

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 2nd Session of the 56th Legislature (2018)

4 ENGROSSED SENATE
5 BILL NO. 1340

 By: Sykes of the Senate

 and

 Osborn (Leslie) of the
 House

8
9
10 [workers' compensation - Administrative Workers'
11 Compensation Act - repealers - codification -
 effective date]

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13
14 ~~BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:~~

15 SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2017, Section 2), is amended to read as
17 follows:

18 Section 2. As used in the Administrative Workers' Compensation
19 Act:

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

23 2. "Carrier" means any stock company, mutual company, or
24 reciprocal or interinsurance exchange authorized to write or carry

1 on the business of workers' compensation insurance in this state.

2 Whenever required by the context, the term "carrier" shall be deemed
3 to include duly qualified self-insureds or self-insured groups;

4 3. "Case management" means the ongoing coordination, by a case
5 manager, of health care services provided to an injured or disabled
6 worker, including but not limited to systematically monitoring the
7 treatment rendered and the medical progress of the injured or
8 disabled worker; ensuring that any treatment plan follows all
9 appropriate treatment protocols, utilization controls and practice
10 parameters; assessing whether alternative health care services are
11 appropriate and delivered in a cost-effective manner based upon
12 acceptable medical standards; and ensuring that the injured or
13 disabled worker is following the prescribed health care plan;

14 4. "Case manager" means a person who is a registered nurse with
15 a current, active unencumbered license from the Oklahoma Board of
16 Nursing, or possesses one or more of the following certifications
17 which indicate the individual has a minimum number of years of case
18 management experience, has passed a national competency test and
19 regularly obtains continuing education hours to maintain
20 certification:

- 21 a. Certified Disability Management Specialist (CDMS),
- 22 b. Certified Case Manager (CCM),
- 23 c. Certified Rehabilitation Registered Nurse (CRRN),
- 24 d. Case Manager - Certified (CMC),

1 e. Certified Occupational Health Nurse (COHN), or

2 f. Certified Occupational Health Nurse Specialist (COHN-
3 S);

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

14 6. "Child" means a natural or adopted son or daughter of the
15 employee under eighteen (18) years of age; or a natural or adopted
16 son or daughter of an employee eighteen (18) years of age or over
17 who is physically or mentally incapable of self-support; or any
18 natural or adopted son or daughter of an employee eighteen (18)
19 years of age or over who is actually dependent; or any natural or
20 adopted son or daughter of an employee between eighteen (18) and
21 twenty-three (23) years of age who is enrolled as a full-time
22 student in any accredited educational institution. The term "child"
23 includes a posthumous child, a child legally adopted or one for whom
24 adoption proceedings are pending at the time of death, an actually

1 dependent stepchild or an actually dependent acknowledged child born
2 out of wedlock;

3 7. ~~"Claimant" means a person who claims benefits for an injury~~
4 ~~or occupational disease pursuant to the provisions of the~~
5 ~~Administrative Workers' Compensation Act;~~

6 ~~8.~~ "Commission" means the Workers' Compensation Commission;

7 ~~9.~~ 8. a. "Compensable injury" means damage or harm to the
8 physical structure of the body, or prosthetic
9 appliances, including eyeglasses, contact lenses, or
10 hearing aids, caused solely as the result of either an
11 accident, cumulative trauma or occupational disease
12 arising out of the course and scope of employment. ~~An~~
13 ~~"accident" means an event involving factors external~~
14 ~~to the employee that:~~

15 ~~(1) was unintended, unanticipated, unforeseen,~~
16 ~~unplanned and unexpected,~~

17 ~~(2) occurred at a specifically identifiable time and~~
18 ~~place,~~

19 ~~(3) occurred by chance or from unknown causes, and~~

20 ~~(4) was independent of sickness, mental incapacity,~~
21 ~~bodily infirmity or any other cause.~~

22 b. "Compensable injury" does not include:

23 (1) injury to any active participant in assaults or
24 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 performed or before the employee was hired or after the employment relationship was terminated,

(4) injury where the accident was caused by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders. If, within twenty-four (24) hours of being injured or reporting an injury, an employee tests positive for intoxication, an illegal controlled substance, or a legal controlled substance used in contravention to a treating physician's orders, or refuses to undergo the drug and

1 alcohol testing, there shall be a rebuttable
2 presumption that the injury was caused by the use
3 of alcohol, illegal drugs, or prescription drugs
4 used in contravention of physician's orders.
5 This presumption may only be overcome if the
6 employee proves by objective, clear and
7 convincing evidence that his or her state of
8 intoxication had no causal relationship to the
9 injury,

10 (5) any strain, degeneration, damage or harm to, or
11 disease or condition of, the eye or
12 musculoskeletal structure or other body part
13 resulting from the natural results of aging,
14 osteoarthritis, arthritis, or degenerative
15 process including, but not limited to,
16 degenerative joint disease, degenerative disc
17 disease, degenerative
18 spondylosis/spondylolisthesis and spinal
19 stenosis, or

20 (6) any injury that is related to a preexisting
21 condition except ~~when~~ if the treating physician
22 ~~clearly confirms~~ determines by objective findings
23 that the injury is an identifiable and
24

1 significant aggravation ~~incurred~~ of the pre-
2 existing condition that:

3 (a) occurred in the course and scope of
4 employment,

5 (b) is not only a recurrence of symptoms
6 inherent in the etiology of the pre-existing
7 condition, and

8 (c) is substantially caused by the work-related
9 accident.

10 c. The definition of "compensable injury" shall not be
11 construed to limit or abrogate the right to recover
12 for mental injuries as described in Section 13 of this
13 ~~act~~ title, heart or lung injury or illness as
14 described in Section 14 of this ~~act~~ title, or
15 occupational diseases as described in Section 65 of
16 this ~~act~~ title.

17 d. A compensable injury shall be established by medical
18 evidence supported by objective findings as defined in
19 paragraph 30 of this section.

20 e. The injured employee shall prove by a preponderance of
21 the evidence that he or she has suffered a compensable
22 injury.

23 f. Benefits shall not be payable for a condition which
24 results from a non-work-related independent

1 intervening cause following a compensable injury which
2 causes or prolongs disability, aggravation, or
3 requires treatment. A non-work-related independent
4 intervening cause does not require negligence or
5 recklessness on the part of ~~a claimant~~ an employee.

6 g. An employee who suffers a compensable injury shall be
7 entitled to receive compensation as prescribed in ~~this~~
8 ~~act~~ the Administrative Workers' Compensation Act.
9 Notwithstanding other provisions of law, if it is
10 determined that a compensable injury did not occur,
11 the employee shall not be entitled to compensation
12 under ~~this act~~ the Administrative Workers'
13 Compensation Act;

14 ~~10.~~ 9. "Compensation" means the money allowance payable to the
15 employee or to his or her dependents and includes the medical
16 services and supplies provided for in Section 50 of this ~~act~~ title
17 and funeral expenses;

18 ~~11. "Consequential injury" means injury or harm to a part of~~
19 ~~the body that is a direct result of the injury or medical treatment~~
20 ~~to the part of the body originally injured in the claim. The~~
21 ~~Commission shall not make a finding of a consequential injury unless~~
22 ~~it is established by objective medical evidence that medical~~
23 ~~treatment for such part of the body is required;~~

1 ~~12.~~ 10. "Continuing medical maintenance" means medical
2 treatment that is reasonable and necessary to maintain ~~claimant's~~
3 the employee's condition resulting from the compensable injury or
4 illness after reaching maximum medical improvement. Continuing
5 medical maintenance shall not include diagnostic tests, surgery,
6 injections, counseling, physical therapy, or pain management devices
7 or equipment;

8 ~~13.~~ 11. "Course and scope of employment" means an activity of
9 any kind or character for which the employee was hired and that
10 relates to and derives from the work, business, trade or profession
11 of an employer, and is performed by an employee in the furtherance
12 of the affairs or business of an employer. The term includes
13 activities conducted on the premises of an employer or at other
14 locations designated by an employer and travel by an employee in
15 furtherance of the affairs of an employer that is specifically
16 directed by the employer. This term does not include:

- 17 a. an employee's transportation to and from his or her
18 place of employment,
- 19 b. travel by an employee in furtherance of the affairs of
20 an employer if the travel is also in furtherance of
21 personal or private affairs of the employee,
- 22 c. any injury occurring in a parking lot or other common
23 area ~~adjacent to an employer's place of business~~
24 within or outside the premises or place of business of

1 the employer, regardless of whether maintained or
2 owned by the employer, before the employee clocks in
3 or otherwise begins work for the employer or after the
4 employee clocks out or otherwise stops work for the
5 employer, or

6 d. any injury occurring while an employee is on a work
7 break, unless the injury occurs while the employee is
8 on a work break inside the employer's facility and the
9 work break is authorized by the employee's supervisor;

10 ~~14.~~ 12. "Cumulative trauma" means an injury to an employee that
11 is caused by the combined effect of repetitive physical activities
12 extending over a period of time in the course and scope of
13 employment. Cumulative trauma shall not mean fatigue, soreness or
14 general aches and pain that may have been caused, aggravated,
15 exacerbated or accelerated by the employee's course and scope of
16 employment. Cumulative trauma shall have resulted directly and
17 independently of all other causes ~~and the employee shall have~~
18 ~~completed at least one hundred eighty (180) days of continuous~~
19 ~~active employment with the employer;~~

20 ~~15.~~ 13. "Death" means only death resulting from compensable
21 injury as defined in paragraph 9 of this section;

22 ~~16.~~ 14. "Disability" means ~~incapacity because of compensable~~
23 ~~injury to earn, in the same or any other employment, substantially~~
24 ~~the same amount of wages the employee was receiving at the time of~~

1 ~~the~~, based on objective findings, impairment of a portion of the
2 total physiological capabilities of the human body caused by a
3 compensable injury;

4 ~~17.~~ 15. "Drive-away ~~operations~~ owner-operator" includes every
5 person engaged in the business of transporting and delivering new or
6 used vehicles by driving, either singly or by towbar, saddle-mount
7 or full-mount method, or any combination thereof, with or without
8 towing a privately owned vehicle;

9 ~~18.~~

10 16. a. "Employee" means any person, including a minor, in the
11 service of an employer under any contract of hire or
12 apprenticeship, written or oral, expressed or implied,
13 but excluding one whose employment is casual and not
14 in the course of the trade, business, profession, or
15 occupation of his or her employer and excluding one
16 who is required to perform work for a municipality or
17 county or the state or federal government on having
18 been convicted of a criminal offense or while
19 incarcerated. "Employee" shall also include a member
20 of the Oklahoma National Guard while in the
21 performance of duties only while in response to state
22 orders and any authorized voluntary or uncompensated
23 worker, rendering services as a firefighter, peace
24 officer or emergency management worker. Travel by a

1 policeman, fireman, or a member of a first aid or
2 rescue squad, in responding to and returning from an
3 emergency, shall be deemed to be in the course of
4 employment.

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

6 (1) any person for whom an employer is liable under
7 any Act of Congress for providing compensation to
8 employees for injuries, disease or death arising
9 out of and in the course of employment including,
10 but not limited to, the Federal Employees'
11 Compensation Act, the Federal Employers'
12 Liability Act, the Longshore and Harbor Workers'
13 Compensation Act and the Jones Act, to the extent
14 his or her employees are subject to such acts,

15 (2) any person who is employed in agriculture or
16 horticulture by an employer who had a gross
17 annual payroll in the preceding calendar year of
18 less than One Hundred Thousand Dollars

19 (\$100,000.00) wages for agricultural or
20 horticultural workers, or any person who is
21 employed in agriculture or horticulture who is
22 not engaged in operation of motorized machines,

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

- 1 (4) any person who is providing services in a medical
2 care or social services program, or who is a
3 participant in a work or training program,
4 administered by the Department of Human Services,
5 unless the Department is required by federal law
6 or regulations to provide workers' compensation
7 for such person. This division shall not be
8 construed to include nursing homes,
- 9 (5) any person employed by an employer with five or
10 fewer total employees, all of whom are related
11 within the second degree by blood or marriage to
12 the employer, or a dependent living in the
13 household of the employer, if the employer is a
14 natural person or a general or limited
15 partnership, or an incorporator of a corporation
16 or limited liability company if the corporation
17 or limited liability company is the employer,
- 18 (6) any person employed by an employer which is a
19 youth sports league which qualifies for exemption
20 from federal income taxation pursuant to federal
21 law,
- 22 (7) sole proprietors, members of a partnership,
23 individuals who are party to a franchise
24 agreement as set out by the Federal Trade

Commission franchise disclosure rule, 16 CFR
436.1 through 436.11, members of a limited
liability company who own at least ten percent
(10%) of the capital of the limited liability
company or any stockholder-employees of a
corporation who own ten percent (10%) or more
stock in the corporation, unless they elect to be
covered by a policy of insurance covering
benefits under the Administrative Workers'
Compensation Act,

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

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

Provided, however, an owner-operator shall not be

precluded from workers' compensation coverage under the Administrative Workers' Compensation Act if the owner-operator elects to participate as a sole proprietor,

(10) a person referred to as a drive-away owner-operator who privately owns and utilizes a tow vehicle in drive-away operations and operates independently for hire, if the drive-away owner-operator actually utilizes the tow vehicle and if the person contracting with the drive-away owner-operator is not the lessor of the tow vehicle. Provided, however, a drive-away owner-operator shall not be precluded from workers' compensation coverage under the Administrative Workers' Compensation Act if the drive-away owner-operator elects to participate as a sole proprietor, and

(11) any person who is employed as a domestic servant or as a casual worker in and about a private home or household, which private home or household had a gross annual payroll in the preceding calendar year of less than Fifty Thousand Dollars (\$50,000.00) for such workers;

~~19.~~ 17. "Employer" means a person, partnership, association, limited liability company, corporation, and the legal

1 representatives of a deceased employer, or the receiver or trustee
2 of a person, partnership, association, corporation, or limited
3 liability company, departments, instrumentalities and institutions
4 of this state and divisions thereof, counties and divisions thereof,
5 public trusts, boards of education and incorporated cities or towns
6 and divisions thereof, employing a person included within the term
7 "employee" as defined in this section. Employer may also mean the
8 employer's workers' compensation insurance carrier, if applicable.
9 Except as provided otherwise, ~~this act~~ the Administrative Workers'
10 Compensation Act applies to all public and private entities and
11 institutions. ~~Employer shall not include a qualified employer with~~
12 ~~an employee benefit plan as provided under the Oklahoma Employee~~
13 ~~Injury Benefit Act in Sections 107 through 120 of this act;~~

14 ~~20.~~ 18. "Employment" includes work or labor in a trade,
15 business, occupation or activity carried on by an employer or any
16 authorized voluntary or uncompensated worker rendering services as a
17 firefighter, peace officer or emergency management worker;

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

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

1 ~~23.~~ 19. "Impaired self-insurer" means a private self-insurer or
2 group self-insurance association that fails to pay its workers'
3 compensation obligations, or is financially unable to do so and is
4 the subject of any proceeding under the Federal Bankruptcy Reform
5 Act of 1978, and any subsequent amendments or is the subject of any
6 proceeding in which a receiver, custodian, liquidator,
7 rehabilitator, trustee or similar officer has been appointed by a
8 court of competent jurisdiction to act in lieu of or on behalf of
9 the self-insurer;

10 20. "Impairment" means a loss of, or loss of the function of, a
11 body part, organ or system;

12 ~~24. "Incapacity" means inadequate strength or ability to~~
13 ~~perform a work-related task;~~

14 ~~25.~~ 21. "Insurance Commissioner" means the ~~Insurance~~
15 Commissioner of the ~~State of Oklahoma~~ Insurance Department;

16 ~~26.~~ 22. "Insurance Department" means the Insurance Department
17 of the State of Oklahoma;

18 ~~27. "Major cause" means more than fifty percent (50%) of the~~
19 ~~resulting injury, disease or illness. A finding of major cause~~
20 ~~shall be established by a preponderance of the evidence. A finding~~
21 ~~that the workplace was not a major cause of the injury, disease or~~
22 ~~illness shall not adversely affect the exclusive remedy provisions~~
23 ~~of this act and shall not create a separate cause of action outside~~
24 ~~this act;~~

1 ~~28.~~ 23. "Maximum medical improvement" means that no further
2 material improvement would reasonably be expected from medical
3 treatment or the passage of time;

4 ~~29.~~ 24. "Medical services" means those services specified in
5 Section 50 of this ~~act~~ title;

6 ~~30.~~ 25. "Misconduct" shall include the following:

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

21 ~~31.~~

22 26. a. (1) "Objective findings" ~~are these~~ means findings
23 based on objective medical evidence which cannot
24 come under the voluntary control of the patient.

