

<DateSubmitted>

HOUSE OF REPRESENTATIVES
CONFERENCE COMMITTEE REPORT

Mr. President:
Mr. Speaker:

The Conference Committee, to which was referred

HB2239

By: Sterling of the House and Daniels of the Senate

Title: Workers' compensation; extending Workers' Compensation Court of Existing Claims;
emergency.

Together with Engrossed Senate Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

1. That the Senate recede from its amendment; and
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

House Action _____ Date _____ Senate Action _____ Date _____

SENATE CONFEREES

Daniels	_____
Howard	_____
Jech	_____
Weaver	_____
Paxton	_____
Floyd	_____
Brooks	_____

House Action _____ Date _____ Senate Action _____ Date _____

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2239

By: Sterling of the House

and

Daniels of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; amending 85A O.S. 2021, Sections 2, 3, 5, 13, 35, 45, 46, 47, 50, 69, 80, 112, and 400, which relate to administration of the workers' compensation system; modifying definitions; modifying terms related to compensable injury; modifying terms related to accidents; modifying provisions related to exclusive nature of remedy; providing for computation of benefits for certain persons; providing for temporary pension benefits; imposing limit on total period for disability benefits; providing for award of permanent total disability based upon maximum medical improvement; providing for payment of benefits based on certain injury; imposing time limit on benefits; imposing limit on employer responsibility for prescription medicine; defining terms; modifying reference to certain publication; modifying provisions related to liability for intentional acts; modifying provisions related to permanent partial disability; modifying provisions related to compensation for loss of certain scheduled members; modifying provisions related to computation of certain benefit amounts; modifying provisions related to computation of certain time periods; modifying provisions related to certain beneficiary payments; modifying provisions related to travel reimbursement process; imposing certain time limits; providing for computation of amounts; modifying provisions related to filing of claims; modifying provisions related to

1 final order for permanent disability; authorizing
2 review by Workers' Compensation Commission;
3 authorizing process for independent medical examiner
4 in certain circumstances; providing for service as
5 independent medical examiner based on certain license
6 status; modifying provisions related to terms of
7 Judges of Workers' Compensation Court of Existing
8 Claims; amending 85 O.S. 2021, Section 380, which
9 relates to volunteer firefighters; modifying
10 references to CompSource Mutual Insurance Company;
11 providing references to the Office of Management and
12 Enterprise Services; providing an effective date; and
13 declaring an emergency.

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

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

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

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

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

3. "Case management" means the ongoing coordination, by a case
manager, of health care services provided to an injured or disabled

worker, including but not limited to systematically monitoring the treatment rendered and the medical progress of the injured or disabled worker; ensuring that any treatment plan follows all appropriate treatment protocols, utilization controls and practice parameters; assessing whether alternative health care services are appropriate and delivered in a cost-effective manner based upon acceptable medical standards; and ensuring that the injured or disabled worker is following the prescribed health care plan;

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

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

5. "Certified workplace medical plan" means an organization of health care providers or any other entity, certified by the State

1 Commissioner of Health, that is authorized to enter into a
2 contractual agreement with an employer, group self-insurance
3 association plan, an employer's workers' compensation insurance
4 carrier, third-party administrator or an insured to provide medical
5 care under the Administrative Workers' Compensation Act. Certified
6 plans shall only include plans which provide medical services and
7 payment for services on a fee-for-service basis to medical
8 providers;

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

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

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

2 9. a. "Compensable injury" means damage or harm to the
3 physical structure of the body, or damage or harm to
4 prosthetic appliances, including eyeglasses, contact
5 lenses, or hearing aids, of which the major cause is
6 either an accident, cumulative trauma or occupational
7 disease arising out of the course and scope of
8 employment. An "accident" means an event involving
9 factors external to the employee that:

10 (1) was unintended, unanticipated, unforeseen,
11 unplanned and unexpected,

12 (2) occurred at a specifically identifiable time and
13 place,

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

15 (4) was independent of sickness, mental incapacity,
16 bodily infirmity or any other cause, and

17 (5) was not as the result of an intentional act.

18 b. "Compensable injury" does not include:

19 (1) injury to any active participant in assaults or
20 combats which, although they may occur in the
21 workplace, are the result of non-employment-
22 related hostility or animus of one, both, or all
23 of the combatants and which assault or combat
24 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 if the accident was caused by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician's orders. If a biological specimen is collected within twenty-four (24) hours of the employee being injured or reporting an injury, or if at any time after the injury a biological specimen is collected by the Oklahoma Office of the Chief Medical Examiner if the injured employee does not survive for at least twenty-four (24) hours after the injury and the employee tests positive for intoxication, an illegal controlled substance, or a legal controlled substance used in contravention to a

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

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

21 (6) any preexisting condition except when the
22 treating physician clearly confirms an
23 identifiable and significant aggravation incurred
24 in the course and scope of employment,

1 (7) any injury resulting from an idiopathic injury or
2 condition, or

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

4 c. Where compensation is payable for an injury resulting
5 from cumulative trauma, the last employer in whose
6 employment the employee was last injuriously exposed
7 to the trauma during a period of at least ninety (90)
8 days or more, and the insurance carrier, if any, on
9 the risk when the employee was last so exposed under
10 such employer, shall alone be liable therefor, without
11 right to contribution from any prior employer or
12 insurance carrier. If there is no employer in whose
13 employment the employee was injuriously exposed to the
14 trauma for a period of at least ninety (90) days, then
15 the last employer in whose employment the employee was
16 last injuriously exposed to the trauma and the
17 insurance carrier, if any, on the risk when such
18 employee was last so exposed under such employer,
19 shall be liable therefor, with right to contribution
20 from any prior employer or insurance carrier.

21 d. A compensable injury shall be established by medical
22 evidence supported by objective findings as defined in
23 paragraph ~~31~~ 33 of this section.

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

~~e.~~ f. Benefits shall not be payable for a condition which results from a non-work-related independent intervening cause following a compensable injury which causes or prolongs disability, aggravation, or requires treatment. A non-work-related independent intervening cause does not require negligence or recklessness on the part of a claimant.

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

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

11. "Consequential injury" means injury or harm to a part of the body that is a direct result of the injury or medical treatment to the part of the body originally injured in the claim. The Commission shall not make a finding of a consequential injury unless

1 it is established by objective medical evidence that medical
2 treatment for such part of the body is required;

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

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

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

1 before the employee clocks in or otherwise begins work
2 for the employer or after the employee clocks out or
3 otherwise stops work for the employer unless the
4 employer owns or maintains exclusive control over the
5 area, 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 or in
9 an area owned by or exclusively controlled by the
10 employer and the work break is authorized by the
11 employee's supervisor;

12 14. "Cumulative trauma" means an injury to an employee that is
13 caused by the combined effect of repetitive physical activities
14 extending over a period of time in the course and scope of
15 employment. Cumulative trauma shall not mean fatigue, soreness or
16 general aches and pain that may have been caused, aggravated,
17 exacerbated or accelerated by the employee's course and scope of
18 employment. Cumulative trauma shall have resulted directly and
19 independently of all other causes;

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

22 16. "Disability" means incapacity because of compensable injury
23 to earn, in the same or any other employment, substantially the same
24

1 amount of wages the employee was receiving at the time of the
2 compensable injury;

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

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

1 returning from an emergency, shall be deemed to be in
2 the course of employment.

