriate for a claimant to receive
17 vocational rehabilitation training or services. If appropriate, the
18 administrative law judge shall refer the employee to a qualified
19 expert for evaluation of the practicability of, need for and kind of
20 rehabilitation services or training necessary and appropriate in
21 order to restore the employee to gainful employment. The cost of
22 the evaluation shall be paid by the employer.

23 3. Upon receipt of such report, and after affording all parties
24 an opportunity to be heard, the administrative law judge shall order

1 that any rehabilitation services or training, recommended in the
2 report, or such other rehabilitation services or training as the
3 administrative law judge may deem necessary, provided the employee
4 elects to receive such services, shall be provided at the expense of
5 the employer. Except as otherwise provided in this subsection,
6 refusal to accept rehabilitation services by the employee shall in
7 no way diminish any benefits allowable to an employee.

8 4. The administrative law judge may order vocational
9 rehabilitation before the injured employee reaches maximum medical
10 improvement, if the treating physician believes that it is likely
11 that the employee's injury will prevent the employee from returning
12 to his or her former employment. In granting early benefits for
13 vocational rehabilitation, the Commission shall consider temporary
14 restrictions and the likelihood that such rehabilitation will return
15 the employee to gainful employment earlier than if such benefits are
16 granted after the permanent partial disability hearing in the claim.

17 5. Vocational rehabilitation services or training shall not
18 extend for a period of more than fifty-two (52) weeks. A request
19 for vocational rehabilitation services or training shall be filed
20 with the Commission by an interested party not later than sixty (60)
21 days from the date of receiving permanent disability that prevents
22 the injured employee from returning to his or her pre-injury or
23 equivalent position.

1 6. If rehabilitation requires residence at or near the facility
2 or institution which is away from the employee's customary
3 residence, reasonable cost of the employee's board, lodging, travel,
4 tuition, books and necessary equipment in training shall be paid for
5 by the insurer in addition to weekly compensation benefits to which
6 the employee is otherwise entitled under the Administrative Workers'
7 Compensation Act.

8 7. During the period when an employee is actively and in good
9 faith being evaluated or participating in a retraining or job
10 placement program for purposes of evaluating permanent total
11 disability status, the employee shall be entitled to receive
12 benefits at the same rate as the employee's temporary total
13 disability benefits for an additional fifty-two (52) weeks. All
14 tuition related to vocational rehabilitation services shall be paid
15 by the employer or the employer's insurer on a periodic basis
16 directly to the facility providing the vocational rehabilitation
17 services or training to the employee.

18 F. Disfigurement.

19 1. If an injured employee incurs serious and permanent
20 disfigurement to any part of the body, the Commission may award
21 compensation to the injured employee in an amount not to exceed
22 Fifty Thousand Dollars (\$50,000.00).
23
24

1 2. No award for disfigurement shall be entered until twelve
2 (12) months after the injury unless the treating physician deems the
3 wound or incision to be fully healed.

4 3. An injured employee shall not be entitled to compensation
5 under this subsection if he or she receives an award for permanent
6 partial disability to the same part of the body.

7 G. Benefits for a single-event injury shall be determined by
8 the law in effect at the time of injury. Benefits for a cumulative
9 trauma injury or occupational disease or illness shall be determined
10 by the law in effect at the time the employee knew or reasonably
11 should have known that the injury, occupational disease or illness
12 was related to work activity. Benefits for death shall be
13 determined by the law in effect at the time of death.

14 SECTION 7. AMENDATORY 85A O.S. 2021, Section 46, is
15 amended to read as follows:

16 Section 46. A. An injured employee who is entitled to receive
17 permanent partial disability compensation under Section 45 of this
18 title shall receive compensation for each part of the body in
19 accordance with the number of weeks for the scheduled loss set forth
20 below.

21 1. Arm amputated at the elbow, or between the elbow and
22 shoulder, two hundred seventy-five (275) weeks;

23 2. Arm amputated between the elbow and wrist, two hundred
24 twenty (220) weeks;

1 3. Leg amputated at the knee, or between the knee and the hip,
2 two hundred seventy-five (275) weeks;

3 4. Leg amputated between the knee and the ankle, two hundred
4 twenty (220) weeks;

5 5. Hand amputated, two hundred twenty (220) weeks;

6 6. Thumb amputated, sixty-six (66) weeks;

7 7. First finger amputated, thirty-nine (39) weeks;

8 8. Second finger amputated, thirty-three (33) weeks;

9 9. Third finger amputated, twenty-two (22) weeks;

10 10. Fourth finger amputated, seventeen (17) weeks;

11 11. Foot amputated, two hundred twenty (220) weeks;

12 12. Great toe amputated, thirty-three (33) weeks;

13 13. Toe other than great toe amputated, eleven (11) weeks;

14 14. Eye enucleated, in which there was useful vision, two
15 hundred seventy-five (275) weeks;

16 15. Loss of hearing of one ear, one hundred ten (110) weeks;

17 16. Loss of hearing of both ears, three hundred thirty (330)
18 weeks; and

19 17. Loss of one testicle, fifty-three (53) weeks; loss of both
20 testicles, one hundred fifty-eight (158) weeks.