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

6 (b) For the purpose of making permanent
7 disability ratings ~~to the spine~~, physicians
8 shall use criteria established by the ~~most~~
9 ~~current edition~~ Sixth Edition of the
10 American Medical Association "Guides to the
11 Evaluation of Permanent Impairment".

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

20 (b) Any difference in the baseline hearing
21 levels shall be confirmed by subsequent
22 testing; provided, however, such test shall
23 be given within four (4) weeks of the
24 initial baseline hearing level test but not

1 before five (5) days after being adjusted
2 for presbycusis.

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

6 ~~32.~~ 27. "Occupational disease" means a disease arising out of
7 and in the course and scope of employment that causes damage or harm
8 to the physical structure of the body. The term includes a disease
9 or infection that naturally results from the work-related disease.
10 The term does not include an ordinary disease of life to which the
11 general public is exposed outside of employment, unless that disease
12 is an incident to a compensable injury or occupational disease;

13 28. "Official Disability Guidelines" or "ODG" means the current
14 edition of the Official Disability Guidelines and the ODG Treatment
15 in Workers' Comp Compensation as published by the Work Loss Data
16 Institute;

17 ~~33.~~ 29. "Permanent disability" means the extent, expressed as a
18 percentage, of the permanent loss of a portion of the total
19 physiological capabilities of the human body as established by
20 competent medical evidence and caused by a compensable injury based
21 on the current edition Sixth Edition of the American Medical
22 Association guides to the evaluation of impairment, if the
23 impairment is contained therein;

1 ~~34. "Permanent partial disability" means a permanent disability~~
2 ~~or loss of use after maximum medical improvement has been reached~~
3 ~~which prevents the injured employee, who has been released to return~~
4 ~~to work by the treating physician, from returning to his or her pre-~~
5 ~~injury or equivalent job. All evaluations of permanent partial~~
6 ~~disability must be supported by objective findings;~~

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

14 ~~36.~~ 30. "Preexisting condition" means any illness, injury,
15 disease, or other physical or mental condition, whether or not work-
16 related, for which medical advice, diagnosis, care or treatment was
17 recommended or received preceding the date of injury, or is
18 determined by objective findings to have existed before the date of
19 injury;

20 ~~37. "Pre-injury or equivalent job" means the job that the~~
21 ~~claimant was working for the employer at the time the injury~~
22 ~~occurred or any other employment offered by the claimant's employer~~
23 ~~that pays at least one hundred percent (100%) of the employee's~~
24 ~~average weekly wage;~~

1 ~~38.~~ 31. "Private self-insurer" means a private employer that
2 has been authorized to self-insure its workers' compensation
3 obligations pursuant to ~~this act~~ the Administrative Workers'
4 Compensation Act, but does not include group self-insurance
5 associations authorized by ~~this act~~ the Administrative Workers'
6 Compensation Act, or any public employer that self-insures pursuant
7 to ~~this act~~ the Administrative Workers' Compensation Act;

8 ~~39.~~ 32. "Prosthetic" means an artificial device used to replace
9 a part or joint of the body that is lost or injured in an accident
10 or illness covered by ~~this act~~ the Administrative Workers'
11 Compensation Act;

12 ~~40.~~ ~~"Scheduled member" or "member" means hands, fingers, arms,~~
13 ~~legs, feet, toes, and eyes. In addition, for purposes of the~~
14 ~~Multiple Injury Trust Fund only, "scheduled member" means hearing~~
15 ~~impairment;~~

16 ~~41.~~ ~~"Scientifically based" involves the application of~~
17 ~~rigorous, systematic, and objective procedures to obtain reliable~~
18 ~~and valid knowledge relevant to medical testing, diagnoses and~~
19 ~~treatment; is adequate to justify the general conclusions drawn; and~~
20 ~~has been accepted by a peer-review journal or approved by a panel of~~
21 ~~independent experts through a comparably rigorous, objective, and~~
22 ~~scientific review;~~

23 ~~42.~~ 33. "State average weekly wage" means the state average
24 weekly wage determined by the Oklahoma Employment Security

Commission in the preceding calendar year. If such determination is not available, the Commission shall determine the wage annually after reasonable investigation;

~~43.~~ 34. "Subcontractor" means a person, firm, corporation or other legal entity hired by the general or prime contractor to perform a specific task for the completion of a work-related activity;

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

~~45.~~ 35. "Surviving spouse" means the employee's spouse by reason of a legal marriage recognized by the State of Oklahoma or under the requirements of a common law marriage in this state, as determined by the Workers' Compensation Commission;

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

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

~~48.~~ 36. "Total loss of use" means a one-hundred-percent permanent partial disability rating to the specific body part; and

37. "Wages" means money compensation received for employment at the time of the accident, including the reasonable value of board, rent, housing, lodging, or similar advantage received from the

1 employer and includes the amount of tips required to be reported by
2 the employer under Section 6053 of the Internal Revenue Code and the
3 regulations promulgated pursuant thereto or the amount of actual
4 tips reported, whichever amount is greater.

5 SECTION 2. AMENDATORY Section 3, Chapter 208, O.S.L.
6 2013 (85A O.S. Supp. 2017, Section 3), is amended to read as
7 follows:

8 Section 3. A. Every employer and every employee, unless
9 otherwise specifically provided in ~~this act~~ the Administrative
10 Workers' Compensation Act, shall be subject and bound to the
11 provisions of the Administrative Workers' Compensation Act.
12 However, nothing in ~~this act~~ the Administrative Workers'
13 Compensation Act shall be construed to conflict with any valid Act
14 of Congress governing the liability of employers for injuries
15 received by their employees.

16 B. ~~This act~~ The Administrative Workers' Compensation Act shall
17 apply only to claims for injuries and death based on accidents which
18 occur on or after ~~the effective date of this act~~ February 1, 2014.

19 C. The Workers' Compensation Code in effect before ~~the~~
20 ~~effective date of this act~~ February 1, 2014, shall govern all rights
21 in respect to claims for injuries and death based on accidents
22 occurring before ~~the effective date of this act~~ February 1, 2014.

1 D. If an employee files a workers' compensation claim or
2 receives benefits in another jurisdiction, the employee shall not be
3 eligible to receive benefits under this act for the same injury.

4 SECTION 3. AMENDATORY Section 7, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2017, Section 7), is amended to read as
6 follows:

7 Section 7. A. An employer may not discriminate or retaliate
8 against an employee when the employee has in good faith:

9 1. Filed a claim under ~~this act~~ the Administrative Workers'
10 Compensation Act;

11 2. Retained a lawyer for representation regarding a claim under
12 ~~this act~~ the Administrative Workers' Compensation Act;

13 3. Instituted or caused to be instituted any proceeding under
14 the provisions of ~~this act~~ the Administrative Workers' Compensation
15 Act; or

16 4. Testified or is about to testify in any proceeding under the
17 provisions of ~~this act~~ the Administrative Workers' Compensation Act.

18 B. ~~The Commission shall have exclusive jurisdiction to hear and~~
19 ~~decide claims based on subsection A of this section.~~

20 C. ~~If the Commission determines that the defendant violated~~
21 ~~subsection A of this section, the Commission may award the employee~~
22 ~~back pay up to a maximum of One Hundred Thousand Dollars~~
23 ~~(\$100,000.00)~~ If a district court of this state determines that an
24 employer violated a provision of this section, such employer shall

1 be liable for reasonable compensatory damages suffered by an
2 employee as a result of the violation. The employee shall have the
3 burden of proof to show such violation by a preponderance of the
4 evidence. Interim earnings or amounts earnable with reasonable
5 diligence by the person discriminated against shall reduce the ~~back~~
6 ~~pay~~ compensatory damages otherwise allowable. Exemplary or punitive
7 damage awards made pursuant to this section shall not exceed One
8 Hundred Thousand Dollars (\$100,000.00).

9 ~~D.~~ C. The prevailing party shall be entitled to recover costs
10 and a reasonable attorney fee.

11 ~~E.~~ D. No employer may discharge an employee during a period of
12 temporary total disability for the sole reason of being absent from
13 work or for the purpose of avoiding payment of temporary total
14 disability benefits to the injured employee.

15 ~~F.~~ E. Notwithstanding any other provision of this section, an
16 employer shall not be required to rehire or retain an employee who,
17 after temporary total disability has been exhausted, is determined
18 by a physician to be physically unable to perform his or her
19 assigned duties, or whose position is no longer available.

20 ~~G.~~ F. This section shall not be construed as establishing an
21 exception to the employment at will doctrine.

22 ~~H.~~ G. The remedies provided for in this section shall be
23 exclusive with respect to any claim arising out of the conduct
24 described in subsection A of this section.

SECTION 4. AMENDATORY Section 14, Chapter 208, O.S.L.

2013 (85A O.S. Supp. 2017, Section 14), is amended to read as follows:

Section 14. ~~A. A cardiovascular, coronary, pulmonary, respiratory, or cerebrovascular accident or myocardial infarction causing injury, illness, or death is a compensable injury only if, in relation to other factors contributing to the physical harm, the course and scope of employment was the major cause.~~

~~B. 1. An injury or disease included in subsection A of this section shall not be deemed to be a compensable injury unless it is shown that the exertion of the work necessary to precipitate the disability or death was extraordinary and unusual in comparison to the employee's usual work in the course of the employee's regular employment, or that some unusual and unpredicted incident occurred which is found to have been the major cause of the physical harm.~~

~~2. Physical or mental stress shall not be considered in determining whether the employee or claimant has met his or her burden of proof:~~

1. It occurred at a definite time and place;

2. It was caused by a specific event occurring in the course and scope of employment;

3. The preponderance of the evidence indicates that the employee's work was the main contributing factor, rather than the natural progression of a preexisting condition; and

1 4. It was not triggered by physical or mental stress.

2 SECTION 5. AMENDATORY Section 16, Chapter 208, O.S.L.
3 2013 (85A O.S. Supp. 2017, Section 16), is amended to read as
4 follows:

5 Section 16. A. The Official Disability Guidelines ~~—Treatment~~
6 ~~in Workers Compensation (ODG), published by the Work Loss Data~~
7 ~~Institute, is to~~ shall be ~~recognized as~~ the primary standard of
8 reference, at the time of treatment, in determining the frequency
9 and extent of services presumed to be medically necessary and
10 appropriate for compensable injuries under ~~this act~~ the
11 Administrative Workers' Compensation Act, or in resolving such
12 matters in the event a dispute arises. ~~The medical treatment~~
13 ~~guidelines are not requirements, nor are they mandates or standards;~~
14 ~~they provide advice by identifying the care most likely to benefit~~
15 ~~injured workers. The guidelines shall be evidence-based,~~
16 ~~scientifically valid, outcome-focused, and designed to reduce~~
17 ~~excessive or inappropriate medical care while safeguarding necessary~~
18 ~~medical care.~~

19 B. Physicians providing care to an employee shall prescribe for
20 the employee any necessary prescription drugs and over-the-counter
21 alternatives to prescription medicine as clinically appropriate and
22 as recommended under the Official Disability Guidelines.
23 Prescriptions and nonprescription drugs that are not preferred,
24 exceed or are not addressed by ~~ODG~~ the Official Disability

1 Guidelines require preauthorization and the preauthorization request
2 shall include the prescribing doctor's drug regimen plan of care and
3 the anticipated dosage or range of dosages.

4 SECTION 6. AMENDATORY Section 17, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2017, Section 17), is amended to read as
6 follows:

7 Section 17. A. There is hereby created a Physician Advisory
8 Committee comprised of nine (9) members to be appointed as follows:

9 1. The Governor shall appoint three members, one of whom shall
10 be licensed in this state as a doctor of medicine and surgery, one
11 of whom shall be engaged in the practice of family medicine in a
12 rural community of the state, and one of whom shall be an
13 osteopathic physician;

14 2. The President Pro Tempore of the Senate shall appoint three
15 members, one of whom shall be licensed in this state as a doctor of
16 medicine and orthopedic surgery, one of whom shall be licensed in
17 this state either as a doctor of medicine or a doctor of osteopathy
18 and a neurosurgeon, and one of whom shall be licensed in this state
19 as a podiatric physician; and

20 3. The Speaker of the House of Representatives shall appoint
21 three members, one of whom shall be licensed in this state as an
22 osteopathic physician, one of whom shall be licensed in this state
23 either as a doctor of medicine or a doctor of osteopathy and shall
24

1 be engaged in the practice of occupational medicine, and one of whom
2 shall be licensed in this state as a chiropractic physician.

3 Any member serving on the ~~effective date of this section~~
4 February 1, 2014, shall serve the remainder of his or her term.

5 Thereafter, each position will be filled by the appointing official
6 for a term of three (3) years. Members shall be subject to
7 reappointment, with any new appointee to serve out the remainder of
8 the unexpired term of the Committee member so replaced.

9 B. The Committee shall:

10 1. Assist and advise the Workers' Compensation Commission
11 regarding utilization review as it relates to the medical practice
12 and treatment of work-related injuries. Such utilization review
13 shall include a review of reasonable and necessary medical
14 treatment; abusive practices; needless treatments, testing, or
15 procedures; or a pattern of billing in excess of or in violation of
16 the Schedule of Medical Fees. The Physician Advisory Committee
17 shall review and make findings and recommendations to the Commission
18 with respect to charges of inappropriate or unnecessary treatment or
19 procedures, abusive practices, or excessive billing disclosed
20 through utilization review;

21 2. Assist the Commission in reviewing medical practices of
22 health care providers, including evaluations of permanent disability
23 provided by health care providers. The Committee shall review and
24 make findings and recommendations to the Commission with respect to

1 charges of abusive practices by health care providers providing
2 medical services or evaluations of permanent partial disability
3 through the workers' compensation system;

4 3. After public hearing, review and make recommendations for
5 acceptable deviations from the Sixth Edition of the American Medical
6 Association's "Guides to the Evaluation of Permanent Impairment";

7 4. After public hearing, adopt Physician Advisory Committee
8 Guidelines (PACG) and protocols for only medical treatment not
9 addressed by the latest edition of the Official Disability
10 Guidelines;

11 5. After public hearing, adopt Physician Advisory Committee
12 Guidelines for the prescription and dispensing of any controlled
13 substance included in Schedule II of the Uniform Controlled
14 Dangerous Substances Act if not addressed by the current edition of
15 the Official Disability Guidelines;

16 6. Review utilization on cases or of providers when requested
17 by any employer, injured employee or insurer. The Committee may
18 issue a public or private censure to any provider for utilization
19 which is excessive or inadequate, or recommend the Commission order
20 treatment within the treatment guidelines;

21 7. Provide general recommendations to the Commission on the
22 issues of injury causation and apportionment;

23 8. Conduct educational seminars for the Commission, employers,
24 employees, and other interested parties;

1 9. Assist the Commission in accessing medical information from
2 scientific literature; ~~and~~

3 10. Report its progress annually to the Governor, the President
4 Pro Tempore of the Senate, and the Speaker of the House of
5 Representatives; and

6 11. Provide an annual report, available to the public,
7 summarizing its activities and recommendations to the Commission for
8 the preceding year.

9 C. The Commission shall recognize the latest edition of the
10 Official Disability Guidelines as the primary standard of reference,
11 at the time of treatment, in determining the frequency and extent of
12 services presumed to be medically necessary and appropriate for
13 compensable injuries ~~under this act~~ the Administrative Workers'
14 Compensation Act, or in resolving such matters in the event a
15 dispute arises.

16 D. Members of the Physician Advisory Committee shall receive no
17 compensation for serving on the Committee but shall be reimbursed by
18 the Commission for their necessary travel expenses incurred in the
19 performance of their duties in accordance with the State Travel
20 Reimbursement Act.

21 E. Meetings of the Physician Advisory Committee shall be called
22 by the Commission but held at least quarterly. The presence of a
23 majority of the members shall constitute a quorum. No action shall
24

1 be taken by the Physician Advisory Committee without the affirmative
2 vote of at least a majority of the members.

3 F. The Commission shall provide office supplies and personnel
4 of the Commission to assist the Committee in the performance of its
5 duties.