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

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

13 (2) any person who is employed in agriculture,
14 ranching or horticulture by an employer who had a
15 gross annual payroll in the preceding calendar
16 year of less than One Hundred Thousand Dollars
17 (\$100,000.00) wages for agricultural, ranching or
18 horticultural workers, or any person who is
19 employed in agriculture, ranching or horticulture
20 who is not engaged in operation of motorized
21 machines. This exemption applies to any period
22 of time for which such employment exists,
23 irrespective of whether or not the person is
24 employed in other activities for which the

1 exemption does not apply. If the person is
2 employed for part of a year in exempt activities
3 and for part of a year in nonexempt activities,
4 the employer shall be responsible for providing
5 workers' compensation only for the period of time
6 for which the person is employed in nonexempt
7 activities,

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

10 (4) any person employed by an employer with five or
11 fewer total employees, all of whom are related
12 within the second degree by blood or marriage to
13 the employer, all of whom are dependents living
14 in the household of the employer, or all of whom
15 are a combination of such relatives and
16 dependents. If the employer is not a natural
17 person, such relative shall be related within the
18 second degree by blood or marriage to a person
19 who owns fifty percent (50%) or more of the
20 employer, or such dependent shall be in the
21 household of a person who owns fifty percent
22 (50%) or more of the employer,

23 (5) any person employed by an employer which is a
24 youth sports league which qualifies for exemption

1 from federal income taxation pursuant to federal
2 law,

3 (6) sole proprietors, members of a partnership,
4 individuals who are party to a franchise
5 agreement as set out by the Federal Trade
6 Commission franchise disclosure rule, 16 CFR
7 436.1 through 436.11, members of a limited
8 liability company who own at least ten percent
9 (10%) of the capital of the limited liability
10 company or any stockholder-employees of a
11 corporation who own ten percent (10%) or more
12 stock in the corporation, unless they elect to be
13 covered by a policy of insurance covering
14 benefits under the Administrative Workers'
15 Compensation Act,

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

23 (8) a person, commonly referred to as an owner-
24 operator, who owns or leases a truck-tractor or

1 truck for hire, if the owner-operator actually
2 operates the truck-tractor or truck and if the
3 person contracting with the owner-operator is not
4 the lessor of the truck-tractor or truck.

5 Provided, however, an owner-operator shall not be
6 precluded from workers' compensation coverage
7 under the Administrative Workers' Compensation
8 Act if the owner-operator elects to participate
9 as a sole proprietor,

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

22 (10) any person who is employed as a domestic servant
23 or as a casual worker in and about a private home
24 or household, which private home or household had

1 a gross annual payroll in the preceding calendar
2 year of less than Fifty Thousand Dollars
3 (\$50,000.00) for such workers;

4 19. "Employer" means a natural person, partnership,
5 association, limited liability company, corporation, and the legal
6 representatives of a deceased employer, or the receiver or trustee
7 of a person, partnership, association, corporation, or limited
8 liability company, departments, instrumentalities and institutions
9 of this state and divisions thereof, counties and divisions thereof,
10 public trusts, boards of education and incorporated cities or towns
11 and divisions thereof, employing a person included within the term
12 "employee" as defined in this section. Employer may also mean the
13 employer's workers' compensation insurance carrier, if applicable.
14 Except as provided otherwise, this act applies to all public and
15 private entities and institutions;

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

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

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

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

9 24. "Impaired self-insurer" means a private self-insurer or
10 group self-insurance association that fails to pay its workers'
11 compensation obligations, or is financially unable to do so and is
12 the subject of any proceeding under the Federal Bankruptcy Reform
13 Act of 1978, and any subsequent amendments or is the subject of any
14 proceeding in which a receiver, custodian, liquidator,
15 rehabilitator, trustee or similar officer has been appointed by a
16 court of competent jurisdiction to act in lieu of or on behalf of
17 the self-insurer;

18 ~~24.~~ 25. "Incapacity" means inadequate strength or ability to
19 perform a work-related task;

20 ~~25.~~ 26. "Insurance Commissioner" means the Insurance
21 Commissioner of the State of Oklahoma;

22 ~~26.~~ 27. "Insurance Department" means the Insurance Department
23 of the State of Oklahoma;

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

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

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

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

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

- a. unexplained absenteeism or tardiness,
- b. willful or wanton indifference to or neglect of the duties required,

- c. willful or wanton breach of any duty required by the employer,
- d. the mismanagement of a position of employment by action or inaction,
- e. actions or omissions that place in jeopardy the health, life, or property of self or others,
- f. dishonesty,
- g. wrongdoing,
- h. violation of a law, or
- i. a violation of a policy or rule adopted to ensure orderly work or the safety of self or others;

~~31.~~ 33.

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

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

(b) For the purpose of making permanent disability ratings to the spine, physicians shall use criteria established by the Sixth Edition of the American Medical Association

"Guides to the Evaluation of Permanent Impairment".

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

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

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

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

1 ~~33.~~ 35. "Permanent disability" means the extent, expressed as a
2 percentage, of the loss of a portion of the total physiological
3 capabilities of the human body as established by competent medical
4 evidence and based on the Sixth Edition of the American Medical
5 Association "Guides to the Evaluation of Permanent Impairment", if
6 the impairment is contained therein;

7 ~~34.~~ 36. "Permanent partial disability" means a permanent
8 disability or loss of use after maximum medical improvement has been
9 reached ~~which prevents the injured employee, who has been released~~
10 ~~to return to work by the treating physician, from returning to his~~
11 ~~or her pre-injury or equivalent job.~~ All evaluations of permanent
12 partial disability must be supported by objective findings;

13 ~~35.~~ 37. "Permanent total disability" means, based on objective
14 findings, incapacity, based upon accidental injury or occupational
15 disease, to earn wages in any employment for which the employee may
16 become physically suited and reasonably fitted by education,
17 training, experience or vocational rehabilitation provided under
18 this act. Loss of both hands, both feet, both legs, or both eyes,
19 or any two thereof, shall constitute permanent total disability;

20 ~~36.~~ 38. "Preexisting condition" means any illness, injury,
21 disease, or other physical or mental condition, whether or not work-
22 related, for which medical advice, diagnosis, care or treatment was
23 recommended or received preceding the date of injury;

1 ~~37.~~ 39. "Pre-injury or equivalent job" means the job that the
2 claimant was working for the employer at the time the injury
3 occurred or any other employment offered by the claimant's employer
4 that pays at least one hundred percent (100%) of the employee's
5 average weekly wage;

6 ~~38.~~ 40. "Private self-insurer" means a private employer that
7 has been authorized to self-insure its workers' compensation
8 obligations pursuant to this act, but does not include group self-
9 insurance associations authorized by this act, or any public
10 employer that self-insures pursuant to this act;

11 ~~39.~~ 41. "Prosthetic" means an artificial device used to replace
12 a part or joint of the body that is lost or injured in an accident
13 or illness covered by this act;

14 ~~40.~~ 42. "Scheduled member" or "member" means hands, fingers,
15 arms, legs, feet, toes, and eyes. In addition, for purposes of the
16 Multiple Injury Trust Fund only, "scheduled member" means hearing
17 impairment;

18 ~~41.~~ 43. "Scientifically based" involves the application of
19 rigorous, systematic, and objective procedures to obtain reliable
20 and valid knowledge relevant to medical testing, diagnoses and
21 treatment; is adequate to justify the general conclusions drawn; and
22 has been accepted by a peer-review journal or approved by a panel of
23 independent experts through a comparably rigorous, objective, and
24 scientific review;

1 ~~42.~~ 44. "State average weekly wage" means the state average
2 weekly wage determined by the Oklahoma Employment Security
3 Commission in the preceding calendar year. If such determination is
4 not available, the Commission shall determine the wage annually
5 after reasonable investigation;