21 B. The permanent partial disability rate of compensation for
22 amputation or permanent total loss of use of a scheduled member
23 specified in this section shall be seventy percent (70%) of the
24 employee's average weekly wage, not to exceed Three Hundred Fifty

1 Dollars (\$350.00) with an increase to Three Hundred Sixty Dollars
2 (\$360.00) on July 1, 2021, and beginning January 1, 2023, an amount
3 equal to forty percent (40%) of the state's average weekly wage,
4 rounded to the nearest dollar, to be adjusted annually, multiplied
5 by the number of weeks as set forth in this section, regardless of
6 whether or not the injured employee is able to return to his or her
7 pre-injury job.

8 C. Other cases: In cases in which the Workers' Compensation
9 Commission finds an injury to a part of the body not specifically
10 covered by the foregoing provisions of this section, the employee
11 may be entitled to compensation for permanent partial disability.
12 The compensation ordered paid shall be seventy percent (70%) of the
13 employee's average weekly wage, not to exceed Three Hundred Fifty
14 Dollars (\$350.00) with an increase to Three Hundred Sixty Dollars
15 (\$360.00) on July 1, 2021, and beginning January 1, 2023, an amount
16 equal to forty percent (40%) of the state's average weekly wage,
17 rounded to the nearest dollar, to be adjusted annually, for the
18 number of weeks which the partial disability of the employee bears
19 to ~~three hundred fifty (350)~~ three hundred sixty (360) weeks.

20 D. 1. Compensation for amputation of the first phalange of a
21 digit shall be one-half (1/2) of the compensation for the amputation
22 of the entire digit.

23 2. Compensation for amputation of more than one phalange of a
24 digit shall be the same as for amputation of the entire digit.

1 E. 1. Compensation for the permanent loss of eighty percent
2 (80%) or more of the vision of an eye shall be the same as for the
3 loss of an eye.

4 2. In all cases of permanent loss of vision, the use of
5 corrective lenses may be taken into consideration in evaluating the
6 extent of loss of vision.

7 F. Compensation for amputation or loss of use of two or more
8 digits or one or more phalanges of two or more digits of a hand or a
9 foot may be proportioned to the total loss of use of the hand or the
10 foot occasioned thereby but shall not exceed the compensation for
11 total loss of a hand or a foot.

12 G. Compensation for permanent total loss of use of a member
13 shall be the same as for amputation of the member.

14 H. The sum of all permanent partial disability awards,
15 excluding awards against the Multiple Injury Trust Fund, shall not
16 exceed ~~three hundred fifty (350)~~ three hundred sixty (360) weeks.

17 SECTION 8. AMENDATORY 85A O.S. 2021, Section 47, is
18 amended to read as follows:

19 Section 47. A. Time of death. If death does not result within
20 one (1) year from the date of the accident or within the first three
21 (3) years of the period for compensation payments fixed by the
22 compensation judgment, a rebuttable presumption shall arise that the
23 death did not result from the injury.

1 B. Common law spouse. A common law spouse shall not be
2 entitled to benefits under this section unless he or she obtains an
3 order from the Workers' Compensation Commission ruling that a common
4 law marriage existed between the decedent and the surviving spouse.
5 The ruling by the Commission shall be exclusive in regard to
6 benefits under this section regardless of any district court
7 decision regarding the probate of the decedent's estate.

8 C. Beneficiaries - Amounts. If an injury or occupational
9 illness causes death, weekly income benefits shall be payable as
10 follows:

11 1. If there is a surviving spouse, a lump-sum payment of One
12 Hundred Thousand Dollars (\$100,000.00) and seventy percent (70%) of
13 the lesser of the deceased employee's average weekly wage and the
14 state average weekly wage. In addition to the benefits theretofore
15 paid or due, two (2) years' indemnity benefit in one lump sum shall
16 be payable to a surviving spouse upon remarriage;

17 2. If there is a surviving spouse and a child or children, a
18 lump-sum payment of Twenty-five Thousand Dollars (\$25,000.00) and
19 fifteen percent (15%) of the lesser of the deceased employee's
20 average weekly wage and the state average weekly wage to each child.
21 If there are more than two children, each child shall receive a pro
22 rata share of Fifty Thousand Dollars (\$50,000.00) and thirty percent
23 (30%) of the deceased employee's average weekly wage;