6 G. Upon written request, the Insurance Commissioner, CompSource
7 Oklahoma, and every approved self-insured employer in Oklahoma shall
8 provide the Committee with data necessary to the performance of its
9 duties.

10 H. Any health care provider acting in good faith and within the
11 scope of the provider's duties as a member of the Physician Advisory
12 Committee shall be immune from civil liability for making any report
13 or other information available to the judges of the Commission or to
14 the Commission or for assisting in the origination, investigation,
15 or preparation of the report or other information so provided.

16 SECTION 7. AMENDATORY Section 18, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2017, Section 18), is amended to read as
18 follows:

19 Section 18. A. No hospital, physician, or other health care
20 provider shall bill or attempt to collect any fee or any portion of
21 a fee for services rendered to an employee due to a work-related
22 injury or report to any credit-reporting agency any failure of the
23 employee to make the payment, when a claim for compensation has been
24 filed under ~~this act~~ the Administrative Workers' Compensation Act

1 and the hospital, physician, or health care provider has received
2 actual notice given in writing by the employee or the employee's
3 representative. Actual notice shall be deemed received by the
4 hospital, physician, or health care provider five (5) days after
5 mailing by certified mail or sending by facsimile, electronic mail
6 or other electronic means with confirmation of receipt by the
7 employee or his or her representative to the hospital, physician, or
8 health care provider.

9 B. The notice shall include:

- 10 1. The name of the employer;
- 11 2. The name of the insurer, if known;
- 12 3. The name of the employee receiving the services;
- 13 4. The general nature of the injury, if known; and
- 14 5. Where a claim has been filed, the claim number, if known.

15 C. When an injury or bill is found to be noncompensable under
16 ~~this act~~ the Administrative Workers' Compensation Act, the hospital,
17 physician, or other health care provider shall be entitled to pursue
18 the employee for any unpaid portion of the fee or other charges for
19 authorized services provided to the employee. Any applicable
20 statute of limitations for an action for the fees or other charges
21 shall be tolled from the time notice is given to the hospital,
22 physician, or other health care provider until a determination of
23 noncompensability in regard to the injury which is the basis of the
24 services is made, or if there is an appeal, until a final

1 determination of noncompensability is rendered and all appeal
2 deadlines have passed.

3 D. This section shall not ~~avoid~~ void, modify, or amend any
4 other section or subsection of ~~this act~~ the Administrative Workers'
5 Compensation Act.

6 E. An order by the Commission under this section shall stay all
7 proceedings for collection.

8 SECTION 8. AMENDATORY Section 19, Chapter 208, O.S.L.
9 2013, as amended by Section 4, House Joint Resolution No. 1096,
10 O.S.L. 2014 (85A O.S. Supp. 2017, Section 19), is amended to read as
11 follows:

12 Section 19. A. There is hereby created the Oklahoma Workers'
13 Compensation Commission, an executive agency of the State of
14 Oklahoma, which shall have the exclusive responsibility and duty to
15 carry out the provisions of ~~this act~~ the Administrative Workers'
16 Compensation Act, except as otherwise provided.

17 B. The Commission shall consist of three (3) full-time
18 commissioners, ~~each~~ two of whom ~~must~~ shall have been involved in the
19 workers' compensation field for at least three (3) years, appointed
20 by the Governor: ~~one of whom is chosen from a slate of three~~
21 ~~selected by the Speaker of the House of Representatives~~, with all
22 three confirmed by the Senate. The term of each appointee shall be
23 six (6) years to administer the provisions of ~~this act~~ the
24 Administrative Workers' Compensation Act. ~~The Governor may request~~

1 ~~a subsequent slate of nominees from the Speaker of the House of~~
2 ~~Representatives if a suitable nominee is not found.~~ Any or all of
3 the commissioners may be reappointed for additional six-year terms
4 upon reconfirmation by the Senate. However, the initial
5 commissioners shall serve staggered terms of two (2), four (4), and
6 six (6) years, respectively, as determined by the Governor. If the
7 Legislature is not in session at the time of appointment, the
8 appointment shall be subject to confirmation by the Senate upon
9 convening of the next regular session of the Legislature.
10 Membership on the Commission shall be a full-time position and no
11 commissioner shall have any other employment, unless authorized or
12 excused by law. Each commissioner shall receive a salary equal to
13 that paid to a district judge of this state; provided however, the
14 commissioners shall not receive any increase in salary as a result
15 of the provisions of Section 1 of ~~this resolution~~ House Joint
16 Resolution No. 1096 of the 2nd Session of the 54th Oklahoma
17 Legislature.

18 C. The Commission shall have the authority to adopt reasonable
19 rules within its respective areas of responsibility including the
20 rules of procedure for administrative hearings, after notice and
21 public hearing, for effecting the purposes of ~~this act~~ the
22 Administrative Workers' Compensation Act, in accordance with the
23 Oklahoma Administrative Procedures Act. All rules, upon adoption,
24 shall be published and be made available to the public and, if not

1 inconsistent with the law, shall be binding in the administration of
2 ~~this act~~ the Administrative Workers' Compensation Act.

3 D. The principal office of the Commission shall be situated in
4 the City of Oklahoma City in quarters assigned by the Office of
5 Management and Enterprise Services. The Commission shall maintain
6 and keep open, during reasonable business hours, the office in
7 Oklahoma City, for the transaction of business, at which office its
8 official records and papers shall be kept. The Commission or any
9 commissioner may hold hearings in any city of this state.

10 E. The Governor shall appoint one of the commissioners to be
11 chair of the Commission. In addition to other duties, the chair of
12 the Commission shall have the following powers and duties:

13 1. To organize, direct and develop the administrative work of
14 the administrative law judges, including but not limited to
15 docketing, clerical, technical and financial work and establishment
16 of hours of operation;

17 2. To employ administrative staff for the Commission, within
18 budgetary limitation; and

19 3. Such other duties and responsibilities authorized by law or
20 as the Commission may prescribe.

21 F. All appeals or disputes arising from actions of the
22 Commission shall be governed by provisions of ~~this act~~ the
23 Administrative Workers' Compensation Act and the Commission shall
24 not be subject to the provisions of the Oklahoma Administrative

1 Procedures Act, except as provided in ~~this act~~ the Administrative
2 Workers' Compensation Act.

3 G. ~~When any commissioner of the Commission is disqualified for~~
4 ~~any reason to hear and participate in the determination of any~~
5 ~~matter pending before the Commission, the Governor shall appoint a~~
6 ~~qualified person to hear and participate in the decision on the~~
7 ~~particular matter. The special commissioner so appointed shall have~~
8 ~~all authority and responsibility with respect to the particular~~
9 ~~matter before the Commission as if the person were a regular~~
10 ~~commissioner of the Commission but shall have no authority or~~
11 ~~responsibility with respect to any other matter before the~~
12 ~~Commission. A person appointed as a special commissioner of the~~
13 ~~Commission under the provisions of this subsection shall be entitled~~
14 ~~to receive a per diem equal to the annual salary of the~~
15 ~~commissioners prorated for the number of days he or she serves in~~
16 ~~the capacity of a special commissioner of the Commission.~~
17 ~~Furthermore, when a vacancy on the Commission occurs or is certain~~
18 ~~to occur, the position shall be filled pursuant to the provisions of~~
19 ~~this section~~ The power of the Commission to decide issues of fact
20 does not include the power to determine the constitutionality of the
21 provisions of this act or the constitutionality of application of
22 the provisions of this act.

SECTION 9. AMENDATORY Section 20, Chapter 208, O.S.L.

2013 (85A O.S. Supp. 2017, Section 20), is amended to read as follows:

Section 20. A. In addition to its other duties and powers, the Commission is given and granted full power and authority:

1. To appoint administrative law judges to hear all claims for compensation, including claims based on injuries which occurred outside this state for which compensation is payable under ~~this act~~ the Administrative Workers' Compensation Act. An administrative law judge shall have been licensed to practice law in this state for a period of not less than three (3) years ~~and shall have not less than three (3) years of workers' compensation experience prior to~~ appointment;

2. To review the performance of an administrative law judge; provided, however, the Commissioners shall not discuss any case with an administrative law judge until all remedies have been exhausted with the Commission;

3. To remand any case to an administrative law judge for the purpose of taking additional evidence;

~~3.~~ 4. To assess penalties;

~~4.~~ 5. To prescribe rules governing the representation of employees, employers, and carriers in respect to claims before the Commission;

1 ~~5.~~ 6. To make available all records in connection with all
2 cases of personal injury to the Oklahoma Department of Labor. The
3 Commissioner of Labor may propose rules for the prevention of
4 injuries and transmit the rules to the Commission. The Commission
5 may recommend proposed rules for prevention of injuries to the
6 Commissioner of Labor; and

7 ~~6.~~ 7. To have and exercise all other powers and duties
8 conferred or imposed by ~~this act~~ the Administrative Workers'
9 Compensation Act.

10 B. 1. In addition to the other powers and duties granted to
11 the Commission in this section and otherwise provided by law, the
12 Commission is authorized to establish and impose reasonable
13 administrative fees to recover the cost of preparation of various
14 informative materials distributed by the Commission.

15 2. The administrative fees shall be established by regulation
16 of the Commission.

17 3. Funds derived from administrative fees shall be deposited
18 into the Workers' Compensation Fund to be used to defray expenses
19 incurred in preparation and distribution of materials.

20 SECTION 10. AMENDATORY Section 21, Chapter 208, O.S.L.
21 2013 (85A O.S. Supp. 2017, Section 21), is amended to read as
22 follows:
23
24

1 Section 21. A. Commissioners shall be considered officers and
2 shall take the oath prescribed by the Oklahoma Constitution and the
3 laws of this state.

4 B. 1. A majority of the Workers' Compensation Commission shall
5 constitute a quorum for the transaction of business, and vacancies
6 shall not impair the right of the remaining commissioners to
7 exercise all the powers of the full Commission, so long as a
8 majority remains.

9 2. Any investigation, inquiry, or hearing which the Commission
10 is authorized to hold or undertake may be held or undertaken by or
11 before any one commissioner of the Commission, or appointee acting
12 for him or her, under authorization of the Commission.

13 C. The Commission shall have a seal for authentication of its
14 judgments, awards, and proceedings, on which shall be inscribed the
15 words: "Workers' Compensation Commission, State of Oklahoma".

16 D. Except with respect to the Commission's authority to hear
17 appeals of decisions from administrative law judges other than as
18 provided pursuant to subsection B of Section 78 of this title, any
19 reference in ~~this act~~ the Administrative Workers' Compensation Act
20 to the Commission's ability to hear and decide the rights of
21 interested parties under ~~this act~~ the Administrative Workers'
22 Compensation Act shall not prevent it from delegating that
23 responsibility to an administrative law judge.
24

1 SECTION 11. AMENDATORY Section 22, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2017, Section 22), is amended to read as
3 follows:

4 Section 22. A. 1. For the purpose of administering the
5 provisions of ~~this act~~ the Administrative Workers' Compensation Act,
6 the Workers' Compensation Commission is authorized:

7 a. to make rules necessary for the administration and
8 operation of the Commission,

9 b. to appoint and fix the compensation of temporary
10 technical assistants, medical and legal advisers,
11 clerical assistants and other officers and employees,
12 and

13 c. to make such expenditures, including those for
14 personal service, rent, books, periodicals, office
15 equipment, and supplies, and for printing and binding
16 as may be necessary.

17 2. ~~a. Before the adoption, prescription, amendment,~~
18 ~~modification, or repeal of any rule, regulation, or~~
19 ~~form, the Commission shall give at least thirty (30)~~
20 ~~days' notice of its intended action.~~

21 ~~b. The notice shall include a statement of the terms or~~
22 ~~substance of the intended action or description of the~~
23 ~~subjects and issues involved, and the time, place, and~~
24

1 ~~manner in which interested persons may present their~~
2 ~~views thereon.~~

3 e. ~~The notice shall be mailed to any person specified by~~
4 ~~law or who shall have requested advance notice of~~
5 ~~rule-making proceedings.~~

6 ~~3. The Commission shall afford all interested persons a~~
7 ~~reasonable opportunity to submit written data, views, or arguments,~~
8 ~~and, if the Commission in its discretion shall so direct, oral~~
9 ~~testimony or argument.~~

10 ~~4. Each rule, regulation, or form adopted by the Commission~~
11 ~~shall be effective twenty (20) days after adoption unless a later~~
12 ~~date is specified by law or in the rule itself.~~

13 ~~5. All expenditures of the Commission in the administration of~~
14 ~~this act shall be allowed and paid from the Workers' Compensation~~
15 ~~Fund on the presentation of itemized vouchers approved by the~~
16 ~~Commission~~ The Commission shall comply with the provisions of the
17 Administrative Procedures Act applicable to the filing and
18 publication requirements for rules.

19 B. 1. The Commission may appoint as many persons as may be
20 necessary to be administrative law judges and in addition may
21 appoint such examiners, investigators, medical examiners, clerks,
22 and other employees as it deems necessary to effectuate the
23 provisions of ~~this act~~ the Administrative Workers' Compensation Act.
24

1 2. Employees appointed under this subsection shall receive an
2 annual salary to be fixed by the Commission.

3 C. Additionally, the Commission shall have the following powers
4 and duties:

5 1. To hear and approve compromise settlements;

6 2. To review and approve own-risk applications and group self-
7 insurance association applications;

8 3. To monitor own-risk, self-insurer and group self-insurance
9 programs, in accordance with the rules of the Commission;

10 ~~4. To contract with an appropriate state governmental entity,~~
11 ~~insurance carrier or approved service organization to process,~~
12 ~~investigate and pay valid claims against an impaired self-insurer~~
13 ~~which fails, due to insolvency or otherwise, to pay its workers'~~
14 ~~compensation obligations, charges for which shall be paid from the~~
15 ~~proceeds of security posted with the Commission as provided in~~
16 ~~Section 38 of this act;~~

17 ~~5.~~ To establish a toll-free telephone number in order to
18 provide information and answer questions about the Commission;

19 ~~6.~~ 5. To hear and determine claims concerning disputed medical
20 bills;

21 ~~7.~~ 6. To promulgate necessary rules for administering ~~this act~~
22 the Administrative Workers' Compensation Act and develop uniform
23 forms and procedures for use by administrative law judges. Such
24 rules shall be reviewable by the Legislature;

1 ~~8.~~ 7. To invest funds on behalf of the Multiple Injury Trust
2 Fund;

3 ~~9.~~ 8. To appoint a Commission Mediator to conduct informal
4 sessions to attempt to resolve assigned disputes; and

5 ~~10.~~ 9. Such other duties and responsibilities authorized by
6 law.

7 D. It shall be the duty of an administrative law judge, under
8 the rules adopted by the Commission, to hear and determine claims
9 for compensation and to conduct hearings and investigations and to
10 make such judgments, decisions, and determinations as may be
11 required by any rule or judgment of the Commission.

12 SECTION 12. AMENDATORY Section 31, Chapter 208, O.S.L.
13 2013, as amended by Section 3, Chapter 344, O.S.L. 2015 (85A O.S.
14 Supp. 2017, Section 31), is amended to read as follows:

15 Section 31. A. The Multiple Injury Trust Fund shall be derived
16 from the following additional sources:

17 1. As soon as practicable after January 1 of each year, the
18 ~~commissioners of the~~ Workers' Compensation Commission shall
19 establish an assessment rate applicable to each mutual or
20 interinsurance association, stock company, CompSource Oklahoma, or
21 other insurance carrier writing workers' compensation insurance in
22 this state, each employer carrying its own risk, and each group
23 self-insurance association, for amounts for purposes of computing
24 the assessment authorized by this section necessary to pay the

1 annual obligations of the Multiple Injury Trust Fund determined on
2 or before December 31 of each year by the MITF Director, provided
3 for in subsection P of this section, to be outstanding for the next
4 calendar year, and to pay the allocations provided for in subsection
5 I of this section. The rate shall be equal for all parties required
6 to pay the assessment. If CompSource begins operating as a mutual
7 insurance company, the Board of Directors for CompSource Mutual
8 Insurance Company shall have the power to disapprove the rate
9 established by the MITF Director until the Multiple Injury Trust
10 Fund repays in full the amount due on any loan from CompSource
11 Mutual Insurance Company or its predecessor CompSource Oklahoma. If
12 the MITF Director and CompSource have not agreed on the assessment
13 rate within thirty (30) days, the Commission shall set an assessment
14 rate sufficient to cover all foreseeable obligations of the Multiple
15 Injury Trust Fund, including interest and principal owed by the Fund
16 on any loan. The rate in effect on the ~~effective date of this act~~
17 February 1, 2014, shall remain effective through June 30, 2014;

18 2. The Oklahoma Tax Commission shall assess and collect from
19 any uninsured employer a temporary assessment at the rate of five
20 percent (5%) of the total compensation for permanent total
21 disability awards, permanent partial disability awards, and death
22 benefits paid out during each quarter of the calendar year by the
23 employers;

24

1 3. The assessments shall be paid to the Tax Commission.