6 ~~43.~~ 45. "Subcontractor" means a person, firm, corporation or
7 other legal entity hired by the general or prime contractor to
8 perform a specific task for the completion of a work-related
9 activity;

10 ~~44.~~ 46. "Surgery" does not include an injection, or the forcing
11 of fluids beneath the skin, for treatment or diagnosis;

12 ~~45.~~ 47. "Surviving spouse" means the employee's spouse by
13 reason of a legal marriage recognized by the State of Oklahoma or
14 under the requirements of a common law marriage in this state, as
15 determined by the Workers' Compensation Commission;

16 ~~46.~~ 48. "Temporary partial disability" means an injured
17 employee who is temporarily unable to perform his or her job, but
18 may perform alternative work offered by the employer;

19 ~~47.~~ 49. "Time of accident" or "date of accident" means the time
20 or date of the occurrence of the accidental incident from which
21 compensable injury, disability, or death results; and

22 ~~48.~~ 50. "Wages" means money compensation received for
23 employment at the time of the accident, including the reasonable
24 value of board, rent, housing, lodging, or similar advantage

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

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

7 Section 3. A. Every employer and every employee, unless
8 otherwise specifically provided in this act, shall be subject and
9 bound to the provisions of the Administrative Workers' Compensation
10 Act and every employer shall pay or provide benefits according to
11 the provisions of this act for the ~~accidental~~ compensable injury or
12 death of an employee arising out of and in the course of his or her
13 employment, without regard to fault for such injury, if the
14 employee's contract of employment was made or if the injury occurred
15 within this state. If an employee makes a claim for an injury in
16 another jurisdiction, the employee is precluded from his or her
17 right of action under the Administrative Workers' Compensation Act
18 unless the Workers' Compensation Commission determines that there is
19 a change in circumstances that creates a good cause to bring the
20 claim under the Administrative Workers' Compensation Act; provided,
21 however, that the employee may not receive duplicate benefits to
22 those received in the foreign jurisdiction and the employee's right
23 to bring a claim under this act shall be subject to the limitations
24 period for bringing a claim pursuant to paragraph 1 of subsection A

1 of Section 69 of this title. Nothing in this act shall be construed
2 to conflict with any valid Act of Congress governing the liability
3 of employers for injuries received by their employees.

4 B. The State of Oklahoma accepts the provisions of the Acts of
5 Congress designated as 40 U.S.C., Section 3172, formerly 40 U.S.C.,
6 Section 290, and hereby extends the territorial jurisdiction of the
7 Administrative Workers' Compensation Act of this state to all lands
8 and premises within the exterior boundaries of this state which the
9 Government of the United States of America owns or holds by deed or
10 act of cession, and to all purchases, projects, buildings,
11 constructions, improvements and property within the exterior
12 boundaries of this state belonging to the Government of the United
13 States of America, in the same manner and to the same extent as if
14 the premises were under the exclusive jurisdiction of this state,
15 subject only to the limitations placed thereon by the Acts of
16 Congress.

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

20 D. The Workers' Compensation Code in effect before February 1,
21 2014, shall govern all rights in respect to claims for injuries and
22 death ~~based on accidents~~ occurring before February 1, 2014.

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

1 Section 5. A. The rights and remedies granted to an employee
2 subject to the provisions of the Administrative Workers'
3 Compensation Act shall be exclusive of all other rights and remedies
4 of the employee, his legal representative, dependents, next of kin,
5 or anyone else claiming rights to recovery on behalf of the employee
6 against the employer, or any principal, officer, director, employee,
7 stockholder, partner, or prime contractor of the employer on account
8 of injury, illness, or death. Negligent acts of a co-employee may
9 not be imputed to the employer. No role, capacity, or persona of
10 any employer, principal, officer, director, employee, or stockholder
11 other than that existing in the role of employer of the employee
12 shall be relevant for consideration for purposes of this act, and
13 the remedies and rights provided by this act shall be exclusive
14 regardless of the multiple roles, capacities, or personas the
15 employer may be deemed to have.

16 B. Exclusive remedy shall not apply if:

17 1. An employer fails to secure the payment of compensation due
18 to the employee as required by this act. An injured employee, or
19 his or her legal representative in case death results from the
20 injury, may, at his or her option, elect to claim compensation under
21 this act or to maintain a legal action in court for damages on
22 account of the injury or death; or

23 2. The injury was caused by an intentional ~~tort~~ act committed
24 by the employer. ~~An intentional tort shall exist only when the~~

1 ~~employee is injured as a result of willful, deliberate, specific~~
2 ~~intent of the employer to cause such injury. Allegations or proof~~
3 ~~that the employer had knowledge that the injury was substantially~~
4 ~~certain to result from the employer's conduct shall not constitute~~
5 ~~an intentional tort. The employee shall plead facts that show it is~~
6 ~~at least as likely as it is not that the employer acted with the~~
7 ~~purpose of injuring the employee~~ An intentional act shall exist only
8 when an employer who owns at least ten percent (10%) of the business
9 engages in or specifically directs the act that is the proximate
10 cause of the injury to the employee. An employee or owner of less
11 than ten percent (10%) of the business shall not be released from
12 liability pursuant to this section if he or she engaged in an
13 intentional act that was the proximate cause of the injury. The
14 issue of whether an act is ~~an~~ intentional ~~tort~~ shall be a question
15 of law.

16 C. The immunity from civil liability described in subsection A
17 of this section shall apply regardless of whether the injured
18 employee is denied compensation or deemed ineligible to receive
19 compensation under this act.

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

1 E. The immunity created by the provisions of this section shall
2 not extend to action against another employer, or its employees, on
3 the same job as the injured or deceased worker where such other
4 employer does not stand in the position of an intermediate or
5 principal employer to the immediate employer of the injured or
6 deceased worker.

7 F. The immunity created by the provisions of this section shall
8 not extend to action against another employer, or its employees, on
9 the same job as the injured or deceased worker even though such
10 other employer may be considered as standing in the position of a
11 special master of a loaned servant where such special master neither
12 is the immediate employer of the injured or deceased worker nor
13 stands in the position of an intermediate or principal employer to
14 the immediate employer of the injured or deceased worker.

15 G. This section shall not be construed to abrogate the loaned
16 servant doctrine in any respect other than that described in
17 subsection F of this section. Nothing in this act shall be
18 construed to relieve the employer from any other penalty provided
19 for in this act for failure to secure the payment of compensation
20 under this act.

21 H. For the purpose of extending the immunity of this section,
22 any architect, professional engineer, or land surveyor shall be
23 deemed an intermediate or principal employer for services performed
24 at or on the site of a construction project, but this immunity shall

1 not extend to the negligent preparation of design plans and
2 specifications.

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

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

10 Section 13. A. 1. A mental injury or illness is not a
11 compensable injury unless caused by a physical injury to the
12 employee, and shall not be considered an injury arising out of and
13 in the course and scope of employment or compensable unless
14 demonstrated by a preponderance of the evidence; provided, however,
15 that this physical injury limitation shall not apply to any victim
16 of a crime of violence or to a law enforcement officer, firefighter,
17 or emergency medical technician on a full-time basis by a
18 municipality, county, or the State of Oklahoma, or a volunteer
19 firefighter who suffers post-traumatic stress disorder, as defined
20 herein, while responding to an emergency. For the purpose of this
21 section, such employee shall be referred to as a first responder.