1 3. If there is a child or children and no surviving spouse, a
2 lump-sum payment of Twenty-five Thousand Dollars (\$25,000.00) and
3 fifty percent (50%) of the lesser of the deceased employee's average
4 weekly wage and the state average weekly wage to each child. If
5 there are more than two children, each child shall receive a pro
6 rata share of one hundred percent (100%) of the lesser of the
7 deceased employee's average weekly wage and the state average weekly
8 wage. With respect to the lump-sum payment, if there are more than
9 six children, each child shall receive a pro rata share of One
10 Hundred Fifty Thousand Dollars (\$150,000.00);

11 ~~4. If there is no surviving spouse or children, each legal~~
12 ~~guardian, if financially dependent on the employee at the time of~~
13 ~~death, shall receive twenty-five percent (25%) of the lesser of the~~
14 ~~deceased employee's average weekly wage and the state average weekly~~
15 ~~wage until the earlier of death, becoming eligible for Social~~
16 ~~Security, obtaining full-time employment, or five (5) years from the~~
17 ~~date benefits under this section begin~~ If there is no surviving
18 spouse or children, Five Thousand Dollars (\$5,000.00) shall be paid
19 to the parents and shall be divided to share and share alike; and

20 5. If there is no surviving spouse, children, or parents, to
21 the brothers, sisters, grandparents, and grandchildren shall be paid
22 Five Thousand Dollars (\$5,000.00). If there should be more than one
23 of such dependents, the total benefits payable for the benefit of
24 such dependents shall be divided to share and share alike; and

1 6. The employer shall pay the actual funeral expenses, not
2 exceeding the sum of Ten Thousand Dollars (\$10,000.00).

3 D. The weekly income benefits payable to the surviving spouse
4 under this section shall continue while the surviving spouse remains
5 unmarried. In no event shall this spousal weekly income benefit be
6 diminished by the award to other beneficiaries. The weekly income
7 benefits payable to any child under this section shall terminate on
8 the earlier of death, marriage, or reaching the age of eighteen
9 (18). However, if the child turns eighteen (18) and is:

10 1. Enrolled as a full-time student in high school or is being
11 schooled by other means pursuant to the Oklahoma Constitution;

12 2. Enrolled as a full-time student in any accredited
13 institution of higher education or vocational or technology
14 education; or

15 3. Physically or mentally incapable of self-support,
16 then he or she may continue to receive weekly income benefits under
17 this section until the earlier of reaching the age of twenty-three
18 (23) or, with respect to paragraphs 1 and 2 of this subsection, no
19 longer being enrolled as a student, and with respect to paragraph 3
20 of this subsection, becoming capable of self-support.

21 E. If any member of the class of beneficiaries who receive a
22 pro rata share of weekly income benefits becomes ineligible to
23 continue to receive benefits, the remaining members of the class
24

1 shall receive adjusted weekly income benefits equal to the new class
2 size.

3 F. To receive benefits under this section, a beneficiary ~~or his~~
4 ~~or her guardian, if applicable,~~ shall file a proof of loss form with
5 the Commission. All questions of dependency shall be determined as
6 of the time of the injury. The employer shall initiate payment of
7 benefits within fifteen (15) days of the Commission's determination
8 of the proper beneficiaries. The Commission shall appoint a
9 guardian ad litem to represent known and unknown minor children and
10 the guardian ad litem shall be paid a reasonable fee for his or her
11 services.

12 SECTION 9. AMENDATORY 85A O.S. 2021, Section 50, is
13 amended to read as follows:

14 Section 50. A. The employer shall promptly provide an injured
15 employee with medical, surgical, hospital, optometric, podiatric,
16 chiropractic and nursing services, along with any medicine,
17 crutches, ambulatory devices, artificial limbs, eyeglasses, contact
18 lenses, hearing aids, and other apparatus as may be reasonably
19 necessary in connection with the injury received by the employee.
20 The employer shall have the right to choose the treating physician
21 or chiropractor.

22 B. If the employer fails or neglects to provide medical
23 treatment within five (5) days after actual knowledge is received of
24 an injury, the injured employee may select a physician or

1 chiropractor to provide medical treatment at the expense of the
2 employer; provided, however, that the injured employee, or another
3 in the employee's behalf, may obtain emergency treatment at the
4 expense of the employer where such emergency treatment is not
5 provided by the employer.

6 C. Diagnostic tests shall not be repeated sooner than six (6)
7 months from the date of the test unless agreed to by the parties or
8 ordered by the Commission for good cause shown.