2 Insurance carriers, self-insurers, group self-insurance associations
3 and CompSource Oklahoma shall pay the assessment in four equal
4 installments not later than the fifteenth day of the month following
5 the close of each quarter of the calendar year of the assessment.

6 Assessments shall be determined based upon gross direct written
7 premiums, normal premiums or actual paid losses of the paying party,
8 as applicable, during the calendar quarter for which the assessment
9 is due. Uninsured employers shall pay the assessment not later than
10 the fifteenth day of the month following the close of each quarter
11 of the calendar year of the assessment. For purposes of this
12 section, "uninsured employer" means an employer required by law to
13 carry workers' compensation insurance but who has failed or
14 neglected to do so.

15 a. The assessment authorized in this section shall be
16 determined using a rate equal to the proportion that
17 the sum of the outstanding obligations of the Multiple
18 Injury Trust Fund as determined pursuant to paragraph
19 1 of this subsection and the allocations provided for
20 in subsection I of this section bear to the combined
21 gross direct written premiums of all such insurers;
22 all actual paid losses of all individual self-
23 insureds; and the normal premium of all group self-
24

1 insurance associations, for the year period from
2 January 1 to December 31 preceding the assessment.

3 b. For purposes of this subsection:

4 (1) "actual paid losses" means all medical and
5 indemnity payments, including temporary
6 disability, permanent disability, and death
7 benefits, and excluding loss adjustment expenses
8 and reserves, and

9 (2) "normal premium" means a standard premium less
10 any discounts;

11 4. By April 15 of each year, the Insurance Commissioner, the
12 MITF Director and each individual and group self-insured shall
13 provide the Commission with such information as the Commission may
14 determine is necessary to effectuate the purposes of this section;

15 5. Each mutual or interinsurance association, stock company,
16 CompSource Oklahoma, or other insurance carrier writing workers'
17 compensation insurance in this state, and each employer carrying its
18 own risk, including each group self-insurance association, shall be
19 notified by the Commission in writing of the rate for the assessment
20 on or before May 1 of each year in which a rate is determined. The
21 rate determined by the Commission shall be in effect for four
22 calendar quarters beginning July 1 following determination by the
23 Commission; and
24

1 6. a. No mutual or interinsurance association, stock
2 company, CompSource Oklahoma, or other insurance
3 carrier writing workers' compensation insurance in
4 this state may be assessed in any year an amount
5 greater than six percent (6%) of the gross direct
6 written premiums of that insurer.

7 b. No employer carrying its own risk may be assessed in
8 any year an amount greater than six percent (6%) of
9 the total actual paid losses of that individual self-
10 insured.

11 c. No group self-insurance association may be assessed in
12 any year an amount greater than six percent (6%) of
13 the normal premium of that group self-insurance
14 association.

15 d. If the maximum assessment does not provide in any one
16 year an amount sufficient to make all necessary
17 payments for obligations of the Multiple Injury Trust
18 Fund and for the allocations provided for in
19 subsection I of this section, the unpaid portion shall
20 be paid as soon thereafter as funds become available.

21 B. The Multiple Injury Trust Fund is hereby authorized to
22 receive and expend monies appropriated by the Legislature.

23 C. It shall be the duty of the Tax Commission to collect the
24 payments provided for in ~~this act~~ the Administrative Workers'

1 Compensation Act. The Tax Commission is hereby authorized to bring
2 an action for the recovery of any delinquent or unpaid payments
3 required in this section.

4 D. Any mutual or interinsurance association, stock company, or
5 other insurance company, which is subject to regulation by the
6 Insurance Commissioner, or CompSource Oklahoma, failing to make
7 payments required in ~~this act~~ the Administrative Workers'
8 Compensation Act promptly and correctly, and failing to report
9 payment of the same to the Insurance Commission within ten (10) days
10 of payment shall be subject to administrative penalties as allowed
11 by law, including but not limited to a fine in the amount of Five
12 Hundred Dollars (\$500.00) or an amount equal to one percent (1%) of
13 the unpaid amount, whichever is greater, to be paid to the Insurance
14 Commissioner.

15 E. Any employer carrying its own risk, or group self-insurance
16 association failing to make payments required in ~~this act~~ the
17 Administrative Workers' Compensation Act promptly and correctly, and
18 failing to report payment of the same to the Commission within ten
19 (10) days of payment shall be subject to administrative penalties as
20 allowed by law, including but not limited to a fine in the amount of
21 Five Hundred Dollars (\$500.00) or an amount equal to one percent
22 (1%) of the unpaid amount, whichever is greater, to be paid to the
23 Commission.

24

1 F. ~~1.~~ On or before the first day of April of each year, the
2 State Treasurer shall advise the Commission, the MITF Director and
3 the Tax Commission of the amount of money held as of March 1 of that
4 year by the State Treasurer to the credit of the Multiple Injury
5 Trust Fund. On or before the first day of November of each year,
6 the State Treasurer shall advise the Commission, the MITF Director
7 and the Tax Commission of the amount of money held as of October 1
8 of that year by the State Treasurer to the credit of the Multiple
9 Injury Trust Fund.

10 ~~2. Until such time as the Multiple Injury Trust Fund fully~~
11 ~~satisfies any loan obligation payable to CompSource Mutual Insurance~~
12 ~~Company or its predecessor CompSource Oklahoma, the State Treasurer~~
13 ~~shall:~~

14 a. ~~advise the Chief Executive Officer of CompSource on or~~
15 ~~before the first day of April of the money held as of~~
16 ~~March 1 of that year by the State Treasurer to the~~
17 ~~credit of the Multiple Injury Trust Fund, and~~

18 b. ~~advise the Chief Executive Officer of CompSource on or~~
19 ~~before the first day of November of the money held as~~
20 ~~of October 1 of that year by the State Treasurer to~~
21 ~~the credit of the Multiple Injury Trust Fund.~~

22 G. Eighty percent (80%) of all sums held by the State Treasurer
23 to the credit of the Multiple Injury Trust Fund may by order of the
24 MITF Director be invested in or loaned on the pledge of any of the

1 securities in which a state bank may invest the monies deposited
2 therein by the State Treasurer; or may be deposited in state or
3 national banks or trust companies upon insured time deposit bearing
4 interest at a rate no less than currently being paid upon insured
5 savings accounts in the institutions. As used in this section,
6 "insured" means insurance as provided by an agency of the federal
7 government. All such securities or evidence of indebtedness shall
8 be placed in the hands of the State Treasurer, who shall be the
9 custodian thereof, who shall collect the principal and interest when
10 due, and pay the same into the Multiple Injury Trust Fund. The
11 State Treasurer shall pay by vouchers drawn on the Multiple Injury
12 Trust Fund for the making of such investments, when signed by the
13 MITF Director, upon delivery of such securities or evidence of
14 indebtedness to the State Treasurer. The MITF Director may sell any
15 of such securities, the proceeds thereof to be paid over to the
16 State Treasurer for the Multiple Injury Trust Fund.

17 H. The refund provisions of Sections 227 through 229 of Title
18 68 of the Oklahoma Statutes shall be applicable to any payments made
19 to the Multiple Injury Trust Fund. Refunds shall be paid from and
20 out of the Multiple Injury Trust Fund.

21 I. The Tax Commission shall pay, monthly, to the State
22 Treasurer to the credit of the Multiple Injury Trust Fund all monies
23 collected pursuant to the provisions of this section. The State
24 Treasurer shall pay out of the Multiple Injury Trust Fund only upon

1 the order and direction of the Workers' Compensation Commission
2 acting under the provisions hereof.

3 J. The Commission shall promulgate rules as the Commission
4 deems necessary to effectuate the provisions of this section.

5 K. The Insurance Commissioner shall promulgate rules relating
6 to insurers as defined in Title 36 of the Oklahoma Statutes, as the
7 Insurance Commissioner deems necessary to effectuate the provisions
8 of this section.

9 L. The MITF Director shall have authority to fulfill all
10 payment obligations of the Multiple Injury Trust Fund.

11 M. The Multiple Injury Trust Fund may enter into an agreement
12 with any reinsurer licensed to sell reinsurance by the Insurance
13 Commissioner pursuant to a competitive process administered by the
14 Director of Central Purchasing in the Office of Management and
15 Enterprise Services.

16 N. Any dividend, rebate, or other distribution, payable by
17 CompSource Oklahoma or any other workers' compensation insurance
18 carrier, to a state agency policyholder shall be paid to the State
19 Treasurer, and shall be credited as follows:

20 1. In the event of failure of the Multiple Injury Trust Fund to
21 meet all lawful obligations, the monies shall be credited to the
22 Multiple Injury Trust Fund and shall be used by the Multiple Injury
23 Trust Fund to meet all lawful obligations of the Multiple Injury
24 Trust Fund; and

1 2. Otherwise, all future dividends made by CompSource Oklahoma
2 or any workers' compensation insurance carrier, on behalf of state
3 agencies, shall be deposited to the credit of the General Revenue
4 Fund of the State Treasury.

5 O. The Workers' Compensation Commission shall be charged with
6 the administration and protection of the Multiple Injury Trust Fund.

7 P. The person serving as the Administrator of the Multiple
8 Injury Trust Fund on the date of passage and approval of ~~this act~~
9 the Administrative Workers' Compensation Act shall serve as the
10 initial MITF Director, provided such person is serving as the
11 Administrator of the Multiple Injury Trust Fund on the ~~effective~~
12 ~~date of this act~~ February 1, 2014. The MITF Director shall be
13 appointed by and serve at the pleasure of the Governor.

14 Q. Any party interested shall have a right to bring a
15 proceeding in the Supreme Court to review an award of the Commission
16 affecting such Multiple Injury Trust Fund, in the same manner as is
17 provided by law with reference to other awards by the Commission.

18 R. The State Treasurer shall allocate to the Commission out of
19 the Multiple Injury Trust Fund sufficient funds for administration
20 expenses thereof in amounts to be fixed and approved by the
21 Administrator for the Multiple Injury Trust Fund, unless rejected by
22 the Commission.

1 SECTION 13. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 36.1 of Title 85A, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Any person who is not required to be covered under a
5 workers' compensation insurance policy or other plan for the payment
6 of workers' compensation may execute an Affidavit of Exempt Status
7 under the Administrative Workers' Compensation Act. The affidavit
8 shall be a form prescribed by the Workers' Compensation Commission
9 and will be available on the Commission's website.

10 B. Execution of the affidavit shall establish a rebuttable
11 presumption that the executor is not an employee for purposes of the
12 Administrative Workers' Compensation Act and therefore shall not be
13 eligible to seek workers' compensation benefits against any
14 contractor.

15 C. The execution of an affidavit shall not affect the rights or
16 coverage of any employee of the individual executing the affidavit.

17 D. The lack of an executed affidavit under this section shall
18 not prejudice any defense by an employer to a claim for workers'
19 compensation benefits.

20 E. 1. Knowingly providing false information on a notarized
21 Affidavit of Exempt Status under the Administrative Workers'
22 Compensation Act shall constitute a misdemeanor punishable by a fine
23 not to exceed One Thousand Dollars (\$1,000.00).
24

1 2. Affidavits shall conspicuously state on the front thereof in
2 at least ten-point, bold-faced print that it is a crime to falsify
3 information on the form.

4 3. The Commission shall immediately notify the Workers'
5 Compensation Fraud Unit in the Office of the Attorney General of any
6 violations or suspected violations of this section. The Commission
7 shall cooperate with the Fraud Unit in any investigation involving
8 affidavits executed pursuant to this section.

9 F. The Commission may assess a fee not to exceed Fifty Dollars
10 (\$50.00) for an Affidavit of Exempt Status Application. Fees
11 collected pursuant to this section shall be deposited in the State
12 Treasury to the credit of the Workers' Compensation Commission
13 Revolving Fund.

14 G. If an employer relies in good faith on proof of a valid
15 workers' compensation insurance policy issued to a contractor of any
16 tier or on proof of an Affidavit of Exempt Status under this
17 section, the employer shall not be liable for injuries of any
18 employees of the contractor.

19 SECTION 14. AMENDATORY Section 43, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2017, Section 43), is amended to read as
21 follows:

22 Section 43. A. ~~Liability Unaffected.~~

23 1. ~~a. The making of a claim for compensation against any~~
24 ~~employer or carrier for the injury or death of an~~

1 ~~employee shall not affect the right of the employee,~~
2 ~~or his or her dependents, to make a claim or maintain~~
3 ~~an action in court against any third party for the~~
4 ~~injury.~~

5 ~~b. The employer or the employer's carrier shall be~~
6 ~~entitled to reasonable notice and opportunity to join~~
7 ~~in the action.~~

8 ~~c. If the employer or employer's carrier join in the~~
9 ~~action against a third party for injury or death, they~~
10 ~~shall be entitled to a first lien on two-thirds (2/3)~~
11 ~~of the net proceeds recovered in the action that~~
12 ~~remain after the payment of the reasonable costs of~~
13 ~~collection, for the payment to them of the amount paid~~
14 ~~and to be paid by them as compensation to the injured~~
15 ~~employee or his or her dependents.~~

16 ~~2. The commencement of an action by an employee or his or her~~
17 ~~dependents against a third party for damages by reason of an injury~~
18 ~~to which this act is applicable, or the adjustment of any claim,~~
19 ~~shall not affect the rights of the injured employee or his or her~~
20 ~~dependents to recover compensation, but any amount recovered by the~~
21 ~~injured employee or his or her dependents from a third party shall~~
22 ~~be applied as follows:~~

23 ~~a. reasonable fees and costs of collection shall be~~
24 ~~deducted,~~

- 1 ~~b. the employer or carrier, as applicable, shall receive~~
2 ~~two-thirds (2/3) of the remainder of the recovery or~~
3 ~~the amount of the workers' compensation lien,~~
4 ~~whichever is less, and~~
5 ~~c. the remainder of the recovery shall go to the injured~~
6 ~~employee or his or her dependents~~

7 The acceptance of compensation benefits from or the making of a
8 claim for compensation against an employer or insurer for the
9 injury, illness or death of an employee shall not affect the right
10 of the employee or his or her dependents to sue any other party at
11 law for such injury, illness or death. The employer and the carrier
12 shall have an automatic first lien on the amount recovered by the
13 injured employee or his or her dependents or legal representative
14 from a third party, which shall be applied as follows:

15 1. Reasonable costs of collection as approved and allowed by
16 the court in which such action is pending, or by the Workers'
17 Compensation Commission in case of settlement without suit, shall be
18 deducted;

19 2. The employer and carrier shall receive the remainder of the
20 recovery or the amount of the workers' compensation lien, whichever
21 is less; and

22 3. Any excess shall belong to the injured employee or his or
23 her dependents.

24 B. Subrogation.

1 1. An employer or carrier liable for compensation under ~~this~~
2 ~~act~~ the Administrative Workers' Compensation Act for the injury or
3 death of an employee shall have the right to maintain an action in
4 tort against any third party responsible for the injury or death.
5 However, the employer or the carrier shall notify the claimant in
6 writing that the claimant has the right to hire a private attorney
7 to pursue any benefits to which the claimant is entitled in addition
8 to the subrogation interest against any third party responsible for
9 the injury or death.

10 2. After reasonable notice and opportunity to be represented in
11 the action has been given to the injured employee, the liability of
12 the third party to the compensation beneficiary shall be determined
13 in the action, as well as the third party's liability to the
14 employer and carrier.

15 3. If the employer recovers against the third party, by suit or
16 otherwise, the injured employee shall be entitled to any amount
17 recovered in excess of the amount that the employer and carrier have
18 paid or are liable for in compensation, after deducting reasonable
19 costs of collection.

20 4. An employer or carrier who is liable for compensation under
21 ~~this act~~ the Administrative Workers' Compensation Act on account of
22 injury or death of an employee shall be entitled to maintain a
23 third-party action against the employer's uninsured motorist
24 coverage or underinsured motorist coverage.