22 2. No mental injury or illness under this section shall be
23 compensable unless it is also diagnosed by a licensed psychiatrist
24 or psychologist and unless the diagnosis of the condition meets the

1 criteria established in the ~~most current issue of the~~ Diagnostic and
2 Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).

3 B. 1. Notwithstanding any other provision of this act, where a
4 claim is for mental injury or illness, the employee shall be limited
5 to twenty-six (26) weeks of disability benefits unless it is shown
6 by clear and convincing evidence that benefits should continue for a
7 set period of time, not to exceed a total of fifty-two (52) weeks.
8 If the treating physician is of the opinion that the first responder
9 is temporarily unable to perform his or her job or any alternative
10 work offered by the employer, he or she shall be entitled to receive
11 compensation which is the greater of the weekly benefit provided for
12 in a collective bargaining agreement or according to the policy of
13 the employer, or seventy percent (70%) of the injured employee's
14 average weekly wage not to exceed the state average weekly wage. If
15 the employee has a temporary pension benefit available at no
16 additional cost to the employee and the benefit is equal to or
17 greater than the temporary award in this system the employer may
18 elect to exercise the temporary pension benefit. In no event shall
19 disability benefits extend beyond fifty-two (52) weeks.

20 2. Notwithstanding any other provision of this section, a
21 person who receives benefits provided herein for a mental injury or
22 illness not caused by a physical injury who, after reaching maximum
23 medical improvement, is unable to perform the essential functions of
24 their employment position and who is not eligible to receive a

1 disability retirement through their pension or retirement system
2 shall be eligible to be awarded permanent disability benefits as
3 provided for in this act.

4 3. a. In cases where death results directly from the mental
5 injury or illness within a period of one (1) year,
6 compensation shall be paid the dependents as provided
7 in other death cases under this act.

8 b. Death directly or indirectly related to the mental
9 injury or illness occurring one (1) year or more from
10 the incident resulting in the mental injury or illness
11 shall not be a compensable injury.

12 C. 1. In the event the Workers' Compensation Commission finds
13 that a first responder has suffered post-traumatic stress disorder
14 not accompanied by a physical injury, as defined herein, the
15 employer shall provide reasonable and necessary medical treatment
16 for such injury, subject to the Oklahoma Workers' Compensation Fee
17 Schedule, for a period of no longer than one (1) year. The employer
18 shall not be responsible for medical treatment in the form of
19 prescription medicine in excess of Ten Thousand Dollars
20 (\$10,000.00).

21 2. During any period in which a first responder is temporarily
22 unable to perform his or her job, the employer shall pay to maintain
23 health insurance coverage for the first responder, if such health
24 insurance was in effect on the date of the injury.

1 D. "Post-traumatic stress disorder", for the purpose of this
2 section, means an injury or condition in which a first responder has
3 been exposed to a traumatic event and:

4 1. Has experienced, witnessed, or was confronted with an event
5 that involved actual or threatened death or serious injury, or a
6 threat to the physical integrity of others, and the response
7 involved fear, helplessness, or horror;

8 2. The traumatic event is persistently re-experienced in one or
9 more of the following ways:

10 a. recurrent and intrusive distressing recollections of
11 the event,

12 b. recurrent distressing dreams,

13 c. acting or feeling as if the traumatic event were
14 recurring,

15 d. intense psychological distress at exposure to cues
16 that symbolize an aspect of the traumatic event, or

17 e. physiological reactivity on exposure to cues that
18 symbolize an aspect of the traumatic event;

19 3. Persistent avoidance of stimuli associated with the trauma
20 and numbing of general responsiveness such as efforts to avoid
21 thoughts, feelings or conversations associated with the trauma,
22 markedly diminished interest or participation in significant
23 activities, or a feeling of detachment or estrangement from others;
24

1 4. Persistent symptoms of increased arousal such as difficulty
2 falling or staying asleep, irritability or outbursts of anger,
3 difficulty concentrating, or hypervigilance;

4 5. The duration of the disturbance is more than one (1) month;
5 and

6 6. The disturbance causes clinically significant distress or
7 impairment in social, occupational and other important areas of
8 functioning.

9 E. "Volunteer firefighter", for the purpose of this section,
10 means a person who is enrolled as a member of a volunteer fire
11 department with two or less salaried firefighters and who serves in
12 such capacity without receiving a regular salary.

13 F. "Emergency medical technician", for the purpose of this
14 section, means a person who holds a license as an emergency medical
15 technician, an intermediate or advanced emergency medical
16 technician, or a paramedic, such license issued by the State
17 Department of Health to perform emergency medical services in
18 accordance with the Oklahoma Emergency Response Systems Development
19 Act and the rules and standards promulgated by the State
20 Commissioner of Health.

21 SECTION 5. AMENDATORY 85A O.S. 2021, Section 35, is
22 amended to read as follows:
23
24

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

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

8 B. The primary obligation to pay compensation is on the
9 employer, and the procurement of a policy of insurance by an
10 employer to cover the obligation in respect to this act shall not
11 relieve the employer of the obligation.

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

14 Section 45. A. Temporary Total Disability.

15 1. If the injured employee is temporarily unable to perform his
16 or her job or any alternative work offered by the employer, he or
17 she shall be entitled to receive compensation equal to seventy
18 percent (70%) of the injured employee's average weekly wage, but not
19 to exceed the state average weekly wage, for one hundred fifty-six
20 (156) weeks. Provided, there shall be no payment for the first
21 three (3) days of the initial period of temporary total disability.
22 If an administrative law judge finds that a consequential injury has
23 occurred and that additional time is needed to reach maximum medical
24 improvement, temporary total disability may continue for a period of

1 not more than an additional fifty-two (52) weeks. Such finding
2 shall be based upon a showing of medical necessity by clear and
3 convincing evidence. An employer shall have the right to recover
4 any overpayment of temporary total disability payments from a
5 subsequent permanent partial disability award if the offset is
6 deemed justified by the Workers' Compensation Commission.

7 2. When the injured employee is released from active medical
8 treatment by the treating physician for all body parts found by the
9 Commission to be injured, or in the event that the employee, without
10 a valid excuse, misses three consecutive medical treatment
11 appointments, fails to comply with medical orders of the treating
12 physician, or otherwise abandons medical care, the employer shall be
13 entitled to terminate temporary total disability by notifying the
14 employee, or if represented, his or her counsel. If, however, an
15 objection to the termination is filed by the employee within ten
16 (10) days of termination, the Commission shall set the matter within
17 twenty (20) days for a determination if temporary total disability
18 compensation shall be reinstated. The temporary total disability
19 shall remain terminated until such time as the employee complies
20 with medical orders of the treating physician. Notwithstanding the
21 provisions of this paragraph, benefits under this subsection shall
22 be permanently terminated by order of the Commission if the employee
23 is noncompliant or abandons treatment for sixty (60) days, or if
24 benefits under this subsection have been suspended under this

1 paragraph at least two times. The administrative law judge may
2 appoint an independent medical examiner to determine if further
3 medical treatment is reasonable and necessary. The independent
4 medical examiner shall not provide treatment to the injured worker,
5 unless agreed upon by the parties.

6 B. Temporary Partial Disability.

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

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

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

22 C. Permanent Partial Disability.

23 1. A permanent partial disability award or combination of
24 awards granted an injured worker may not exceed a permanent partial

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

21 2. Permanent partial disability shall not be allowed to a part
22 of the body for which no medical treatment has been received. A
23 determination of permanent partial disability made by the Commission
24 or administrative law judge which is not supported by objective

1 medical findings provided by a treating physician who is a medical
2 doctor, doctor of osteopathy, chiropractor or a qualified
3 independent medical examiner shall be considered an abuse of
4 discretion.