9 D. Unless recommended by the treating doctor or chiropractor at
10 the time claimant reaches maximum medical improvement or by an
11 independent medical examiner, continuing medical maintenance shall
12 not be awarded by the Commission. The employer or insurance carrier
13 shall not be responsible for continuing medical maintenance or pain
14 management treatment that is outside the parameters established by
15 the Physician Advisory Committee or ODG. The employer or insurance
16 carrier shall not be responsible for continuing medical maintenance
17 or pain management treatment not previously ordered by the
18 Commission or approved in advance by the employer or insurance
19 carrier.

20 E. An employee claiming or entitled to benefits under the
21 Administrative Workers' Compensation Act, shall, if ordered by the
22 Commission or requested by the employer or insurance carrier, submit
23 himself or herself for medical examination. If an employee refuses
24 to submit himself or herself to examination, his or her right to

1 prosecute any proceeding under the Administrative Workers'
2 Compensation Act shall be suspended, and no compensation shall be
3 payable for the period of such refusal.

4 F. For compensable injuries resulting in the use of a medical
5 device, ongoing service for the medical device shall be provided in
6 situations including, but not limited to, medical device battery
7 replacement, ongoing medication refills related to the medical
8 device, medical device repair, or medical device replacement.

9 G. Travel Reimbursement.

10 1. The employer shall reimburse the employee for the actual
11 mileage in excess of twenty (20) miles round trip to and from the
12 employee's home to the location of a medical service provider for
13 all reasonable and necessary treatment, for an evaluation of an
14 independent medical examiner and for any evaluation made at the
15 request of the employer or insurance carrier. The rate of
16 reimbursement for such travel expense shall be the official
17 reimbursement rate as established by the State Travel Reimbursement
18 Act. In no event shall the reimbursement of travel for medical
19 treatment or evaluation exceed six hundred (600) miles round trip.

20 2. A claim for travel reimbursement under this act shall be
21 barred unless the request for reimbursement of travel is made within
22 one (1) year of the date of travel for which reimbursement is being
23 sought following a finding of compensable injury by the Commission
24 or admission of injury to the Commission by the employer.

1 3. Reimbursement of travel shall be issued to the employee
2 within sixty (60) days of receipt by employer of the request for
3 reimbursement from employee following a finding of compensable
4 injury by the Commission or admission of compensable injury to the
5 Commission by the employer, and subject to paragraph 2 of this
6 subsection. If payment for reimbursement is not issued as required,
7 employer shall pay to the employee an additional amount equal to
8 fifty percent (50%) of the request for reimbursement remaining to be
9 paid provided the Commission orders the payment of mileage equal to
10 the request for reimbursement by the employee and the amount for
11 which the hearing was sought.

12 H. Fee Schedule.

13 1. The Commission shall conduct a review and update of the
14 Current Procedural Terminology (CPT) in the Fee Schedule every two
15 (2) years pursuant to the provisions of paragraph 14 of this
16 subsection. The Fee Schedule shall establish the maximum rates that
17 medical providers shall be reimbursed for medical care provided to
18 injured employees including, but not limited to, charges by
19 physicians, chiropractors, dentists, counselors, hospitals,
20 ambulatory and outpatient facilities, clinical laboratory services,
21 diagnostic testing services, and ambulance services, and charges for
22 durable medical equipment, prosthetics, orthotics, and supplies.
23 The most current Fee Schedule established by the Administrator of
24 the Workers' Compensation Court prior to February 1, 2014, shall

1 remain in effect, unless or until the Legislature approves the
2 Commission's proposed Fee Schedule.

3 2. Reimbursement for medical care shall be prescribed and
4 limited by the Fee Schedule. The director of the Employees Group
5 Insurance Division of the Office of Management and Enterprise
6 Services shall provide the Commission such information as may be
7 relevant for the development of the Fee Schedule. The Commission
8 shall develop the Fee Schedule in a manner in which quality of
9 medical care is assured and maintained for injured employees. The
10 Commission shall give due consideration to additional requirements
11 for physicians treating an injured worker under the Administrative
12 Workers' Compensation Act, including, but not limited to,
13 communication with claims representatives, case managers, attorneys,
14 and representatives of employers, and the additional time required
15 to complete forms for the Commission, insurance carriers, and
16 employers.

17 3. In making adjustments to the Fee Schedule, the Commission
18 shall use, as a benchmark, the reimbursement rate for each Current
19 Procedural Terminology (CPT) code provided for in the fee schedule
20 published by the Centers for Medicare and Medicaid Services of the
21 U.S. Department of Health and Human Services for use in Oklahoma
22 (Medicare Fee Schedule) on the effective date of this section,
23 workers' compensation fee schedules employed by neighboring states,
24 the latest edition of "Relative Values for Physicians" (RVP), usual,

1 customary and reasonable medical payments to workers' compensation
2 health care providers in the same trade area for comparable
3 treatment of a person with similar injuries, and all other data the
4 Commission deems relevant. For services not valued by CMS, the
5 Commission shall establish values based on the usual, customary and
6 reasonable medical payments to health care providers in the same
7 trade area for comparable treatment of a person with similar
8 injuries.