1 SECTION 15. AMENDATORY Section 45, Chapter 208, O.S.L.
2 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S.
3 Supp. 2017, Section 45), is amended to read as follows:

4 Section 45. A. Temporary Total Disability. 1. If the injured
5 employee is temporarily unable to perform his or her job or any
6 alternative work offered by the employer because of a disability, he
7 or she shall be entitled to receive compensation equal to seventy
8 percent (70%) of the injured employee's average weekly wage per
9 week, but not to exceed ~~seventy percent (70%)~~ of the state average
10 weekly wage, for up to one hundred four (104) weeks. Provided,
11 there shall be no payment for the first three (3) days of the
12 initial period of temporary total disability. If an administrative
13 law judge finds that a ~~consequential~~ subsequent injury has occurred
14 as a direct result of the injury or medical treatment to the part of
15 the body originally injured and that additional time is needed to
16 reach maximum medical improvement, temporary total disability may
17 continue for a period of not more than an additional fifty-two (52)
18 weeks. Such finding shall be based upon a showing of medical
19 necessity by clear and convincing evidence.

20 2. When the injured employee is released from active medical
21 treatment by the treating physician for all body parts found by the
22 Commission to be injured, or in the event that the employee, ~~without~~
23 ~~a valid excuse, misses three consecutive medical treatment~~
24 ~~appointments,~~ fails to comply with medical orders of the treating

1 physician, or otherwise abandons medical care, the employer shall be
2 entitled to terminate temporary total disability by notifying the
3 employee, or if represented, his or her counsel. If, however, an
4 objection to the termination of temporary total disability is filed
5 by the employee within ten (10) days of termination, the Commission
6 shall set the matter within twenty (20) days for a determination if
7 temporary total disability compensation shall be reinstated. The
8 temporary total disability shall remain terminated unless the
9 employee proves the existence of a valid excuse for his or her
10 failure to comply with medical orders of the treating physician or
11 his or her abandonment of medical care. The administrative law
12 judge may appoint an independent medical examiner to determine if
13 further medical treatment is reasonable and necessary. The
14 independent medical examiner shall not provide treatment to the
15 injured ~~worker~~ employee, unless agreed upon by the parties.

16 B. Temporary Partial Disability.

17 1. If the injured employee is temporarily unable to perform his
18 or her job because of a disability, but may perform alternative work
19 offered by the employer, he or she shall be entitled to receive
20 compensation equal to ~~the greater of~~ seventy percent (70%) of the
21 difference between the injured employee's average weekly wage before
22 the injury and his or her weekly wage for performing alternative
23 work after the injury, but only if his or her weekly wage for
24 performing the alternative work is less than the temporary total

1 disability rate. However, the injured employee's actual earnings
2 plus temporary partial disability shall not exceed the temporary
3 total disability rate.

4 2. Compensation under this subsection may not exceed fifty-two
5 (52) weeks.

6 3. If the employee refuses to perform the alternative work
7 offered by the ~~employee~~ employer, he or she shall not be entitled to
8 benefits under ~~subsection A of this section or under~~ this section.

9 C. Permanent Partial Disability.

10 1. If the injured employee has a permanent disability after
11 reaching maximum medical improvement, he or she shall be entitled to
12 receive compensation equal to seventy percent (70%) of the
13 employee's average weekly wage per week, not to exceed Three Hundred
14 Fifty Dollars (\$350.00) per week, for three and a half weeks for
15 each percentage point of impairment, but not to exceed the earlier
16 of three hundred fifty (350) weeks or the date of the injured
17 employee's death.

18 2. A permanent partial disability award or combination of
19 awards granted an injured ~~worker~~ employee may not exceed a permanent
20 partial disability rating of one hundred percent (100%) to any body
21 part or to the body as a whole. The determination of permanent
22 partial disability shall be the responsibility of the Commission
23 through its administrative law judges. Any claim by an employee for
24 compensation for permanent partial disability must be supported by

1 competent medical testimony of a medical doctor, osteopathic
2 physician, or chiropractor, and shall be supported by objective
3 ~~medical~~ findings, as defined in ~~this act~~ Section 2 of this title.

4 The opinion of the physician shall include employee's percentage of
5 permanent partial disability and whether or not the disability is
6 job-related and caused by the accidental injury or occupational
7 disease. A physician's opinion of the nature and extent of
8 permanent partial disability to parts of the body other than
9 ~~scheduled members must~~ those listed in Section 46 of this title
10 shall be based solely on criteria established by the ~~current edition~~
11 Sixth Edition of the American Medical Association's "Guides to the
12 Evaluation of Permanent Impairment". A copy of any written
13 evaluation shall be sent to both parties within seven (7) days of
14 issuance. Medical opinions addressing compensability and permanent
15 disability must be stated within a reasonable degree of medical
16 certainty. Any party may submit the report of an evaluating
17 physician.

18 ~~2.~~ 3. Permanent partial disability shall not be allowed to a
19 part of the body for which no medical treatment has been received.
20 A determination of permanent partial disability made by the
21 Commission or administrative law judge which is not supported by
22 objective ~~medical~~ findings provided by a treating physician who is a
23 medical doctor, doctor of osteopathy, chiropractor or a qualified
24

1 independent medical examiner shall be considered an abuse of
2 discretion.

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

5 ~~4. In cases of permanent partial disability, the compensation~~
6 ~~shall be seventy percent (70%) of the employee's average weekly~~
7 ~~wage, not to exceed Three Hundred Twenty-three Dollars (\$323.00) per~~
8 ~~week, for a term not to exceed a total of three hundred fifty (350)~~
9 ~~weeks for the body as a whole.~~

10 ~~5. Except pursuant to settlement agreements entered into by the~~
11 ~~employer and employee, payment of a permanent partial disability~~
12 ~~award shall be deferred and held in reserve by the employer or~~
13 ~~insurance company if the employee has reached maximum medical~~
14 ~~improvement and has been released to return to work by his or her~~
15 ~~treating physician, and then returns to his pre-injury or equivalent~~
16 ~~job for a term of weeks determined by dividing the total dollar~~
17 ~~value of the award by seventy percent (70%) of the employee's~~
18 ~~average weekly wage.~~

19 ~~a. The amount of the permanent partial disability award~~
20 ~~shall be reduced by seventy percent (70%) of the~~
21 ~~employee's average weekly wage for each week he works~~
22 ~~in his pre-injury or equivalent job.~~

23 ~~b. If, for any reason other than misconduct as defined in~~
24 ~~Section 2 of this act, the employer terminates the~~

~~employee or the position offered is not the pre-injury or equivalent job, the remaining permanent partial disability award shall be paid in a lump sum. If the employee is discharged for misconduct, the employer shall have the burden to prove that the employee engaged in misconduct.~~

~~c. If the employee refuses an offer to return to his pre-injury or equivalent job, the permanent partial disability award shall continue to be deferred and shall be reduced by seventy percent (70%) of the employee's average weekly wage for each week he refuses to return to his pre-injury or equivalent job.~~

~~d. Attorney fees for permanent partial disability awards, as approved by the Commission, shall be calculated based upon the total permanent partial disability award and paid in full at the time of the deferral.~~

~~e. Assessments pursuant to Sections 31, 98, 112 and 165 of this act shall be calculated based upon the amount of the permanent partial disability award and shall be paid at the time of the deferral.~~

~~6. If an employee is eligible to receive permanent total disability benefits, he or she may not also receive permanent partial disability benefits.~~

1 5. An employee may elect to commute the remainder of the
2 permanent partial disability award to which the employee is
3 entitled, including under Section 46 of this title, if the employee
4 has returned to work for at least six months and is earning at least
5 seventy percent (70%) of the employee's average weekly wage at the
6 time of the injury. An employee who elects to commute the permanent
7 partial disability award is not entitled to additional benefits for
8 the injury.

9 6. Previous Disability: The fact that an employee has suffered
10 previous disability or received compensation therefor shall not
11 preclude the employee from compensation for a later accidental
12 personal injury or occupational disease. In the event there exists
13 a previous permanent partial disability, including a previous non-
14 work-related injury or condition which produced permanent partial
15 disability and the same is aggravated or accelerated by an
16 accidental personal injury or occupational disease, compensation for
17 permanent partial disability shall be only for such amount as was
18 caused by such accidental personal injury or occupational disease
19 and no additional compensation shall be allowed for the preexisting
20 disability ~~or impairment~~. Any such reduction shall not apply to
21 temporary total disability, nor shall it apply to compensation for
22 medical treatment.

23 a. If workers' compensation benefits have previously been
24 awarded through settlement or judicial or

1 administrative determination in Oklahoma, the
2 percentage basis of the prior settlement or award
3 shall conclusively establish the amount of permanent
4 partial disability determined to be preexisting. If
5 workers' compensation benefits have not previously
6 been awarded through settlement or judicial or
7 administrative determination in Oklahoma, the amount
8 of preexisting permanent partial disability shall be
9 established by competent evidence.

10 b. In all cases, the applicable reduction shall be
11 calculated as follows:

12 (1) if the preexisting ~~impairment~~ disability is the
13 result of injury sustained while working for the
14 employer against whom workers' compensation
15 benefits are currently being sought, any award of
16 compensation shall be reduced by the current
17 dollar value attributable under the
18 Administrative Workers' Compensation Act to the
19 percentage of permanent partial disability
20 determined to be preexisting. The current dollar
21 value shall be calculated by multiplying the
22 percentage of preexisting permanent partial
23 disability by the compensation rate in effect on
24

1 the date of the accident or injury against which
2 the reduction will be applied, and

3 (2) in all other cases, the employer against whom
4 benefits are currently being sought shall be
5 entitled to a credit for the percentage of
6 preexisting permanent partial disability.

7 7. No payments on any permanent partial disability order shall
8 begin until payments on any preexisting permanent partial disability
9 orders have been completed.

10 8. The whole body shall represent a maximum of three hundred
11 fifty (350) weeks.

12 ~~9. The permanent partial disability rate of compensation for~~
13 ~~amputation or permanent total loss of use of a scheduled member~~
14 ~~specified in Section 46 of this act shall be seventy percent (70%)~~
15 ~~of the employee's average weekly wage, not to exceed Three Hundred~~
16 ~~Twenty-three Dollars (\$323.00), multiplied by the number of weeks~~
17 ~~set forth for the member in Section 46 of this act, regardless of~~
18 ~~whether the injured employee is able to return to his or her pre-~~
19 ~~injury or equivalent job.~~

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

1 ~~Higher Education, which shall include retraining and job placement~~
2 ~~to restore the employee to gainful employment. Vocational~~
3 ~~rehabilitation services or training shall not extend for a period of~~
4 ~~more than fifty-two (52) weeks.~~

5 D. Permanent Total Disability.

6 ~~1. In case of total disability adjudged to be permanent, If the~~
7 injured employee is incapable of earning wages in any employment for
8 which the employee may become physically suited and reasonably
9 fitted by education, training, experience or vocational
10 rehabilitation provided under this act because of a disability, he
11 or she shall be entitled to receive compensation equal to seventy
12 percent (70%) of the employee's average weekly wages per week, but
13 not in excess of the state's average weekly wage, shall be paid to
14 the employee during for the continuance duration of the disability
15 until such time as the employee reaches the age of maximum Social
16 Security retirement benefits or for a period of fifteen (15) years,
17 whichever is longer. In the event the claimant employee dies of
18 causes unrelated to the injury or illness, benefits shall cease on
19 the date of death. Provided, however, any person entitled to revive
20 the action shall receive a one-time lump-sum payment equal to
21 twenty-six (26) weeks of weekly benefits for permanent total
22 disability awarded the claimant. If more than one person is
23 entitled to revive the claim, the lump-sum payment shall be evenly
24 divided between or among such persons. In the event the Commission

1 ~~awards both permanent partial disability and permanent total~~
2 ~~disability benefits, the permanent total disability award shall not~~
3 ~~be due until the permanent partial disability award is paid in full.~~
4 If otherwise qualified according to the provisions of ~~this act~~ the
5 Administrative Workers' Compensation Act, permanent total disability
6 benefits may be awarded to an employee who has exhausted the maximum
7 period of temporary total disability even though the employee has
8 not reached maximum medical improvement.

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

17 ~~E. 1. The Workers' Compensation Commission shall hire or~~
18 ~~contract for a Vocational Rehabilitation Director to oversee the~~
19 ~~vocational rehabilitation program of the Commission.~~

20 ~~2. The Vocational Rehabilitation Director shall help injured~~
21 ~~workers return to the work force. If the injured employee is unable~~
22 ~~to return to his or her pre-injury or equivalent position due to~~
23 ~~permanent restrictions as determined by the treating physician, upon~~
24 ~~the request of either party, the Vocational Rehabilitation Director~~

1 ~~shall determine if it is appropriate for a claimant to receive~~
2 ~~vocational rehabilitation training or services, and will oversee~~
3 ~~such training. If appropriate, the Vocational Rehabilitation~~
4 ~~Director shall issue administrative orders, including, but not~~
5 ~~limited to, an order for a vocational rehabilitation evaluation for~~
6 ~~any injured employee unable to work for at least ninety (90) days.~~
7 ~~In addition, the Vocational Rehabilitation Director may assign~~
8 ~~injured workers to vocational rehabilitation counselors for~~
9 ~~coordination of recommended services. The cost of the services~~
10 ~~shall be paid by the employer. All administrative orders are~~
11 ~~subject to appeal to the full Commission.~~

12 ~~3. There shall be a presumption in favor of ordering vocational~~
13 ~~rehabilitation services or training for an eligible injured employee~~
14 ~~under the following circumstances:~~

- 15 ~~a. if the employee's occupation is truck driver or~~
16 ~~laborer and the medical condition is traumatic brain~~
17 ~~injury, stroke or uncontrolled vertigo,~~
- 18 ~~b. if the employee's occupation is truck driver or~~
19 ~~laborer performing high risk tasks and the medical~~
20 ~~condition is seizures,~~
- 21 ~~c. if the employee's occupation is manual laborer and the~~
22 ~~medical condition is bilateral wrist fusions,~~

- 1 ~~d. if the employee's occupation is assembly-line worker~~
2 ~~and the medical condition is radial head fracture with~~
3 ~~surgical excision,~~
- 4 ~~e. if the employee's occupation is heavy laborer and the~~
5 ~~medical condition is myocardial infarction with~~
6 ~~congestive heart failure,~~
- 7 ~~f. if the employee's occupation is heavy manual laborer~~
8 ~~and the medical condition is multilevel neck or back~~
9 ~~fusions greater than two levels,~~
- 10 ~~g. if the employee's occupation is laborer performing~~
11 ~~overhead work and the medical condition is massive~~
12 ~~rotator cuff tears, with or without surgery,~~
- 13 ~~h. if the employee's occupation is heavy laborer and the~~
14 ~~medical condition is recurrent inguinal hernia~~
15 ~~following unsuccessful surgical repair,~~
- 16 ~~i. if the employee's occupation is heavy manual laborer~~
17 ~~and the medical condition is total knee replacement or~~
18 ~~total hip replacement,~~
- 19 ~~j. if the employee's occupation is roofer and the medical~~
20 ~~condition is calcaneal fracture, medically or~~
21 ~~surgically treated,~~
- 22 ~~k. if the employee's occupation is laborer of any kind~~
23 ~~and the medical condition is total shoulder~~
24 ~~replacement,~~

- 1 ~~l. if the employee's occupation is laborer and the~~
2 ~~medical condition is amputation of a hand, arm, leg,~~
3 ~~or foot,~~
- 4 ~~m. if the employee's occupation is laborer and the~~
5 ~~medical condition is tibial plateau fracture, pilon~~
6 ~~fracture,~~
- 7 ~~n. if the employee's occupation is laborer and the~~
8 ~~medical condition is ankle fusion or knee fusion,~~
- 9 ~~o. if the employee's occupation is driver or heavy~~
10 ~~equipment operator and the medical condition is~~
11 ~~unilateral industrial blindness, or~~
- 12 ~~p. if the employee's occupation is laborer and the~~
13 ~~medical condition is 3-, 4-, or 5-level positive~~
14 ~~discogram of the cervical spine or lumbar spine,~~
15 ~~medically treated.~~

16 ~~4. Upon the request of either party, or by order of an~~
17 ~~administrative law judge, the Vocational Rehabilitation Director~~
18 ~~shall assist the Workers' Compensation Commission in determining if~~
19 ~~it is appropriate for a claimant to receive vocational~~
20 ~~rehabilitation training or services. If appropriate, the~~
21 ~~administrative law judge shall refer the employee to a qualified~~
22 ~~expert for evaluation of the practicability of, need for and kind of~~
23 ~~rehabilitation services or training necessary and appropriate in~~
24 ~~order to restore the employee to gainful employment. The cost of~~