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

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

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

22 6. Previous Disability: The fact that an employee has suffered
23 previous disability or received compensation therefor shall not
24 preclude the employee from compensation for a later accidental

1 personal injury or occupational disease. In the event there exists
2 a previous permanent partial disability, including a previous non-
3 work-related injury or condition which produced permanent partial
4 disability and the same is aggravated or accelerated by an
5 accidental personal injury or occupational disease, compensation for
6 permanent partial disability shall be only for such amount as was
7 caused by such accidental personal injury or occupational disease
8 and no additional compensation shall be allowed for the preexisting
9 disability or impairment. Any such reduction shall not apply to
10 temporary total disability, nor shall it apply to compensation for
11 medical treatment. If workers' compensation benefits have
12 previously been awarded through settlement or judicial or
13 administrative determination in Oklahoma, the percentage basis of
14 the prior settlement or award shall conclusively establish the
15 amount of permanent partial disability determined to be preexisting.
16 If workers' compensation benefits have not previously been awarded
17 through settlement or judicial or administrative determination in
18 Oklahoma, the amount of preexisting permanent partial disability
19 shall be established by competent evidence and determined by the
20 Commission.

21 7. No payments on any permanent partial disability order shall
22 begin until payments on any preexisting permanent partial disability
23 orders have been completed.
24

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

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

14 10. An injured employee who is eligible for permanent partial
15 disability under this subsection shall be entitled to receive
16 vocational rehabilitation services provided by a technology center
17 or public secondary school offering vocational-technical education
18 courses, or a member institution of The Oklahoma State System of
19 Higher Education, which shall include retraining and job placement
20 to restore the employee to gainful employment. Vocational
21 rehabilitation services or training shall not extend for a period of
22 more than fifty-two (52) weeks.

23 D. Permanent Total Disability.
24

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

22 2. The Workers' Compensation Commission shall annually review
23 the status of any employee receiving benefits for permanent total
24 disability against the last employer. The Commission shall require

1 the employee to annually file an affidavit under penalty of perjury
2 stating that he or she is not and has not been gainfully employed
3 and is not capable of gainful employment. Failure to file such
4 affidavit shall result in suspension of benefits; provided, however,
5 reinstatement of benefits may occur after proper hearing before the
6 Commission.

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

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

18 3. Upon receipt of such report, and after affording all parties
19 an opportunity to be heard, the administrative law judge shall order
20 that any rehabilitation services or training, recommended in the
21 report, or such other rehabilitation services or training as the
22 administrative law judge may deem necessary, provided the employee
23 elects to receive such services, shall be provided at the expense of
24 the employer. Except as otherwise provided in this subsection,

1 refusal to accept rehabilitation services by the employee shall in
2 no way diminish any benefits allowable to an employee.

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

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

19 6. If rehabilitation requires residence at or near the facility
20 or institution which is away from the employee's customary
21 residence, reasonable cost of the employee's board, lodging, travel,
22 tuition, books and necessary equipment in training shall be paid for
23 by the insurer in addition to weekly compensation benefits to which
24

1 the employee is otherwise entitled under the Administrative Workers'
2 Compensation Act.

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

13 F. Disfigurement.

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

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

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

1 G. Benefits for a single-event injury shall be determined by
2 the law in effect at the time of injury. Benefits for a cumulative
3 trauma injury or occupational disease or illness shall be determined
4 by the law in effect at the time the employee knew or reasonably
5 should have known that the injury, occupational disease or illness
6 was related to work activity. Benefits for death shall be
7 determined by the law in effect at the time of death.

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

10 Section 46. A. An injured employee who is entitled to receive
11 permanent partial disability compensation under Section 45 of this
12 title shall receive compensation for each part of the body in
13 accordance with the number of weeks for the scheduled loss set forth
14 below.

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

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

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

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

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

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

- 1 7. First finger amputated, thirty-nine (39) weeks;
- 2 8. Second finger amputated, thirty-three (33) weeks;
- 3 9. Third finger amputated, twenty-two (22) weeks;
- 4 10. Fourth finger amputated, seventeen (17) weeks;
- 5 11. Foot amputated, two hundred twenty (220) weeks;
- 6 12. Great toe amputated, thirty-three (33) weeks;
- 7 13. Toe other than great toe amputated, eleven (11) weeks;
- 8 14. Eye enucleated, in which there was useful vision, two
- 9 hundred seventy-five (275) weeks;
- 10 15. Loss of hearing of one ear, one hundred ten (110) weeks;
- 11 16. Loss of hearing of both ears, three hundred thirty (330)
- 12 weeks; and
- 13 17. Loss of one testicle, fifty-three (53) weeks; loss of both
- 14 testicles, one hundred fifty-eight (158) weeks.

15 B. The permanent partial disability rate of compensation for
16 amputation or permanent total loss of use of a scheduled member
17 specified in this section shall be seventy percent (70%) of the
18 employee's average weekly wage, not to exceed Three Hundred Fifty
19 Dollars (\$350.00) with an increase to Three Hundred Sixty Dollars
20 (\$360.00) on July 1, 2021, and beginning January 1, 2023, an amount
21 equal to forty percent (40%) of the state's average weekly wage,
22 rounded to the nearest dollar, to be adjusted annually, multiplied
23 by the number of weeks as set forth in this section, regardless of
24

1 whether or not the injured employee is able to return to his or her
2 pre-injury job.

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

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

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

20 E. 1. Compensation for the permanent loss of eighty percent
21 (80%) or more of the vision of an eye shall be the same as for the
22 loss of an eye.
23
24

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

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

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

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

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

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

21 B. Common law spouse. A common law spouse shall not be
22 entitled to benefits under this section unless he or she obtains an
23 order from the Workers' Compensation Commission ruling that a common
24 law marriage existed between the decedent and the surviving spouse.

1 The ruling by the Commission shall be exclusive in regard to
2 benefits under this section regardless of any district court
3 decision regarding the probate of the decedent's estate.

4 C. Beneficiaries - Amounts. If an injury or occupational
5 illness causes death, weekly income benefits shall be payable as
6 follows:

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

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

20 3. If there is a child or children and no surviving spouse, a
21 lump-sum payment of Twenty-five Thousand Dollars (\$25,000.00) and
22 fifty percent (50%) of the lesser of the deceased employee's average
23 weekly wage and the state average weekly wage to each child. If
24 there are more than two children, each child shall receive a pro

1 rata share of one hundred percent (100%) of the lesser of the
2 deceased employee's average weekly wage and the state average weekly
3 wage. With respect to the lump-sum payment, if there are more than
4 six children, each child shall receive a pro rata share of One
5 Hundred Fifty Thousand Dollars (\$150,000.00);

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

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

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

22 D. The weekly income benefits payable to the surviving spouse
23 under this section shall continue while the surviving spouse remains
24 unmarried. In no event shall this spousal weekly income benefit be

1 diminished by the award to other beneficiaries. The weekly income
2 benefits payable to any child under this section shall terminate on
3 the earlier of death, marriage, or reaching the age of eighteen
4 (18). However, if the child turns eighteen (18) and is:

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

7 2. Enrolled as a full-time student in any accredited
8 institution of higher education or vocational or technology
9 education; or

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

16 E. If any member of the class of beneficiaries who receive a
17 pro rata share of weekly income benefits becomes ineligible to
18 continue to receive benefits, the remaining members of the class
19 shall receive adjusted weekly income benefits equal to the new class
20 size.