9 a. No reimbursement shall be allowed for any magnetic
10 resonance imaging (MRI) unless the MRI is provided by
11 an entity that meets Medicare requirements for the
12 payment of MRI services or is accredited by the
13 American College of Radiology, the Intersocietal
14 Accreditation Commission or the Joint Commission on
15 Accreditation of Healthcare Organizations. For all
16 other radiology procedures, the reimbursement rate
17 shall be the lesser of the reimbursement rate allowed
18 by the 2010 Oklahoma Fee Schedule and two hundred
19 seven percent (207%) of the Medicare Fee Schedule.

20 b. For reimbursement of medical services for Evaluation
21 and Management of injured employees as defined in the
22 Fee Schedule adopted by the Commission, the
23 reimbursement rate shall not be less than one hundred
24 fifty percent (150%) of the Medicare Fee Schedule.

1 c. Any entity providing durable medical equipment,
2 prosthetics, orthotics or supplies shall be accredited
3 by a CMS-approved accreditation organization. If a
4 physician provides durable medical equipment,
5 prosthetics, orthotics, prescription drugs, or
6 supplies to a patient ancillary to the patient's
7 visit, reimbursement shall be no more than ten percent
8 (10%) above cost.

9 d. The Commission shall develop a reasonable stop-loss
10 provision of the Fee Schedule to provide for adequate
11 reimbursement for treatment for major burns, severe
12 head and neurological injuries, multiple system
13 injuries, and other catastrophic injuries requiring
14 extended periods of intensive care. An employer or
15 insurance carrier shall have the right to audit the
16 charges and question the reasonableness and necessity
17 of medical treatment contained in a bill for treatment
18 covered by the stop-loss provision.

19 4. The right to recover charges for every type of medical care
20 for injuries arising out of and in the course of covered employment
21 as defined in the Administrative Workers' Compensation Act shall lie
22 solely with the Commission. When a medical care provider has
23 brought a claim to the Commission to obtain payment for services, a
24

1 party who prevails in full on the claim shall be entitled to
2 reasonable attorney fees.

3 5. Nothing in this section shall prevent an employer, insurance
4 carrier, group self-insurance association, or certified workplace
5 medical plan from contracting with a provider of medical care for a
6 reimbursement rate that is greater than or less than limits
7 established by the Fee Schedule.

8 6. A treating physician may not charge more than Four Hundred
9 Dollars (\$400.00) per hour for preparation for or testimony at a
10 deposition or appearance before the Commission in connection with a
11 claim covered by the Administrative Workers' Compensation Act.

12 7. The Commission's review of medical and treatment charges
13 pursuant to this section shall be conducted pursuant to the Fee
14 Schedule in existence at the time the medical care or treatment was
15 provided. The judgment approving the medical and treatment charges
16 pursuant to this section shall be enforceable by the Commission in
17 the same manner as provided in the Administrative Workers'
18 Compensation Act for the enforcement of other compensation payments.

19 8. Charges for prescription drugs dispensed by a pharmacy shall
20 be limited to ninety percent (90%) of the average wholesale price of
21 the prescription, plus a dispensing fee of Five Dollars (\$5.00) per
22 prescription. "Average wholesale price" means the amount determined
23 from the latest publication designated by the Commission.
24 Physicians shall prescribe and pharmacies shall dispense generic

1 equivalent drugs when available. If the National Drug Code, or
2 "NDC", for the drug product dispensed is for a repackaged drug, then
3 the maximum reimbursement shall be the lesser of the original
4 labeler's NDC and the lowest-cost therapeutic equivalent drug
5 product. Compounded medications shall be billed by the compounding
6 pharmacy at the ingredient level, with each ingredient identified
7 using the applicable NDC of the drug product, and the corresponding
8 quantity. Ingredients with no NDC area are not separately
9 reimbursable. Payment shall be based on a sum of the allowable fee
10 for each ingredient plus a dispensing fee of Five Dollars (\$5.00)
11 per prescription.

12 9. When medical care includes prescription drugs dispensed by a
13 physician or other medical care provider and the NDC for the drug
14 product dispensed is for a repackaged drug, then the maximum
15 reimbursement shall be the lesser of the original labeler's NDC and
16 the lowest-cost therapeutic equivalent drug product. Payment shall
17 be based upon a sum of the allowable fee for each ingredient plus a
18 dispensing fee of Five Dollars (\$5.00) per prescription. Compounded
19 medications shall be billed by the compounding pharmacy.