1 ~~the evaluation shall be paid by the employer. Following the~~
2 ~~evaluation, if the employee refuses the services or training ordered~~
3 ~~by the administrative law judge, or fails to complete in good faith~~
4 ~~the vocational rehabilitation training ordered by the administrative~~
5 ~~law judge, then the cost of the evaluation and services or training~~
6 ~~rendered may, in the discretion of the administrative law judge, be~~
7 ~~deducted from any award of benefits to the employee which remains~~
8 ~~unpaid by the employer. Upon receipt of such report, and after~~
9 ~~affording all parties an opportunity to be heard, the administrative~~
10 ~~law judge shall order that any rehabilitation services or training,~~
11 ~~recommended in the report, or such other rehabilitation services or~~
12 ~~training as the administrative law judge may deem necessary,~~
13 ~~provided the employee elects to receive such services, shall be~~
14 ~~provided at the expense of the employer. Except as otherwise~~
15 ~~provided in this subsection, refusal to accept rehabilitation~~
16 ~~services by the employee shall in no way diminish any benefits~~
17 ~~allowable to an employee.~~

18 ~~5. The administrative law judge may order vocational~~
19 ~~rehabilitation before the injured employee reaches maximum medical~~
20 ~~improvement, if the treating physician believes that it is likely~~
21 ~~that the employee's injury will prevent the employee from returning~~
22 ~~to his or her former employment. In granting early benefits for~~
23 ~~vocational rehabilitation, the Commission shall consider temporary~~
24 ~~restrictions and the likelihood that such rehabilitation will return~~

1 ~~the employee to gainful employment earlier than if such benefits are~~
2 ~~granted after the permanent partial disability hearing in the claim.~~

3 ~~6. Vocational rehabilitation services or training shall not~~
4 ~~extend for a period of more than fifty-two (52) weeks. A request~~
5 ~~for vocational rehabilitation services or training shall be filed~~
6 ~~with the Commission by an interested party not later than sixty (60)~~
7 ~~days from the date of receiving permanent restrictions that prevent~~
8 ~~the injured employee from returning to his or her pre-injury or~~
9 ~~equivalent position.~~

10 ~~7. If rehabilitation requires residence at or near the facility~~
11 ~~or institution which is away from the employee's customary~~
12 ~~residence, reasonable cost of the employee's board, lodging, travel,~~
13 ~~tuition, books and necessary equipment in training shall be paid for~~
14 ~~by the insurer in addition to weekly compensation benefits to which~~
15 ~~the employee is otherwise entitled under the Administrative Workers'~~
16 ~~Compensation Act.~~

17 ~~8. During the period when an employee is actively and in good~~
18 ~~faith being evaluated or participating in a retraining or job~~
19 ~~placement program for purposes of evaluating permanent total~~
20 ~~disability status, the employee shall be entitled to receive~~
21 ~~benefits at the same rate as the employee's temporary total~~
22 ~~disability benefits for an additional fifty-two (52) weeks. All~~
23 ~~tuition related to vocational rehabilitation services shall be paid~~
24 ~~by the employer or the employer's insurer on a periodic basis~~

1 ~~directly to the facility providing the vocational rehabilitation~~
2 ~~services or training to the employee. The employer or employer's~~
3 ~~insurer may deduct the amount paid for tuition from compensation~~
4 ~~awarded to the employee~~ Vocational Rehabilitation.

5 1. If the injured employee has a permanent disability after
6 reaching maximum medical improvement and, as a result, is unable to
7 return to his or her pre-injury job or another job that pays at
8 least eighty percent (80%) of the injured employee's pre-injury
9 wages, the injured employee may receive, upon written request no
10 later than thirty (30) days following maximum medical improvement,
11 vocational rehabilitation services provided by a technology center
12 or public secondary school offering vocational-technical education
13 courses, or a member institution of The Oklahoma State System of
14 Higher Education, which shall include retraining and job placement
15 to restore the employee to full-time employment. Vocational
16 rehabilitation services or training shall not extend for a period of
17 more than fifty-two (52) weeks.

18 2. An administrative law judge may order vocational
19 rehabilitation before the injured employee reaches maximum medical
20 improvement if the treating physician believes that it is likely
21 that the employee will ultimately be eligible.

22 3. If vocational rehabilitation requires residence at or near
23 the facility or institution which is away from the employee's
24 customary residence, reasonable cost of the employee's board,

1 lodging, travel, tuition, books and necessary equipment in training
2 shall be paid by the employer in addition to weekly compensation
3 benefits to which the employee is otherwise entitled.

4 F. Disfigurement.

5 1. If an injured employee incurs serious and permanent
6 disfigurement to any part of the body, the Commission may award
7 compensation to the injured employee in an amount not to exceed
8 Fifty Thousand Dollars (\$50,000.00).

9 2. No award for disfigurement shall be entered until twelve
10 (12) months after the injury.

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

14 ~~G. Benefits for a single-event injury shall be determined by~~
15 ~~the law in effect at the time of injury. Benefits for a cumulative~~
16 ~~trauma injury or occupational disease or illness shall be determined~~
17 ~~by the law in effect at the time the employee knew or reasonably~~
18 ~~should have known that the injury, occupational disease or illness~~
19 ~~was related to work activity. Benefits for death shall be~~
20 ~~determined by the law in effect at the time of death.~~

21 SECTION 16. AMENDATORY Section 46, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2017, Section 46), is amended to read as
23 follows:
24

1 Section 46. A. ~~An~~ In lieu of compensation provided pursuant to
2 paragraph 1 of subsection C of Section 45 of this title, an injured
3 employee who is entitled to receive permanent partial disability
4 compensation under Section 45 of this act suffers amputation or
5 permanent total loss of use as described in this subsection shall
6 receive compensation for each part of the body in accordance with
7 equal to seventy percent (70%) of the employee's average weekly wage
8 per week, not to exceed Three Hundred Fifty Dollars (\$350.00) per
9 week, for the number of weeks for the scheduled loss set forth
10 below. as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 ~~B. The permanent partial disability rate of compensation for~~
12 ~~amputation or permanent total loss of use of a scheduled member~~
13 ~~specified in this section shall be seventy percent (70%) of the~~
14 ~~employee's average weekly wage, not to exceed Three Hundred Twenty-~~
15 ~~three Dollars (\$323.00), multiplied by the number of weeks as set~~
16 ~~forth in this section, regardless of whether or not the injured~~
17 ~~employee is able to return to his or her pre-injury job.~~

18 ~~C. Other cases: In cases in which the Commission finds an~~
19 ~~injury to a part of the body not specifically covered by the~~
20 ~~foregoing provisions of this section, the employee may be entitled~~
21 ~~to compensation for permanent partial disability. The compensation~~
22 ~~ordered paid shall be seventy percent (70%) of the employee's~~
23 ~~average weekly wage, not to exceed Three Hundred Twenty-three~~
24

~~Dollars (\$323.00) for the number of weeks which the partial disability of the employee bears to three hundred fifty (350) weeks.~~

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

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

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

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

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

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

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

1 SECTION 17. AMENDATORY Section 56, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2017, Section 56), is amended to read as
3 follows:

4 Section 56. A. If the employer has previously contracted with
5 a certified workplace medical plan, the employer shall select for
6 the injured employee a treating physician from the physicians listed
7 within the network of the certified workplace medical plan. The
8 employee may apply for a change of physician by utilizing the
9 dispute resolution process set out in the certified workplace
10 medical plan on file with the State Department of Health.

11 B. If the employer is not covered by a certified workplace
12 medical plan, the employer shall select the treating physician. The
13 Commission, on application of the employee ~~shall~~ and finding of good
14 cause, may order one change of treating physician, regardless of the
15 number of body parts being treated. An application for change of
16 physician shall not be considered after maximum medical improvement
17 has been reached, or if the employee has not received authorized
18 medical treatment within one hundred and eighty (180) days of the
19 date of the application. Upon the Commission's granting of the
20 application, the employer shall provide a list of three physicians
21 from whom the employee may select the replacement. The employer may
22 identify physicians within the same practice, facility or hospital
23 as the treating physician. The only requirement for the three
24

1 physicians on the list is that they be licensed and accredited to
2 perform the necessary treatment.

3 SECTION 18. AMENDATORY Section 57, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2017, Section 57), is amended to read as
5 follows:

6 Section 57. A. If an injured employee misses ~~two~~ three or more
7 scheduled appointments for treatment, he or she shall no longer be
8 eligible to receive benefits under ~~this act~~ the Administrative
9 Workers' Compensation Act, unless his or her absence was:

10 1. Caused by extraordinary circumstances beyond the employee's
11 control as determined by the Commission; or

12 2. The employee gave the employer at least two (2) hours prior
13 notice of the absence and had a valid excuse.

14 B. Inability to get transportation to or from the appointment
15 shall not be considered extraordinary circumstances nor a valid
16 excuse for the absence.

17 SECTION 19. AMENDATORY Section 62, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2017, Section 62), is amended to read as
19 follows:

20 Section 62. A. Notwithstanding the provisions of Section 45 of
21 this ~~act~~ title, if an employee suffers a nonsurgical soft tissue
22 injury, temporary total disability compensation shall not exceed
23 ~~eight (8)~~ twelve (12) weeks, regardless of the number of parts of
24 the body to which there is a nonsurgical soft tissue injury. An

1 employee who is treated with an epidural steroid injection ~~or~~
2 ~~injections~~ shall be entitled to an extension of an additional eight
3 (8) weeks, regardless of the number of injections received. An
4 employee who has been recommended by a treating physician for
5 surgery for a soft tissue injury may petition the Workers'
6 Compensation Commission for one extension of temporary total
7 disability compensation and the Commission may order an extension,
8 not to exceed sixteen (16) additional weeks. If the surgery is not
9 performed within thirty (30) days of the approval of the surgery by
10 the employer, its insurance carrier, or an order of the Commission
11 authorizing the surgery, and the delay is caused by the employee
12 acting in bad faith, the benefits for the extension period shall be
13 terminated and the employee shall reimburse the employer any
14 temporary total disability compensation he or she received beyond
15 eight (8) weeks. An epidural steroid injection, or any procedure of
16 the same or similar physical invasiveness, shall not be considered
17 surgery.

18 B. For purposes of this section τ:

19 1. "~~soft~~ Soft tissue injury" means damage to one or more of the
20 tissues that surround bones and joints. Soft tissue injury
21 includes, but is not limited to, sprains, strains, contusions,
22 tendonitis and muscle tears. Cumulative trauma is to be considered
23 a soft tissue injury. Soft tissue injury does not include any of
24 the following:

1 ~~1. Injury~~

2 a. injury to or disease of the spine, spinal discs,
3 spinal nerves or spinal cord, where corrective surgery
4 is performed~~+~~,
5

6 ~~2. Brain~~

7 b. brain or closed-head injury as evidenced by:

8 ~~a.~~

9 (1) sensory or motor disturbances,

10 ~~b.~~

11 (2) communication disturbances,

12 ~~c.~~

13 (3) complex integrated disturbances of cerebral
14 function,

15 ~~d.~~

16 (4) episodic neurological disorders, or

17 ~~e.~~

18 (5) other brain and closed-head injury conditions at
19 least as severe in nature as any condition
20 provided in subparagraphs a through d of this
21 paragraph~~+~~, or

22 ~~3. Any~~

23 c. any joint replacement; and

24 2. "Surgery" does not include an injection, or the forcing of
fluids beneath the skin, for treatment or diagnosis.

1 SECTION 20. AMENDATORY Section 65, Chapter 208, O.S.L.

2 2013, as amended by Section 3, Chapter 390, O.S.L. 2015 (85A O.S.
3 Supp. 2017, Section 65), is amended to read as follows:

4 Section 65. A. If an employee suffers from an occupational
5 disease as defined in this section and is disabled or dies as a
6 result of the disease, the employee, or, in case of death, his or
7 her dependents, shall be entitled to compensation as if the
8 disability or death were caused by injury arising out of work
9 activities within the scope of employment, except as otherwise
10 provided in this section.

11 B. No compensation shall be payable for an occupational disease
12 if the employee, at the time of entering into the employment of the
13 employer by whom the compensation would otherwise be payable,
14 falsely represented himself or herself in writing as not having
15 previously been disabled, laid off, or compensated in damages or
16 otherwise, because of the disease.

17 C. 1. If an occupational disease is aggravated by any other
18 disease or infirmity, not itself compensable, or if disability or
19 death from any other cause, not itself compensable, is aggravated,
20 prolonged, accelerated, or in any way contributed to by an
21 occupational disease, the compensation payable shall be reduced and
22 limited to the proportion ~~only of the compensation that would be~~
23 ~~payable if the occupational disease were the major cause of the~~
24 ~~disability or death as the occupational disease, as a causative~~

1 ~~factor, bears to all the causes of the disability or death~~ that is a
2 compensable injury.

3 2. The reduction in compensation is to be effected by reducing
4 the number of weekly or monthly payments or the amounts of the
5 payments, as under the circumstances of the particular case may be
6 for the best interest of the claimant.

7 D. 1. ~~"Occupational disease", as used in this act, unless the~~
8 ~~context otherwise requires, means any disease that results in~~
9 ~~disability or death and arises out of and in the course of the~~
10 ~~occupation or employment of the employee or naturally follows or~~
11 ~~unavoidably results from an injury as that term is defined in this~~
12 ~~act.~~ A causal connection between the occupation or employment and
13 the occupational disease shall be established by a preponderance of
14 the evidence.

15 2. No compensation shall be payable for any contagious or
16 infectious disease unless contracted in the course and scope of
17 employment.

18 3. No compensation shall be payable for any ordinary disease of
19 life to which the general public is exposed.

20 E. 1. When compensation is payable for an occupational
21 disease, the employer in whose employment the employee was last
22 injuriously exposed to the hazards of the disease and the carrier,
23 if any, on the risk when the employee was last injuriously exposed
24 under the employer shall be liable.

1 2. The amount of the compensation shall be based on the average
2 weekly wage of the employee when last injuriously exposed under the
3 employer, and the notice of injury and claim for compensation shall
4 be given and made to that employer.

5 F. 1. An employer shall not be liable for any compensation for
6 an occupational disease unless:

7 a. the disease is due to the nature of an employment in
8 which the hazards of the disease actually exist and is
9 actually incurred in the course and scope of his or
10 her employment. This includes any disease due to or
11 attributable to exposure to or contact with any
12 radioactive material by an employee in the course and
13 scope of his or her employment,

14 b. disablement or death results within three (3) years in
15 case of silicosis or asbestosis, or one (1) year in
16 case of any other occupational disease, except a
17 diseased condition caused by exposure to X-rays,
18 radioactive substances, or ionizing radiation, after
19 the last injurious exposure to the disease in the
20 employment, or

21 c. in case of death, death follows continuous disability
22 from the disease, commencing within the period, for
23 which compensation has been paid or awarded or timely
24 claim made as provided in subparagraph b of this

1 paragraph and results within seven (7) years after the
2 last exposure.

3 2. However, in case of a diseased condition caused by exposure
4 to X-rays, radioactive substances, or ionizing radiation only, the
5 limitations expressed do not apply.

6 SECTION 21. AMENDATORY Section 68, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2017, Section 68), is amended to read as
8 follows:

9 Section 68. A. ~~Unless an~~ An employee ~~gives oral or written~~
10 shall give notice of an injury to the employer within ~~thirty (30)~~
11 fifteen (15) days of the date an on which the injury occurs or, if
12 ~~the rebuttable presumption shall be that the injury was not work-~~
13 ~~related. Such presumption must be overcome by a preponderance of~~
14 ~~the evidence~~ is an occupational disease or cumulative trauma, the
15 date on which the employee knew or should have known that the injury
16 may be related to the employment.

17 B. ~~Unless an~~ If the employee ~~gives oral or written~~ does not
18 give timely notice of an injury to the employer ~~within thirty (30)~~
19 ~~days of the employee's separation from employment,~~ there shall be a
20 rebuttable presumption that ~~an occupational disease or cumulative~~
21 ~~trauma~~ the injury did not arise out of and in the course of
22 ~~employment~~ is not a compensable injury. Such presumption ~~must~~ may
23 be overcome by a preponderance of the evidence. If notice is not
24 timely given but the employee overcomes the presumption that the

1 injury is not compensable, the employee shall not be entitled to
2 receive benefits for the time period before the date on which the
3 employee reported the injury.