21 F. To receive benefits under this section, a beneficiary ~~or his~~
22 ~~or her guardian, if applicable,~~ shall file a proof of loss form with
23 the Commission. All questions of dependency shall be determined as
24 of the time of the injury. The employer shall initiate payment of

1 benefits within fifteen (15) days of the Commission's determination
2 of the proper beneficiaries. The Commission shall appoint a
3 guardian ad litem to represent known and unknown minor children and
4 the guardian ad litem shall be paid a reasonable fee for his or her
5 services.

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

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

16 B. If the employer fails or neglects to provide medical
17 treatment within five (5) days after actual knowledge is received of
18 an injury, the injured employee may select a physician or
19 chiropractor to provide medical treatment at the expense of the
20 employer; provided, however, that the injured employee, or another
21 in the employee's behalf, may obtain emergency treatment at the
22 expense of the employer where such emergency treatment is not
23 provided by the employer.

24

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

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

15 E. An employee claiming or entitled to benefits under the
16 Administrative Workers' Compensation Act, shall, if ordered by the
17 Commission or requested by the employer or insurance carrier, submit
18 himself or herself for medical examination. If an employee refuses
19 to submit himself or herself to examination, his or her right to
20 prosecute any proceeding under the Administrative Workers'
21 Compensation Act shall be suspended, and no compensation shall be
22 payable for the period of such refusal.

23 F. For compensable injuries resulting in the use of a medical
24 device, ongoing service for the medical device shall be provided in

1 situations including, but not limited to, medical device battery
2 replacement, ongoing medication refills related to the medical
3 device, medical device repair, or medical device replacement.

4 G. Travel Reimbursement.

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

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

20 3. Reimbursement of travel shall be issued to the employee
21 within sixty (60) days of receipt by employer of the request for
22 reimbursement from employee following a finding of compensable
23 injury by the Commission or admission of compensable injury to the
24 Commission by the employer, and subject to paragraph 2 of this

1 subsection. If payment for reimbursement is not issued as required,
2 employer shall pay to the employee an additional amount equal to
3 fifty percent (50%) of the request for reimbursement remaining to be
4 paid provided the Commission orders the payment of mileage equal to
5 the request for reimbursement by the employee and the amount for
6 which the hearing was sought.

7 H. Fee Schedule.

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

22 2. Reimbursement for medical care shall be prescribed and
23 limited by the Fee Schedule. The director of the Employees Group
24 Insurance Division of the Office of Management and Enterprise

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

12 3. In making adjustments to the Fee Schedule, the Commission
13 shall use, as a benchmark, the reimbursement rate for each Current
14 Procedural Terminology (CPT) code provided for in the fee schedule
15 published by the Centers for Medicare and Medicaid Services of the
16 U.S. Department of Health and Human Services for use in Oklahoma
17 (Medicare Fee Schedule) on the effective date of this section,
18 workers' compensation fee schedules employed by neighboring states,
19 the latest edition of "Relative Values for Physicians" (RVP), usual,
20 customary and reasonable medical payments to workers' compensation
21 health care providers in the same trade area for comparable
22 treatment of a person with similar injuries, and all other data the
23 Commission deems relevant. For services not valued by CMS, the
24 Commission shall establish values based on the usual, customary and

1 reasonable medical payments to health care providers in the same
2 trade area for comparable treatment of a person with similar
3 injuries.

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

15 b. For reimbursement of medical services for Evaluation
16 and Management of injured employees as defined in the
17 Fee Schedule adopted by the Commission, the
18 reimbursement rate shall not be less than one hundred
19 fifty percent (150%) of the Medicare Fee Schedule.

20 c. Any entity providing durable medical equipment,
21 prosthetics, orthotics or supplies shall be accredited
22 by a CMS-approved accreditation organization. If a
23 physician provides durable medical equipment,
24 prosthetics, orthotics, prescription drugs, or

1 supplies to a patient ancillary to the patient's
2 visit, reimbursement shall be no more than ten percent
3 (10%) above cost.

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

14 4. The right to recover charges for every type of medical care
15 for injuries arising out of and in the course of covered employment
16 as defined in the Administrative Workers' Compensation Act shall lie
17 solely with the Commission. When a medical care provider has
18 brought a claim to the Commission to obtain payment for services, a
19 party who prevails in full on the claim shall be entitled to
20 reasonable attorney fees.

21 5. Nothing in this section shall prevent an employer, insurance
22 carrier, group self-insurance association, or certified workplace
23 medical plan from contracting with a provider of medical care for a
24

1 reimbursement rate that is greater than or less than limits
2 established by the Fee Schedule.

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

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

14 8. Charges for prescription drugs dispensed by a pharmacy shall
15 be limited to ninety percent (90%) of the average wholesale price of
16 the prescription, plus a dispensing fee of Five Dollars (\$5.00) per
17 prescription. "Average wholesale price" means the amount determined
18 from the latest publication designated by the Commission.
19 Physicians shall prescribe and pharmacies shall dispense generic
20 equivalent drugs when available. If the National Drug Code, or
21 "NDC", for the drug product dispensed is for a repackaged drug, then
22 the maximum reimbursement shall be the lesser of the original
23 labeler's NDC and the lowest-cost therapeutic equivalent drug
24 product. Compounded medications shall be billed by the compounding

1 pharmacy at the ingredient level, with each ingredient identified
2 using the applicable NDC of the drug product, and the corresponding
3 quantity. Ingredients with no NDC area are not separately
4 reimbursable. Payment shall be based on a sum of the allowable fee
5 for each ingredient plus a dispensing fee of Five Dollars (\$5.00)
6 per prescription.

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

15 10. Implantables are paid in addition to procedural
16 reimbursement paid for medical or surgical services. A
17 manufacturer's invoice for the actual cost to a physician, hospital
18 or other entity of an implantable device shall be adjusted by the
19 physician, hospital or other entity to reflect, at the time
20 implanted, all applicable discounts, rebates, considerations and
21 product replacement programs and shall be provided to the payer by
22 the physician or hospital as a condition of payment for the
23 implantable device. If the physician, or an entity in which the
24 physician has a financial interest other than an ownership interest

1 of less than five percent (5%) in a publically traded company,
2 provides implantable devices, this relationship shall be disclosed
3 to patient, employer, insurance company, third-party commission,
4 certified workplace medical plan, case managers, and attorneys
5 representing claimant and defendant. If the physician, or an entity
6 in which the physician has a financial interest other than an
7 ownership interest of less than five percent (5%) in a publicly
8 traded company, buys and resells implantable devices to a hospital
9 or another physician, the markup shall be limited to ten percent
10 (10%) above cost.

11 11. Payment for medical care as required by the Administrative
12 Workers' Compensation Act shall be due within forty-five (45) days
13 of the receipt by the employer or insurance carrier of a complete
14 and accurate invoice, unless the employer or insurance carrier has a
15 good-faith reason to request additional information about such
16 invoice. Thereafter, the Commission may assess a penalty up to
17 twenty-five percent (25%) for any amount due under the Fee Schedule
18 that remains unpaid on the finding by the Commission that no good-
19 faith reason existed for the delay in payment. If the Commission
20 finds a pattern of an employer or insurance carrier willfully and
21 knowingly delaying payments for medical care, the Commission may
22 assess a civil penalty of not more than Five Thousand Dollars
23 (\$5,000.00) per occurrence.

24

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

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

21 14. a. Beginning on May 28, 2019, the Commission shall
22 conduct an evaluation of the Fee Schedule, which shall
23 include an update of the list of Current Procedural
24 Terminology (CPT) codes, a line item adjustment or

1 renewal of all rates, and amendment as needed to the
2 rules applicable to the Fee Schedule.