20 10. Implantables are paid in addition to procedural
21 reimbursement paid for medical or surgical services. A
22 manufacturer's invoice for the actual cost to a physician, hospital
23 or other entity of an implantable device shall be adjusted by the
24 physician, hospital or other entity to reflect, at the time

1 implanted, all applicable discounts, rebates, considerations and
2 product replacement programs and shall be provided to the payer by
3 the physician or hospital as a condition of payment for the
4 implantable device. If the physician, or an entity in which the
5 physician has a financial interest other than an ownership interest
6 of less than five percent (5%) in a publically traded company,
7 provides implantable devices, this relationship shall be disclosed
8 to patient, employer, insurance company, third-party commission,
9 certified workplace medical plan, case managers, and attorneys
10 representing claimant and defendant. If the physician, or an entity
11 in which the physician has a financial interest other than an
12 ownership interest of less than five percent (5%) in a publicly
13 traded company, buys and resells implantable devices to a hospital
14 or another physician, the markup shall be limited to ten percent
15 (10%) above cost.

16 11. Payment for medical care as required by the Administrative
17 Workers' Compensation Act shall be due within forty-five (45) days
18 of the receipt by the employer or insurance carrier of a complete
19 and accurate invoice, unless the employer or insurance carrier has a
20 good-faith reason to request additional information about such
21 invoice. Thereafter, the Commission may assess a penalty up to
22 twenty-five percent (25%) for any amount due under the Fee Schedule
23 that remains unpaid on the finding by the Commission that no good-
24 faith reason existed for the delay in payment. If the Commission

1 finds a pattern of an employer or insurance carrier willfully and
2 knowingly delaying payments for medical care, the Commission may
3 assess a civil penalty of not more than Five Thousand Dollars
4 (\$5,000.00) per occurrence.

5 12. If an employee fails to appear for a scheduled appointment
6 with a physician or chiropractor, the employer or insurance company
7 shall pay to the physician or chiropractor a reasonable charge, to
8 be determined by the Commission, for the missed appointment. In the
9 absence of a good-faith reason for missing the appointment, the
10 Commission shall order the employee to reimburse the employer or
11 insurance company for the charge.

12 13. Physicians or chiropractors providing treatment under the
13 Administrative Workers' Compensation Act shall disclose under
14 penalty of perjury to the Commission, on a form prescribed by the
15 Commission, any ownership or interest in any health care facility,
16 business, or diagnostic center that is not the physician's or
17 chiropractor's primary place of business. The disclosure shall
18 include any employee leasing arrangement between the physician or
19 chiropractor and any health care facility that is not the
20 physician's or chiropractor's primary place of business. A
21 physician's or chiropractor's failure to disclose as required by
22 this section shall be grounds for the Commission to disqualify the
23 physician or chiropractor from providing treatment under the
24 Administrative Workers' Compensation Act.

- 1 14. a. Beginning on May 28, 2019, the Commission shall
2 conduct an evaluation of the Fee Schedule, which shall
3 include an update of the list of Current Procedural
4 Terminology (CPT) codes, a line item adjustment or
5 renewal of all rates, and amendment as needed to the
6 rules applicable to the Fee Schedule.
- 7 b. The Commission shall contract with an external
8 consultant with knowledge of workers' compensation fee
9 schedules to review regional and nationwide
10 comparisons of Oklahoma's Fee Schedule rates and date
11 and market for medical services. The consultant shall
12 receive written and oral comment from employers,
13 workers' compensation medical service and insurance
14 providers, self-insureds, group self-insurance
15 associations of this state and the public. The
16 consultant shall submit a report of its findings and a
17 proposed amended Fee Schedule to the Commission.
- 18 c. The Commission shall adopt the proposed amended Fee
19 Schedule in whole or in part and make any additional
20 updates or adjustments. The Commission shall submit a
21 proposed updated and adjusted Fee Schedule to the
22 President Pro Tempore of the Senate, the Speaker of
23 the House of Representatives and the Governor. The
24 proposed Fee Schedule shall become effective on July 1

1 following the legislative session, if approved by
2 Joint Resolution of the Legislature during the session
3 in which a proposed Fee Schedule is submitted.

4 d. Beginning on May 28, 2019, an external evaluation
5 shall be conducted and a proposed amended Fee Schedule
6 shall be submitted to the Legislature for approval
7 during the 2020 legislative session. Thereafter, an
8 external evaluation shall be conducted and a proposed
9 amended Fee Schedule shall be submitted to the
10 Legislature for approval every two (2) years.