4 C. For purposes of this section, if the injury is an
5 occupational disease or cumulative trauma, the employer is the
6 person who employed the employee on the date of the last injurious
7 exposure to the hazards of the disease.

8 SECTION 22. AMENDATORY Section 69, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2017, Section 69), is amended to read as
10 follows:

11 Section 69. A. Time for Filing. 1. A claim for benefits
12 under ~~this act~~ the Administrative Workers' Compensation Act, ~~other~~
13 ~~than an occupational disease,~~ shall be barred unless it is filed
14 with the Commission within:

15 a. one (1) year from the date of the injury. ~~If during~~
16 ~~the one-year period following the filing of the claim~~
17 ~~the employee receives no weekly benefit compensation~~
18 ~~and receives no medical treatment resulting from the~~
19 ~~alleged injury, the claim shall be barred thereafter.~~
20 ~~For purposes of this section, the date of the injury~~
21 ~~shall be defined as the date an injury is caused by an~~
22 ~~accident as set forth in paragraph 9 of Section 2 of~~
23 ~~this act.~~.

1 b. two (2) years from the date of injury for an
2 occupational disease or cumulative trauma, or

3 c. two (2) years from the date of death;

4 2. ~~a. A claim for compensation for disability on account of~~
5 ~~injury which is either an occupational disease or~~
6 ~~occupational infection shall be barred unless filed~~
7 ~~with the Commission within two (2) years from the date~~
8 ~~of the last injurious exposure to the hazards of the~~
9 ~~disease or infection.~~

10 ~~b. A claim for compensation for disability on account of~~
11 ~~silicosis or asbestosis shall be filed with the~~
12 ~~Commission within one (1) year after the time of~~
13 ~~disablement, and the disablement shall occur within~~
14 ~~three (3) years from the date of the last injurious~~
15 ~~exposure to the hazard of silicosis or asbestosis.~~

16 ~~c. A claim for compensation for disability on account of~~
17 ~~a disease condition caused by exposure to X-rays,~~
18 ~~radioactive substances, or ionizing radiation only~~
19 ~~shall be filed with the Commission within two (2)~~
20 ~~years from the date the condition is made known to an~~
21 ~~employee following examination and diagnosis by a~~
22 ~~medical doctor.~~

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

4 ~~4. If within six (6) months after the filing of a claim for~~
5 ~~compensation no bona fide request for a hearing has been made with~~
6 ~~respect to the claim, the claim may, on motion and after hearing, be~~
7 ~~dismissed with prejudice~~ For purposes of this section, the date of
8 injury for an occupational disease or cumulative trauma shall be the
9 date the employee knew or should have known that the injury may be
10 related to the employment.

11 B. Time for Filing Additional Compensation.

12 ~~1. In cases in which any compensation, including disability or~~
13 ~~medical, has been paid on account of injury, a claim for additional~~
14 ~~compensation shall be barred unless filed with the Commission within~~
15 ~~one (1) year from the date of the last payment of disability~~
16 ~~compensation or two (2) years from the date of the injury, whichever~~
17 ~~is greater~~ If a claim for benefits under this act has been timely
18 filed with the Commission, any claim for additional compensation
19 shall be filed within ninety (90) days of the date that the last
20 benefit was received, except as otherwise prescribed by the treating
21 physician at the time of the last appointment.

22 2. The statute of limitations provided in paragraph 1 of this
23 subsection shall not apply to claims for the replacement of
24 medicine, crutches, ambulatory devices, artificial limbs,

1 eyeglasses, contact lenses, hearing aids, and other apparatus
2 permanently or indefinitely required as the result of a compensable
3 injury, when the employer or carrier previously furnished such
4 medical supplies, but replacement of such items shall not constitute
5 payment of compensation so as to toll the statute of limitations.

6 ~~C. A claim for additional compensation shall specifically state~~
7 ~~that it is a claim for additional compensation. Documents which do~~
8 ~~not specifically request additional benefits shall not be considered~~
9 ~~a claim for additional compensation.~~

10 ~~D. If within six (6) months after the filing of a claim for~~
11 ~~additional compensation no bona fide request for a hearing has been~~
12 ~~made with respect to the claim, the claim shall be dismissed without~~
13 ~~prejudice to the refiling of the claim within the limitation period~~
14 ~~specified in subsection B of this section.~~

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

21 ~~F. Persons under Disability.~~

22 ~~1. Notwithstanding any statute of limitation provided for in~~
23 ~~this act, when it is established that failure to file a claim by an~~
24 ~~injured employee or his or her dependents was induced by fraud, the~~

1 ~~claim may be filed within one (1) year from the time of the~~
2 ~~discovery of the fraud.~~

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

11 ~~G. A latent injury or condition shall not delay or toll the~~
12 ~~limitation periods specified in this section. This subsection shall~~
13 ~~not apply to the limitation period for occupational diseases~~
14 ~~specified in paragraph 2 of subsection A of this section.~~

15 SECTION 23. AMENDATORY Section 71, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2017, Section 71), is amended to read as
17 follows:

18 Section 71. A. ~~Notice.~~ Within ten (10) days after ~~a~~ an
19 Employee's Notice of Claim for Compensation or other claim for
20 ~~compensation~~ benefits has been filed, the Commission shall notify
21 the employer and any other interested person of the filing of the
22 claim.

23 B. ~~Investigation — Hearing.~~
24

1 ~~1. The Commission shall assign the claim to an administrative~~
2 ~~law judge who shall hold a hearing on application of any interested~~
3 ~~party, or on its own motion.~~

4 ~~2. An application for a hearing shall clearly set forth the~~
5 ~~specific issues of fact or law in controversy and the contentions of~~
6 ~~the party applying for the hearing.~~

7 ~~3. If any party is not represented by a lawyer, the~~
8 ~~administrative law judge shall define the issues to be heard.~~

9 ~~4. If a hearing on the claim is ordered, the administrative law~~
10 ~~judge shall give the claimant and other interested parties ten (10)~~
11 ~~days' notice of the hearing served personally on the claimant and~~
12 ~~other parties, or by registered mail. The hearing shall be held in~~
13 ~~Tulsa or Oklahoma County, as determined by the Commission.~~

14 ~~5. The award, together with the statement of the findings of~~
15 ~~fact and other matters pertinent to the issues, shall be filed with~~
16 ~~the record of the proceedings, and a copy of the award shall~~
17 ~~immediately be sent to the parties in or to counsels of record, if~~
18 ~~any pre-hearing conference within seven (7) days of filing of the~~
19 Employee's Notice of Claim for Compensation or other claim for
20 benefits. At the pre-hearing conference, the claim shall be set for
21 trial at a date no later than sixty (60) days from the date of the
22 pre-hearing conference.

23 C. Hearings and trials shall not be continued absent
24 extraordinary circumstances as determined by the Commission.

1 D. Evidence and Construction.

2 1. a. At the hearing the claimant and the employer may each
3 present evidence relating to the claim. Evidence may
4 be presented by any person authorized in writing for
5 such purpose. The evidence may include verified
6 medical reports which shall be accorded such weight as
7 may be warranted when considering all evidence in the
8 case.

9 b. Any determination of the existence or extent of
10 physical impairment shall be supported by objective
11 ~~and measurable physical or mental~~ findings.

12 2. When deciding any issue, administrative law judges and the
13 Commission shall determine, on the basis of the record as a whole,
14 whether the party having the burden of proof on the issue has
15 established it by a preponderance of the evidence.

16 3. Administrative law judges, the Commission, and any reviewing
17 courts shall strictly construe the provisions of ~~this act~~ the
18 Administrative Workers' Compensation Act.

19 4. In determining whether a party has met the burden of proof
20 on an issue, administrative law judges and the Commission shall
21 weigh the evidence impartially and without giving the benefit of the
22 doubt to any party.

23 ~~D.~~ E. Judgment. The judgment denying the claim or making the
24 award shall be filed in the office of the Commission, and a copy

1 shall be sent by registered mail, facsimile, electronic mail or by
2 other electronic means with confirmation of receipt to the claimant
3 and to the employer or to their attorneys.

4 ~~E.~~ F. No compensation for disability of an injured employee
5 shall be payable for any period beyond his or her death; provided,
6 however, an award of compensation for disability may be made after
7 the death of the injured employee for the period of disability
8 preceding death.

9 SECTION 24. AMENDATORY Section 78, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2017, Section 78), is amended to read as
11 follows:

12 Section 78. A. Any party feeling aggrieved by the judgment,
13 decision, or award made by the administrative law judge may, within
14 ten (10) days of issuance, appeal to the Workers' Compensation
15 Commission. After hearing arguments, the Commission may reverse or
16 modify the decision only if it determines that the decision was
17 against the clear weight of the evidence or contrary to law. All
18 such proceedings of the Commission shall be recorded by a court
19 reporter, if requested by any party. Any judgment of the Commission
20 which reverses a decision of the administrative law judge shall
21 contain specific findings relating to the reversal.

22 B. The chair of the Commission shall have the authority to
23 appoint an administrative law judge to the en banc panel when any
24 Commissioner of the Commission is disqualified for any reason, to

1 fill a vacancy, or in the absence of a Commissioner. The
2 appointment of an administrative law judge shall be made based on a
3 rotation of administrative law judges, excluding any judge who
4 presided over any of the previous hearings on the claim.

5 C. The appellant shall pay a filing fee of One Hundred Seventy-
6 five Dollars (\$175.00) to the Commission at the time of filing his
7 or her appeal. The fee shall be deposited in the Workers'
8 Compensation Fund.

9 ~~C.~~ D. The judgment, decision or award of the Commission shall
10 be final and conclusive on all questions within its jurisdiction
11 between the parties unless an action is commenced in the Supreme
12 Court of this state to review the judgment, decision or award within
13 twenty (20) days of being sent to the parties. Any judgment,
14 decision or award made by an administrative law judge shall be
15 stayed until all appeal rights have been waived or exhausted. The
16 Supreme Court may modify, reverse, remand for rehearing, or set
17 aside the judgment or award only if it was:

- 18 1. In violation of constitutional provisions;
- 19 2. In excess of the statutory authority or jurisdiction of the
20 Commission;
- 21 3. Made on unlawful procedure;
- 22 4. Affected by other error of law;
- 23 5. Clearly erroneous in view of the reliable, material,
24 probative and substantial competent evidence;

1 6. Arbitrary or capricious;

2 7. Procured by fraud; or

3 8. Missing findings of fact on issues essential to the
4 decision.

5 This action shall be commenced by filing with the Clerk of the
6 Supreme Court a certified copy of the judgment, decision or award of
7 the Commission attached to the petition by the complaint which shall
8 specify why the judgment, decision or award is erroneous or illegal.
9 The proceedings shall be heard in a summary manner and shall have
10 precedence over all other civil cases in the Supreme Court, except
11 preferred Corporation Commission appeals. The Supreme Court shall
12 require the appealing party to file within forty-five (45) days from
13 the date of the filing of an appeal or a judgment appealed from, a
14 transcript of the record of the proceedings before the Commission,
15 or such later time as may be granted by the Supreme Court on
16 application and for good cause shown. The action shall be subject
17 to the law and practice applicable to other civil actions cognizable
18 in the Supreme Court.

19 ~~D.~~ E. A fee of One Hundred Dollars (\$100.00) per appeal to the
20 Supreme Court shall be paid to the Commission and deposited in the
21 Workers' Compensation Fund as costs for preparing, assembling,
22 indexing and transmitting the record for appellate review. This fee
23 shall be paid by the party taking the appeal. If more than one
24 party to the action files an appeal from the same judgment, decision

1 or award, the fee shall be paid by the party whose petition in error
2 commences the principal appeal.

3 SECTION 25. AMENDATORY Section 82, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2017, Section 82), is amended to read as
5 follows:

6 Section 82.

7 A. 1. a. Fees for legal services rendered in a claim shall not
8 be valid unless approved by the Commission.

9 b. An attorney representing an injured employee may only
10 recover attorney fees up to ten percent (10%) of any
11 temporary total disability or temporary partial
12 disability compensation and ~~twenty percent (20%)~~
13 fifteen percent (15%) of any permanent partial
14 disability, permanent total disability, or death
15 compensation awarded to an injured employee by the
16 Commission from a controverted claim. If the employer
17 makes a written offer to settle permanent partial
18 disability, permanent total disability, or death
19 compensation and that offer is rejected, the
20 employee's attorney may not recover attorney fees in
21 excess of thirty percent (30%) of the difference
22 between the amount of any award and the settlement
23 offer.
24

(1) Attorney fees may not be collected for recovery on noncontroverted claims.

(2) Attorney fees shall not be awarded on medical benefits or services.

(3) The fee for legal services rendered by an attorney representing an employee in connection with a change of physician requested by the injured employee, controverted by the employer, and awarded by the Commission, shall be Two Hundred Dollars (\$200.00).

~~(4) Attorney fees may include not more than ten percent (10%) of the value, or reasonable estimate thereof, of vocational rehabilitation services.~~

c. A "controverted claim" means ~~that there has been a contested hearing before the Commission over whether there has been a compensable injury or whether the employee is entitled to~~ a claim where the employer has denied compensability or denied the payment of temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, or death compensation. A request for a change in physician shall not trigger a controverted claim for purposes of recovering any

1 attorney fees except the fees under division 3 of
2 subparagraph b of this paragraph. A controverted
3 claim shall not exist if the employee or his or her
4 representative has withheld pertinent information in
5 his or her possession related to the claim from the
6 employer or has violated the provisions of Section 6
7 of this ~~act~~ title.

8 2. Any person who or entity that brings a controverted claim
9 against the ~~State Treasurer, as a custodian of the~~ Multiple Injury
10 Trust Fund, shall provide notice of the claim to the Commission.
11 Thereafter, the Commission shall direct fees for legal services be
12 paid from the Fund, in addition to any compensation award. The fees
13 shall be authorized only on the difference between the amount of
14 compensation controverted and the amount awarded from the Fund.

15 3. In any case where attorney fees are allowed by the
16 Commission, the limitations expressed in subparagraph b of paragraph
17 1 of this subsection shall apply.

18 4. Medical providers may voluntarily contract with the attorney
19 for the employee to recover disputed charges, and the provider may
20 charge a reasonable fee for the cost of collection.

21 B. An attorney representing an employee under ~~this act~~ the
22 Administrative Workers' Compensation Act may not recover fees for
23 services except as expressly provided in this section.
24

SECTION 26. AMENDATORY Section 87, Chapter 208, O.S.L.

2013 (85A O.S. Supp. 2017, Section 87), is amended to read as follows:

Section 87. A. If the employer or carrier and the injured employee desire to settle the claim, they shall file a joint petition for settlement with the Commission. After the joint petition has been filed, the Commission shall order that all claims between the parties have been settled. No appeal shall lie from a judgment or award denying a joint petition.

B. The Commission shall not approve a joint petition or other settlement that provides for the payment of benefits in a lump sum except as provided in paragraph 5 of subsection C of Section 45 of this title.

SECTION 27. AMENDATORY Section 98, Chapter 208, O.S.L.

2013, as amended by Section 4, Chapter 169, O.S.L. 2014 (85A O.S. Supp. 2017, Section 98), is amended to read as follows:

Section 98. The Self-insurance Guaranty Fund shall be derived from the following sources:

1. Any unexpended funds, including interest thereon, held by the State Treasurer in the Workers' Compensation Self-insurance Guaranty Fund transferred to the Self-insurance Guaranty Fund as provided in Section 124 of this title;

2. ~~Until In the event the Self-insurance Guaranty Fund contains Two Million Dollars (\$2,000,000.00) or in the event the amount in~~

1 ~~the fund falls below One Million Dollars (\$1,000,000.00)~~ Eight
2 Hundred Thousand Dollars (\$800,000.00), an assessment levied by the
3 Commission against each private self-insurer and group self-
4 insurance association based on an assessment rate to be determined
5 by the commissioners, not exceeding ~~one percent (1%)~~ two percent
6 (2%) per annum of actual paid losses of the self-insurer during the
7 preceding calendar year, payable to the Tax Commission for deposit
8 to the fund. The assessment against private self-insurers shall be
9 determined using a rate equal to the proportion that the deficiency
10 in the fund attributable to private self-insurers bears to the
11 actual paid losses of all private self-insurers for the year period
12 of January 1 through December 31 preceding the assessment. The
13 assessment against group self-insurance associations shall be
14 determined using a rate equal to the proportion that the deficiency
15 in excess of the surplus of the Group Self-Insurance Association
16 Guaranty Fund at the date of the transfer attributable to group
17 self-insurance associations bears to the actual paid losses of all
18 group self-insurance associations cumulatively for any calendar year
19 preceding the assessment. Each self-insurer shall provide the
20 Workers' Compensation Commission with such information as the
21 Commission may determine is necessary to effectuate the purposes of
22 this paragraph. For purposes of this paragraph, "actual paid
23 losses" means all medical and indemnity payments, including
24

1 temporary disability, permanent disability, and death benefits, and
2 excluding loss adjustment expenses and reserves.