3 b. The Commission shall contract with an external
4 consultant with knowledge of workers' compensation fee
5 schedules to review regional and nationwide
6 comparisons of Oklahoma's Fee Schedule rates and date
7 and market for medical services. The consultant shall
8 receive written and oral comment from employers,
9 workers' compensation medical service and insurance
10 providers, self-insureds, group self-insurance
11 associations of this state and the public. The
12 consultant shall submit a report of its findings and a
13 proposed amended Fee Schedule to the Commission.

14 c. The Commission shall adopt the proposed amended Fee
15 Schedule in whole or in part and make any additional
16 updates or adjustments. The Commission shall submit a
17 proposed updated and adjusted Fee Schedule to the
18 President Pro Tempore of the Senate, the Speaker of
19 the House of Representatives and the Governor. The
20 proposed Fee Schedule shall become effective on July 1
21 following the legislative session, if approved by
22 Joint Resolution of the Legislature during the session
23 in which a proposed Fee Schedule is submitted.

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

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

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

Section 69. A. Time for Filing.

1. A claim for benefits under this act, other than an occupational disease, shall be barred unless it is filed with the Workers' Compensation Commission within one (1) year from the date of the injury or, if the employee has received benefits under this title for the injury, six (6) months from the date of the last

1 ~~issuance of such benefits~~ payment of indemnity benefits or date of
2 service for medical treatment, whichever is later. For purposes of
3 this section, the date of the injury shall be defined as the date an
4 injury is caused by an accident as set forth in paragraph 9 of
5 Section 2 of this title.

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

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

18 c. A claim for compensation for disability on account of
19 a disease condition caused by exposure to X-rays,
20 radioactive substances, or ionizing radiation only
21 shall be filed with the Commission within two (2)
22 years from the date the condition is made known to an
23 employee following examination and diagnosis by a
24 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 a claim for benefits has been timely filed ~~under~~
5 ~~paragraph 1 of this subsection~~ and the ~~employee~~ claimant does not:

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

10 b. receive or seek benefits, including medical treatment,
11 under this title for a period of six (6) months,

12 then on motion by the employer, the claim shall be dismissed with
13 prejudice.

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

20 C. Persons under Disability.

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

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

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

11 D. 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 11. AMENDATORY 85A O.S. 2021, Section 80, is
16 amended to read as follows:

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

22 1. Such review may be done upon application for a change of
23 condition for the worse at any time within six (6) months from the
24 date of the last order in which monetary benefits were awarded or

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

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

20 B. The review and subsequent award shall be made in accordance
21 with the procedure prescribed in Sections 69 through 78 of this
22 title. No review shall affect any compensation paid under a prior
23 order, judgment or award.

24

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

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

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

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

1 Commission may remove an independent medical examiner from the list
2 for cause. An independent medical examiner shall not be
3 disqualified from serving based upon a probationary license status.

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

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

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

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

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

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

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

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

22 J. Upon receipt of an independent medical examiner's report,
23 any party shall have the right to object to the introduction of the
24 report into evidence. The objection must be made by giving written

1 notification to all parties and to the Commission within ten (10)
2 days after receipt of the report. The employer shall be responsible
3 for the reasonable charges of the physician for such testimony,
4 preparation time, and the expense of the deposition.

5 SECTION 13. AMENDATORY 85A O.S. 2021, Section 400, is
6 amended to read as follows:

7 Section 400. A. The Workers' Compensation Court shall be
8 renamed the Workers' Compensation Court of Existing Claims for the
9 purpose of hearing disputes relating to claims that arise before
10 February 1, 2014. ~~The Court shall consist of the existing judges~~
11 ~~for the remainder of his or her term. Each judge of the Court shall~~
12 ~~continue to serve as the appointment to a designated position on the~~
13 ~~Court. The terms of the judges by position number shall expire on~~
14 ~~the following dates:~~

15 ~~Position 4 shall expire 7-1-20.~~

16 ~~Position 5 shall expire 7-1-20.~~

17 ~~Position 8 shall expire 7-1-20.~~

18 ~~Position 9 shall expire 7-1-20.~~

19 B. ~~Effective July 1, 2020, the~~ The Workers' Compensation Court
20 of Existing Claims shall consist of one judge to be appointed by the
21 Governor, with confirmation by the Senate. The judge shall be
22 appointed for a term to expire on July 1, ~~2022~~ 2023. For the
23 purpose of continued operation of the Court of Existing Claims until
24 July 1, 2027, the existing judge on the effective date of this act

1 shall continue to serve, with the term to expire on July 1, 2027.

2 The Governor shall select the judge from a list of three applicants
3 submitted to the Governor by the Judicial Nominating Commission. If
4 the list is not acceptable to the Governor, the Governor may request
5 from the Judicial Nominating Commission a list of names of three
6 additional applicants. Any present judge of the Court of Existing
7 Claims may apply to the Judicial Nominating Commission for
8 appointment to fill any position authorized by this section.

9 C. A judge may be removed for cause by the Court on the
10 Judiciary prior to the expiration of his or her term.

11 D. Each judge shall receive a salary equal to that paid to a
12 district judge of this state, and shall devote full time to his or
13 her duties and shall not engage in the private practice of law
14 during the term in office.

15 E. If a vacancy occurs on the Court of Existing Claims, the
16 Governor shall appoint a judge to serve the remainder of the term
17 from a list of three applicants submitted to the Governor by the
18 Judicial Nominating Commission, with confirmation of the State
19 Senate. If the list is not acceptable to the Governor, the Governor
20 may request from the Judicial Nominating Commission a list of the
21 names of three additional applicants.

22 F. 1. ~~Effective January 1, 2020, the~~ The Governor shall
23 appoint an Administrator of the Court of Existing Claims, who shall
24 serve at the pleasure of the Governor. The Administrator shall be

1 appointed by the Governor with the advice and consent of the Senate.
2 The compensation for the Administrator shall be set at ninety
3 percent (90%) of the compensation of a district court judge.

4 2. The Administrator shall employ and supervise the work of
5 employees of the Court and shall have the authority to expend funds
6 and contract on behalf of the Court. The Administrator may contract
7 with the Workers' Compensation Commission to provide support
8 services or personnel needs necessary to carry out the purposes of
9 the Court and shall supervise the work of any such personnel as
10 necessary to maintain the Court as a Court of Record.

11 G. The Court of Existing Claims shall contract with the
12 Workers' Compensation Commission to integrate its case management
13 and records Information Technology System into the system of the
14 Workers' Compensation Commission with such integration to be
15 completed on or before July 1, 2022. The Court shall be entitled to
16 any fees generated for the retrieval of such data.

17 H. The Court shall operate by the rules adopted by the Workers'
18 Compensation Court prior to February 1, 2014.

19 I. The Court is hereby designated and confirmed as a court of
20 record, with respect to any matter within the limits of its
21 jurisdiction, and within such limits the judges thereof shall
22 possess the powers and prerogatives of the judges of the other
23 courts of record of this state including the power to punish for
24

1 contempt those persons who disobey a subpoena, or refuse to be sworn
2 or to answer as a witness, when lawfully ordered to do so.

3 J. The principal office of the Court shall be situated in the
4 City of Oklahoma City in quarters assigned by the Office of
5 Management and Enterprise Services. The Court may hold hearings in
6 any city of this state.

7 K. All county commissioners and presiding district judges of
8 this state shall make quarters available for the conducting of
9 hearings by a judge of the Court upon request by the Court.