11 I. Formulary. The Commission by rule shall adopt a closed
12 formulary. Rules adopted by the Commission shall allow an appeals
13 process for claims in which a treating doctor determines and
14 documents that a drug not included in the formulary is necessary to
15 treat an injured employee's compensable injury. The Commission by
16 rule shall require the use of generic pharmaceutical medications and
17 clinically appropriate over-the-counter alternatives to prescription
18 medications unless otherwise specified by the prescribing doctor, in
19 accordance with applicable state law.

20 SECTION 10. AMENDATORY 85A O.S. 2021, Section 69, is
21 amended to read as follows:

22 Section 69. A. Time for Filing.

23 1. A claim for benefits under this act, other than an
24 occupational disease, shall be barred unless it is filed with the

1 Workers' Compensation Commission within one (1) year from the date
2 of the injury or, if the employee has received benefits under this
3 title for the injury, six (6) months from the date of the last
4 ~~issuance of such benefits~~ payment of indemnity benefits or date of
5 service for medical treatment, whichever is later. For purposes of
6 this section, the date of the injury shall be defined as the date an
7 injury is caused by an accident as set forth in paragraph 9 of
8 Section 2 of this title.

9 2. a. A claim for compensation for disability on account of
10 injury which is either an occupational disease or
11 occupational infection shall be barred unless filed
12 with the Commission within two (2) years from the date
13 of the last injurious exposure to the hazards of the
14 disease or infection.

15 b. A claim for compensation for disability on account of
16 silicosis or asbestosis shall be filed with the
17 Commission within one (1) year after the time of
18 disablement, and the disablement shall occur within
19 three (3) years from the date of the last injurious
20 exposure to the hazard of silicosis or asbestosis.

21 c. A claim for compensation for disability on account of
22 a disease condition caused by exposure to X-rays,
23 radioactive substances, or ionizing radiation only
24 shall be filed with the Commission within two (2)

1 years from the date the condition is made known to an
2 employee following examination and diagnosis by a
3 medical doctor.

4 3. A claim for compensation on account of death shall be barred
5 unless filed with the Commission within two (2) years of the date of
6 such a death.

7 4. If a claim for benefits has been timely filed ~~under~~
8 ~~paragraph 1 of this subsection~~ and the ~~employee~~ claimant does not:

9 a. make a good-faith request for a hearing to resolve a
10 dispute regarding the right to receive benefits,
11 including medical treatment, under this title within
12 six (6) months of the date the claim is filed, or

13 b. receive or seek benefits, including medical treatment,
14 under this title for a period of six (6) months,
15 then on motion by the employer, the claim shall be dismissed with
16 prejudice.

17 B. Failure to File. Failure to file a claim within the period
18 prescribed in subsection A of this section shall not be a bar to the
19 right to benefits hereunder unless objection to the failure is made
20 at the first hearing on the claim in which all parties in interest
21 have been given a reasonable notice and opportunity to be heard by
22 the Commission.

23 C. Persons under Disability.
24

1 1. Notwithstanding any statute of limitation provided for in
2 this act, when it is established that failure to file a claim by an
3 injured employee or his or her dependents was induced by fraud, the
4 claim may be filed within one (1) year from the time of the
5 discovery of the fraud.

6 2. Subsection A of this section shall not apply to a mental
7 incompetent or minor so long as the person has no guardian or
8 similar legal representative. The limitations prescribed in
9 subsection A of this section shall apply to the mental incompetent
10 or minor from the date of the appointment of a guardian or similar
11 legal representative for that person, and when no guardian or
12 similar representative has been appointed, to a minor on reaching
13 the age of majority.

14 D. A latent injury or condition shall not delay or toll the
15 limitation periods specified in this section. This subsection shall
16 not apply to the limitation period for occupational diseases
17 specified in paragraph 2 of subsection A of this section.

18 SECTION 11. AMENDATORY 85A O.S. 2021, Section 80, is
19 amended to read as follows:

20 Section 80. A. A final order for permanent disability is a
21 final adjudication of all issues pending in the claim unless
22 reserved in the order or by operation of law. Except where a joint
23 petition settlement has been approved, the Workers' Compensation
24 Commission may review any compensation judgment, award, or decision.

1 1. Such review may be done upon application for a change of
2 condition for the worse at any time within six (6) months from the
3 date of the last order in which monetary benefits were awarded or
4 active medical treatment was provided, ~~on the Commission's own~~
5 ~~motion or on the application of any party in interest,~~ and unless
6 filed within such period of time shall be forever barred. On
7 review, the Commission may make a judgment or award ~~terminating,~~
8 continuing, decreasing, or increasing for the future the
9 compensation previously awarded, subject to the maximum limits
10 provided for in this title. An order denying an application to
11 reopen a claim shall not extend the period of time set out in this
12 title for reopening the claim. A failure to comply with a medical
13 treatment plan ordered by the Commission shall bar the reopening of
14 a claim.