3 a. The assessment shall be paid within thirty (30)
4 calendar days after the date the commissioners notify
5 the self-insurer of the assessment.

6 b. A private employer or group self-insurance association
7 which ceases to be a self-insurer shall remain liable
8 for any and all assessments of the self-insurer as
9 provided in this paragraph based on actual paid losses
10 for the calendar year period preceding the assessment.

11 c. Failure of a self-insurer to pay, or timely pay, an
12 assessment required by this paragraph, or to report
13 payment of the same to the Commission within ten (10)
14 days of payment, shall be grounds for revocation by
15 the Commission of the self-insurer's permit to self-
16 insure in this state, after notice and hearing. A
17 former self-insurer failing to make payments required
18 by this paragraph promptly and correctly, or failing
19 to report payment of the same to the Commission within
20 ten (10) days of payment, shall be subject to
21 administrative penalties as allowed by law, including
22 but not limited to, a fine in the amount of Five
23 Hundred Dollars (\$500.00) or an amount equal to one
24 percent (1%) of the unpaid amount, whichever is

greater, to be paid and deposited to the credit of the Workers' Compensation Fund created in Section 28 of this title. It shall be the duty of the Tax Commission to collect the assessment provided for in this paragraph. The Tax Commission is authorized to bring an action for recovery of any delinquent or unpaid assessments, and may enforce payment of the assessment by proceeding in accordance with Section 79 of this title.

d. An impaired self-insurer shall be exempt from assessments beginning on the date of the Commission's designation until the Commission determines the self-insurer is no longer impaired.

e. The Tax Commission shall determine the fund balance as of March 1 and September 1 of each year, and when otherwise requested by the Workers' Compensation Commission, and shall advise the Workers' Compensation Commission in writing within thirty (30) days of each such determination; ~~and~~

3. Any excess funds, including interest thereon, transferred to the Self-insurance Guaranty Fund as provided in subsection D of Section 99 of this title; and

4. Any interest accruing on monies paid into the fund.

1 SECTION 28. AMENDATORY Section 99, Chapter 208, O.S.L.

2 2013, as amended by Section 5, Chapter 169, O.S.L. 2014 (85A O.S.
3 Supp. 2017, Section 99), is amended to read as follows:

4 Section 99. A. On determination by the Workers' Compensation
5 Commission that a self-insurer has become an impaired self-insurer,
6 the Commission shall promptly secure release of the security
7 required by Section 38 of this title ~~and,~~ advise the Self-insurance
8 Guaranty Fund Board of the impairment. ~~Claims administration,~~
9 ~~including processing, investigating and paying valid claims against~~
10 ~~an impaired self-insurer under the Administrative Workers'~~
11 ~~Compensation Act, may include payment by the surety that issued the~~
12 ~~surety bond or be under a contract between the Commission and an~~
13 ~~insurance carrier, appropriate state governmental entity or an~~
14 ~~approved service organization, as approved by the Commission and~~
15 transfer the proceeds of the security to the Self-insurance Guaranty
16 Fund Board to be maintained in a segregated interest-bearing
17 division special agency account for administering workers'
18 compensation obligations of the impaired self-insurer. The Self-
19 insurance Guaranty Fund Board shall be the fiduciary of the account.

20 B. Proceeds from the released security, including interest
21 thereon, shall be used by the Board to administer the workers'
22 compensation obligations of the impaired self-insurer. Claims
23 administration includes, but is not limited to, processing,
24 investigating and paying claims, actuarial studies, attorney fees

1 incurred for filing a proof of claim in the bankruptcy of the
2 impaired self-insurer and a pro rata portion of the staff expenses
3 of the Self-insurance Guaranty Fund Board.

4 C. Any unexpended funds, including interest thereon, held by
5 the State Treasurer in an interest-bearing account maintained by the
6 Commission before the effective date of this act from which an
7 impaired self-insurer's workers' compensation obligations are paid,
8 shall be transferred to the Board. Such funds shall be expended by
9 the Board only for the purpose of administering the workers'
10 compensation obligations of the impaired self-insurer and as
11 otherwise authorized in subsection D of this section.

12 D. Except as otherwise provided by law or by agreement of the
13 parties, excess proceeds from the security remaining after each
14 claim for benefits of an impaired self-insurer has been paid,
15 settled or lapsed under the Administrative Workers' Compensation
16 Act, and costs of administration of such claims have been paid, as
17 determined by the Self-insurance Guaranty Fund Board, shall be
18 transferred to the Self-insurance Guaranty Fund by the Board.

19 SECTION 29. AMENDATORY Section 152, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2017, Section 109), is amended to read as
21 follows:

22 Section 109. A. The Workers' Compensation Commission shall
23 establish a workers' compensation counselor or ombudsman program to
24 assist injured workers, employers and persons claiming death

1 benefits in obtaining benefits under this act. A special effort
2 shall be made to equip counselors or ombudsmen with sufficient
3 resources to assist injured workers through the system without the
4 necessity of retaining legal representation.

5 B. Workers' compensation counselors or ombudsmen shall provide
6 information to injured workers; investigate complaints; communicate
7 with employers, insurance carriers, self-insurers, and health care
8 providers; provide informational seminars and workshops on workers'
9 compensation for medical providers, insurance adjustors, and
10 employee and employer groups; and develop informational materials
11 for employees, employers and medical providers.

12 C. The Commission shall ~~mail a notice to the injured worker~~
13 ~~within ten (10) days of the filing of an Employer's First Notice of~~
14 ~~Injury. The notice shall advise the injured worker of~~ publish on
15 its website information on the availability of the services of the
16 Commission's counselor or ombudsman program and of the availability
17 of mediation and other forms of alternative dispute resolution to
18 assist the injured worker. ~~The Commission shall provide additional~~
19 ~~information as the Commission may determine necessary.~~

20 D. The Commission shall develop a program that provides for
21 annual training for own-risk employers and claims representatives
22 handling workers' compensation claims in Oklahoma. The training
23 shall include information about the alternative dispute resolution
24

1 program, including counselor and ombudsman programs, mediation, and
2 other services provided by the Commission.

3 SECTION 30. AMENDATORY Section 154, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2017, Section 111), is amended to read as
5 follows:

6 Section 111. A. ~~Any claim for any benefit under this act shall~~
7 ~~be commenced with the~~ If any claimant is denied any rights under
8 this act, the claimant may challenge the denial by filing of an
9 Employee's First Notice of Claim for Compensation by the employee
10 with the Workers' Compensation Commission. The claim Notice of
11 Claim for Compensation shall contain a be on a form prescribed by
12 the Commission and shall require:

13 1. A description of the alleged injury, including the affected
14 body parts;

15 2. A description of the claim for benefits, including the
16 rights denied by the employer;

17 3. The section of this act which is the basis for the claim;
18 and

19 4. A statement that all matters stated therein are true and
20 accurate and shall be signed by the claimant and the claimant's
21 agent, if any.

22 Any person who signs this statement or causes another to sign
23 this statement knowing the statement to be false shall be guilty of
24 perjury. An individual who signs on behalf of a claimant may be

1 presumed to have the authorization of the claimant and to be acting
2 at the claimant's direction. If the Notice of Claim for
3 Compensation does not contain the information required by this
4 subsection, it shall be rejected by the Commission.

5 B. If an employer controverts any issue related to the
6 Employee's First Notice of Claim for Compensation, the employer
7 shall file a Notice of Contested Issues on a form prescribed by the
8 Commission. All answers and defenses to claims or other documents
9 filed on behalf of a respondent or the respondent's insurer in a
10 workers' compensation case shall contain a statement that all
11 matters stated therein are true and accurate and shall be signed by
12 the respondent, the insurer, or their respective agents, if any.
13 Any person who signs such a statement or causes another to sign such
14 a statement, knowing the statement to be false, shall be guilty of
15 perjury. An individual who signs on behalf of a respondent, its
16 insurer, or its agent may be presumed to have the authorization of
17 the respondent, its insurer or agent and to be acting at their
18 direction.

19 ~~C. Any party shall have the right to request a prehearing~~
20 ~~conference or administrative hearing before the Commission on any~~
21 ~~issue. The Commission shall, within seven (7) days of the receipt~~
22 ~~of such notification, set the matter for prehearing conference or~~
23 ~~administrative hearing at the earliest available time. In the event~~
24 ~~the compensability of a claim is contested, the respondent shall~~

1 ~~complete discovery and secure a medical evaluation of the claimant~~
2 ~~within sixty (60) days of the filing of a request for benefits.~~

3 SECTION 31. AMENDATORY Section 155, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2017, Section 112), is amended to read as
5 follows:

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

22 B. An administrative law judge may appoint an independent
23 medical examiner to assist in determining any issue before the
24 Commission. In the event surgery is recommended by a treating

1 physician, upon request of the employer, an independent medical
2 examiner shall be appointed to determine the reasonableness and
3 necessity of the recommended surgery. Such independent medical
4 examiner shall be qualified to perform the type of surgery
5 recommended.

6 C. An independent medical examiner shall be selected from ~~the a~~
7 list of independent medical examiners ~~within ten (10) days when the~~
8 ~~employer or the employee petitions the Commission for the selection~~
9 ~~of an independent medical examiner. The independent medical~~
10 ~~examiner shall be certified by a recognized specialty board in the~~
11 ~~area or areas appropriate to the condition under review. Each~~
12 independent medical examiner shall be added to a list from which
13 assignments for independent reviews are made in order of the date of
14 registration of the physician with the Commission as an independent
15 medical examiner. Upon order from the administrative law judge, the
16 Commission shall assign independent medical examiners
17 chronologically from the list of independent medical examiners, with
18 assignment to the first physician on the list who is certified by a
19 recognized specialty board in the area or areas appropriate to the
20 condition under review and who has no apparent conflicts of
21 interest. Upon assignment, the independent medical examiner's name
22 shall move to the end of the list. If an independent medical
23 examiner is not selected for a specific case because of lack of
24 proper certification or existence of a conflict of interest, the

1 independent medical examiner's name shall not move to the end of the
2 list.

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

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

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

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

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

23 I. If the Commission does not follow the opinion of the
24 independent medical examiner on any issue, the administrative law

1 judge or member of the Board of Review shall set out its reasons for
2 deviating from the opinion of the independent medical examiner. The
3 opinion of the independent medical examiner shall be followed unless
4 there is clear and convincing evidence to the contrary.

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

12 SECTION 32. AMENDATORY Section 158, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2017, Section 115), is amended to read as
14 follows:

15 Section 115. A. If the employee and employer shall reach an
16 agreement for the full, final and complete settlement of any issue
17 of a claim pursuant to ~~this act~~ the Administrative Workers'
18 Compensation Act, a form designated as "Joint Petition" shall be
19 signed by both the employer and employee, or representatives
20 thereof, and shall be approved by the Workers' Compensation
21 Commission or an administrative law judge, and filed with the
22 Commission. In cases in which the employee is not represented by
23 legal counsel, the Commission or an administrative law judge shall
24 have jurisdiction to approve a full, final and complete settlement

1 of any issue upon the filing of an ~~Employer's First Notice of Injury~~
2 Employee's Notice of Claim for Compensation. There shall be no
3 requirement for the filing of an Employee's First Notice of Claim
4 for Compensation to effect such settlement in cases in which the
5 employee is not represented by legal counsel.

6 B. In the event all issues of a claim are not fully, finally
7 and completely settled by a Joint Petition, the issues not settled
8 by the parties and subject to the Commission's continuing
9 jurisdiction must be noted by appendix to the Joint Petition or on a
10 form created for such purpose by the Commission. The appendix must
11 be signed by the parties and approved by the Commission as set forth
12 herein.

13 C. In the absence of fraud, a Joint Petition shall be deemed
14 binding upon the parties thereto and a final adjudication of all
15 rights pursuant to ~~this act~~ the Administrative Workers' Compensation
16 Act or the workers' compensation law in effect at the time of the
17 injury or final order of the Workers' Compensation Court. An
18 official record shall be made by an official Commission reporter of
19 the testimony taken to effect the Joint Petition.

20 D. A good-faith effort shall be made on the part of any
21 insurance carrier, CompSource Oklahoma, or group self-insured plan
22 to notify an insured employer of the possibility of and terms of any
23 settlement of a workers' compensation case pursuant to this section.
24 Written comments or objections to settlements shall be filed with

1 the Commission and periodically shared with the management of the
2 applicable insurer. A written notice shall be made to all
3 policyholders of their right to a good-faith effort by their insurer
4 to notify them of any proposed settlement, if the policyholder so
5 chooses.

6 SECTION 33. AMENDATORY Section 163, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2017, Section 120), is amended to read as
8 follows:

9 Section 120. A. Except as otherwise provided by state or
10 federal law and subject to the provisions of this section, an
11 employer may inquire about previous workers' compensation claims
12 paid to an employee while the employee was employed by a previous
13 employer. If the employee fails to answer truthfully about any
14 previous permanent partial disability awards made pursuant to
15 workers' compensation claims, the employee shall be subject to
16 discharge by the employer.

17 B. 1. All requests made ~~to the Workers' Compensation~~
18 ~~Commission~~ for information on prior workers' compensation claims
19 involving a worker, including written inquiries about prior claims
20 and requests to access a worker's compensation claim file, must be
21 in writing, on a form prescribed by the Commission, and accompanied
22 by a fee of One Dollar (\$1.00) per search request, not to exceed One
23 Dollar (\$1.00) per claims record of a particular worker. The fee
24 shall be deposited to the credit of the Workers' Compensation

1 Commission Revolving Fund. The form shall require identification of
2 the person requesting the information, and the person for whom a
3 search is being made if different from the requester. The form must
4 contain an affidavit signed by the requester under penalty of
5 perjury that the information sought is not requested for a purpose
6 in violation of state or federal law. The form must be used by all
7 repositories of archived Court claim files. All request forms shall
8 be maintained by the Commission as a public record, together with a
9 record of a worker's written authorization permitting a search
10 indexed by the worker's social security number as required by
11 Section 3113 of Title 74 of the Oklahoma Statutes. The request
12 forms and authorizations shall be indexed alphabetically by the last
13 name of the worker.

14 2. This subsection shall not apply:

- 15 a. to requests for claims information made by a public
16 officer or by a public employee in the performance of
17 his or her duties on behalf of a governmental entity
18 or as may be allowed by law,
- 19 b. to requests for claims information made by an insurer,
20 self-insured employer, third-party claims
21 administrator, or a legal representative thereof, when
22 necessary to process or defend a workers' compensation
23 claim,

- 1 c. when a worker or the worker's representative requests
2 review of the worker's claims information,
- 3 d. when the disclosure is made for educational or
4 research purposes and in such a manner that the
5 disclosed information cannot be used to identify any
6 worker who is the subject of a claim,
- 7 e. to requests for claims information made by a health
8 care or rehabilitation provider or the provider's
9 legal representative when necessary to process payment
10 of health care or rehabilitation services rendered to
11 a worker, and
- 12 f. to requests for claims information made by an employer
13 or personnel service company, including but not
14 limited to an individual or entity, where the worker
15 executes a written authorization permitting the search
16 and designating the employer or personnel service
17 company as the worker's representative for that
18 purpose; however, nothing in this subparagraph shall
19 relieve the employer or personnel service company from
20 complying with the requirements of utilizing the form
21 set forth in paragraph 1 of this subsection.

22 SECTION 34. REPEALER Sections 36, 60, 61, 63, 67, 80,
23 159 and 160, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2017, Sections
24 36, 60, 61, 63, 67, 80, 116 and 117), are hereby repealed.

SECTION 35. This act shall become effective November 1, 2018.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03/28/2018 - DO
PASS, As Amended.