10 L. Judges of the Workers' Compensation Court of Existing Claims
11 may punish for direct contempt pursuant to Sections 565, 565.1 and
12 566 of Title 21 of the Oklahoma Statutes.

13 M. The Court shall be vested with jurisdiction over all claims
14 filed pursuant to the Workers' Compensation Code or previous statute
15 in effect on the date of an injury that occurred before February 1,
16 2014. All claims so filed shall be heard by the judge sitting
17 without a jury. The Court shall have full power and authority to
18 determine all questions in relation to payment of claims for
19 compensation under the provisions of the Workers' Compensation Code
20 or previous statute in effect on the date of an injury that occurred
21 before February 1, 2014. The Court, upon application of either
22 party, shall order a hearing. Upon a hearing, either party may
23 present evidence and be represented by counsel. The decision of the
24 Court shall be final as to all questions of fact and law; provided,

1 the decision of the Court may be appealed to the Court en banc or
2 the Supreme Court as provided by the Workers' Compensation Code or
3 previous statute in effect on the date of an injury that occurred
4 before February 1, 2014. In the event that an insufficient number
5 of active judges are available to comprise the three-judge en banc
6 panel, retired or former judges of the district court, Workers'
7 Compensation Court or Workers' Compensation Court of Existing Claims
8 may be designated by the Presiding Judge of the Court of Existing
9 Claims as eligible to serve on such panel. The Governor shall
10 provide to the Court of Existing Claims a list of designated judges
11 eligible for service on the Court en banc. The decision of the
12 Court shall be issued within thirty (30) days following the
13 submission of the case by the parties. The power and jurisdiction
14 of the Court over each case shall be continuing and it may, from
15 time to time, make such modifications or changes with respect to
16 former findings or orders relating thereto if, in its opinion, it
17 may be justified.

18 N. For an injury occurring before February 1, 2014, all
19 benefits and procedures to obtain benefits shall be determined by
20 the workers' compensation law of this state in effect on the date of
21 the injury.

22 O. All accrued rights and penalties incurred pursuant to a
23 final order of the Workers' Compensation Court shall be preserved.
24 No accrued right, penalty incurred, or proceeding begun by virtue of

1 a statute repealed by this act shall be abrogated by the terms of
2 this act.

3 P. Annually, on or before the first day of July, ~~commencing~~
4 ~~with July 2019,~~ the Administrator shall prepare and submit a report
5 for the prior calendar year to the Governor, the Chief Justice of
6 the Supreme Court, the President Pro Tempore of the Senate and the
7 Speaker of the House of Representatives which shall include a
8 statement of the number of awards made and the causes of the
9 accidents leading to the injuries for which the awards were made,
10 total work load data of the Court, a detailed report of the work
11 load of the judges of the Court, a detailed statement of the
12 expenses of the office of the Administrator of Workers' Compensation
13 Court of Existing Claims, together with any other matter which the
14 Administrator deems proper to report to the Governor including any
15 recommendations he or she may desire to make.

16 Q. Subject to the availability of funds, the Judge of the Court
17 of Existing Claims may employ one at-will full- or part-time special
18 workers' compensation judge with jurisdiction to hear cases as set
19 forth in subsection M of this section and as may be assigned by the
20 Judge. The special workers' compensation judge shall receive
21 compensation for such services in accordance with the provisions of
22 Section 92.1A of Title 20 of the Oklahoma Statutes.

23 SECTION 14. AMENDATORY 85 O.S. 2021, Section 380, is
24 amended to read as follows:

1 Section 380. A. 1. Volunteer fire departments organized
2 pursuant to state law may obtain workers' compensation insurance for
3 volunteer firefighters through the Volunteer Firefighter Group
4 Insurance Pool pursuant to requirements established by ~~CompSource~~
5 ~~Mutual Insurance Company~~ the Office of Management and Enterprise
6 Services which shall administer the Pool. For the premium set by
7 ~~CompSource Mutual Insurance Company~~ the Office of Management and
8 Enterprise Services, the state shall provide Fifty-five Dollars
9 (\$55.00) per firefighter per year. Except as otherwise provided by
10 subsection D of this section, the total amount paid by the state
11 shall not exceed Three Hundred Twenty Thousand Three Hundred Thirty-
12 eight Dollars (\$320,338.00) per year or so much thereof as may be
13 necessary to fund the Volunteer Firefighter Group Insurance Pool.

14 2. ~~CompSource Mutual Insurance Company~~ The Office of Management
15 and Enterprise Services shall collect the premium from state
16 agencies, public trusts and other instrumentalities of the state.
17 Any funds received by ~~CompSource Mutual Insurance Company~~ the Office
18 of Management and Enterprise Services from any state agency, public
19 trust, or other instrumentality for purposes of workers'
20 compensation insurance pursuant to this section shall be deposited
21 to the credit of the Volunteer Firefighter Group Insurance Pool.
22 ~~CompSource Mutual Insurance Company~~ The Office of Management and
23 Enterprise Services shall collect premiums, pay claims, and provide
24 for excess insurance as needed.

1 B. ~~CompSource Mutual Insurance Company~~ The Office of Management
2 and Enterprise Services shall report, annually, to the Governor, the
3 Speaker of the Oklahoma House of Representatives, and the President
4 Pro Tempore of the State Senate the number of enrollees in the
5 Volunteer Firefighter Group Insurance Pool, and the amount of any
6 anticipated surplus or deficiency of the Pool; and shall also
7 provide to the Governor, the Speaker of the Oklahoma House of
8 Representatives and the President Pro Tempore of the State Senate
9 sixty (60) days advance notice of any proposed change in rates for
10 the Volunteer Firefighter Group Insurance Pool.

11 C. The amount of claims paid, claim expenses, underwriting
12 losses, loss ratio, or any other financial aspect of the Volunteer
13 Firefighter Group Insurance Pool shall not be considered when
14 determining or considering bids for the amount of any premiums,
15 rates, or expenses owed by, or any discounts, rebates, dividends, or
16 other financial benefits owed to any other policyholder of
17 ~~CompSource Mutual Insurance Company~~ the Office of Management and
18 Enterprise Services.

19 D. Except as otherwise provided by law, any increase in the
20 state payment rate for volunteer firefighters under the Volunteer
21 Firefighter Group Insurance Pool shall not exceed five percent (5%)
22 per annum. Any proposed change in rates for the Volunteer
23 Firefighter Group Insurance Pool must be approved by the ~~Board of~~
24 ~~Directors of CompSource Mutual Insurance Company~~ Office of

1 Management and Enterprise Services with notice provided pursuant to
2 subsection B of this section. ~~CompSource Mutual Insurance Company~~
3 The Office of Management and Enterprise Services shall not increase
4 premiums for the Volunteer Firefighter Group Insurance Pool more
5 than once per annum.

6 E. For purposes of this section, the term "volunteer fire
7 departments" includes those volunteer fire departments which have
8 authorized voluntary or uncompensated workers rendering services as
9 firefighters and are created by statute pursuant to Section 592 of
10 Title 18 of the Oklahoma Statutes, Sections 29-201 through 29-204 of
11 Title 11 of the Oklahoma Statutes, and those defined by Section 351
12 of Title 19 of the Oklahoma Statutes.

13 SECTION 15. Sections 1 through 12 and 14 of this act shall
14 become effective November 1, 2022.

15 SECTION 16. It being immediately necessary for the preservation
16 of the public peace, health or safety, an emergency is hereby
17 declared to exist, by reason whereof this act shall take effect and
18 be in full force from and after its passage and approval.

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