15 2. The Workers' Compensation Commission may review any
16 compensation judgment, award, or decision at any time, and without
17 limitation upon a filing of an application for a finding of a change
18 of condition for the better. Such review may be filed for good
19 cause shown. On review, the Commission may make a judgment or award
20 terminating, continuing, or decreasing for the future the
21 compensation previously awarded, subject to the limits provided for
22 in this act.

23 B. The review and subsequent award shall be made in accordance
24 with the procedure prescribed in Sections 69 through 78 of this

1 title. No review shall affect any compensation paid under a prior
2 order, judgment or award.

3 C. The Commission may correct any clerical error in any
4 compensation judgment or award within one (1) year from the date of
5 its issuance.

6 D. Aging and the effects of aging on a compensable injury are
7 not to be considered in determining whether there has been a change
8 in physical condition. Aging or the effect of aging on a
9 compensable injury shall not be considered in determining permanent
10 disability under this section or any other section in this act.

11 SECTION 12. AMENDATORY 85A O.S. 2021, Section 112, is
12 amended to read as follows:

13 Section 112. A. The Workers' Compensation Commission shall
14 create, maintain and review a list of licensed physicians who shall
15 serve as independent medical examiners from a list of licensed
16 physicians who have completed such course study as the Commission
17 may require. An independent medical examiner must agree to examine
18 an employee within forty-five (45) days of appointment. The
19 Commission shall, to the best of its ability, include the most
20 experienced and competent physicians in the specific fields of
21 expertise utilized most often in the treatment of injured employees.
22 The period of qualification shall be two (2) years. Physicians may
23 be qualified for successive two-year periods. Physicians serving as
24 independent medical examiners on the effective date of this act

1 shall serve the remainder of their respective two-year qualification
2 periods and may reapply for successive qualification periods. The
3 Commission may remove an independent medical examiner from the list
4 for cause.

5 B. An administrative law judge may appoint an independent
6 medical examiner to assist in determining any issue before the
7 Commission. In the event surgery is recommended by a treating
8 physician, upon request of the employer, an independent medical
9 examiner shall be appointed to determine the reasonableness and
10 necessity of the recommended surgery. Upon request of the employee,
11 an independent medical examiner may be appointed to determine the
12 reasonableness and necessity of surgery recommended by a treating
13 physician. Such independent medical examiner shall be qualified to
14 perform the type of surgery recommended.

15 C. An independent medical examiner shall be selected from the
16 list of independent medical examiners within ten (10) days when the
17 employer or the employee petitions the Commission for the selection
18 of an independent medical examiner. The independent medical
19 examiner shall be certified by a recognized specialty board in the
20 area or areas appropriate to the condition under review.

21 D. The Commission shall, to the best of its ability, maintain a
22 geographic balance of independent medical examiners.

1 E. Counsel for the employee and employer are responsible for
2 transmittal of the employee's medical records to the independent
3 medical examiner within ten (10) days of appointment.

4 F. After a physical examination and review of medical records
5 and other appropriate information, including depositions and
6 surveillance video, the independent medical examiner shall submit a
7 verified written report to the Commission and to the parties. In
8 the event the independent medical examiner determines that more
9 medical treatment is necessary, the employer shall designate a
10 treating physician to provide the indicated treatment.

11 G. Any independent medical examiner selected pursuant to the
12 provisions of this section shall be reimbursed for the medical
13 examination, reports and fees in a reasonable and customary amount
14 set by the Commission, and these costs shall be borne by the
15 employer.

16 H. The Commission shall create a review process to oversee on a
17 continuing basis the quality of performance and the timeliness of
18 the submission of medical findings by independent medical examiners.

19 I. If the Commission does not follow the opinion of the
20 independent medical examiner on any issue, the administrative law
21 judge or member of the Board of Review shall set out its reasons for
22 deviating from the opinion of the independent medical examiner. The
23 opinion of the independent medical examiner shall be followed unless
24 there is clear and convincing evidence to the contrary.

1 J. Upon receipt of an independent medical examiner's report,
2 any party shall have the right to object to the introduction of the
3 report into evidence. The objection must be made by giving written
4 notification to all parties and to the Commission within ten (10)
5 days after receipt of the report. The employer shall be responsible
6 for the reasonable charges of the physician for such testimony,
7 preparation time, and the expense of the deposition.

8 SECTION 13. This act shall become effective November 1, 2022.

9
10 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated
11 02/10/2022 - DO PASS, As Amended.
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