

**FLOOR AMENDMENT**  
HOUSE OF REPRESENTATIVES  
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB2375 \_\_\_\_\_  
Of the printed Bill  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by  
inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Adopted: \_\_\_\_\_ Amendment submitted by: Chris Kannady \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

FLOOR SUBSTITUTE

FOR

HOUSE BILL NO. 2375

By: Kannady

FLOOR 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; 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 final order for permanent disability; authorizing review by Workers' Compensation Commission; authorizing process for independent medical examiner in certain circumstances; providing for service as independent medical examiner based on certain license status; modifying provisions related to terms of Judges of Workers' Compensation Court of Existing Claims; providing an effective date; and declaring an emergency.

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

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

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

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

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

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

24

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

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

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

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

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

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

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

1 employment. An "accident" means an event involving  
2 factors external to the employee that:

3 (1) was unintended, unanticipated, unforeseen,  
4 unplanned and unexpected,

5 (2) occurred at a specifically identifiable time and  
6 place,

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

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

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

11 b. "Compensable injury" does not include:

12 (1) injury to any active participant in assaults or  
13 combats which, although they may occur in the  
14 workplace, are the result of non-employment-  
15 related hostility or animus of one, both, or all  
16 of the combatants and which assault or combat  
17 amounts to a deviation from customary duties;  
18 provided, however, injuries caused by horseplay  
19 shall not be considered to be compensable  
20 injuries, except for innocent victims,

21 (2) injury incurred while engaging in or performing  
22 or as the result of engaging in or performing any  
23 recreational or social activities for the  
24 employee's personal pleasure,

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

1                   convincing evidence that his or her state of  
2                   intoxication had no causal relationship to the  
3                   injury,

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

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

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

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

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



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

14          ~~e.~~

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

18          ~~d.~~

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

22          ~~e.~~

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

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

6           ~~f.~~

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

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

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

23          12. "Continuing medical maintenance" means medical treatment  
24          that is reasonable and necessary to maintain claimant's condition

1 resulting from the compensable injury or illness after reaching  
2 maximum medical improvement. Continuing medical maintenance shall  
3 not include diagnostic tests, surgery, injections, counseling,  
4 physical therapy, or pain management devices or equipment;

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

- 14 a. an employee's transportation to and from his or her  
15 place of employment,
- 16 b. travel by an employee in furtherance of the affairs of  
17 an employer if the travel is also in furtherance of  
18 personal or private affairs of the employee,
- 19 c. any injury occurring in a parking lot or other common  
20 area adjacent to an employer's place of business  
21 before the employee clocks in or otherwise begins work  
22 for the employer or after the employee clocks out or  
23 otherwise stops work for the employer unless the  
24

1 employer owns or maintains exclusive control over the  
2 area, or

3 d. any injury occurring while an employee is on a work  
4 break, unless the injury occurs while the employee is  
5 on a work break inside the employer's facility or in  
6 an area owned by or exclusively controlled by the  
7 employer and the work break is authorized by the  
8 employee's supervisor;

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

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

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

23 17. "Drive-away operations" includes every person engaged in  
24 the business of transporting and delivering new or used vehicles by

1 driving, either singly or by towbar, saddle-mount or full-mount  
2 method, or any combination thereof, with or without towing a  
3 privately owned vehicle;

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

23 b. The term "employee" shall not include:  
24

- 1 (1) any person for whom an employer is liable under  
2 any Act of Congress for providing compensation to  
3 employees for injuries, disease or death arising  
4 out of and in the course of employment including,  
5 but not limited to, the Federal Employees'  
6 Compensation Act, the Federal Employers'  
7 Liability Act, the Longshore and Harbor Workers'  
8 Compensation Act and the Jones Act, to the extent  
9 his or her employees are subject to such acts,
- 10 (2) any person who is employed in agriculture,  
11 ranching or horticulture by an employer who had a  
12 gross annual payroll in the preceding calendar  
13 year of less than One Hundred Thousand Dollars  
14 (\$100,000.00) wages for agricultural, ranching or  
15 horticultural workers, or any person who is  
16 employed in agriculture, ranching or horticulture  
17 who is not engaged in operation of motorized  
18 machines. This exemption applies to any period  
19 of time for which such employment exists,  
20 irrespective of whether or not the person is  
21 employed in other activities for which the  
22 exemption does not apply. If the person is  
23 employed for part of a year in exempt activities  
24 and for part of a year in nonexempt activities,

1 the employer shall be responsible for providing  
2 workers' compensation only for the period of time  
3 for which the person is employed in nonexempt  
4 activities,

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

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

20 (5) any person employed by an employer which is a  
21 youth sports league which qualifies for exemption  
22 from federal income taxation pursuant to federal  
23 law,  
24

- 1 (6) sole proprietors, members of a partnership,  
2 individuals who are party to a franchise  
3 agreement as set out by the Federal Trade  
4 Commission franchise disclosure rule, 16 CFR  
5 436.1 through 436.11, members of a limited  
6 liability company who own at least ten percent  
7 (10%) of the capital of the limited liability  
8 company or any stockholder-employees of a  
9 corporation who own ten percent (10%) or more  
10 stock in the corporation, unless they elect to be  
11 covered by a policy of insurance covering  
12 benefits under the Administrative Workers'  
13 Compensation Act,
- 14 (7) any person providing or performing voluntary  
15 service who receives no wages for the services  
16 other than meals, drug or alcohol rehabilitative  
17 therapy, transportation, lodging or reimbursement  
18 for incidental expenses except for volunteers  
19 specifically provided for in subparagraph a of  
20 this paragraph,
- 21 (8) a person, commonly referred to as an owner-  
22 operator, who owns or leases a truck-tractor or  
23 truck for hire, if the owner-operator actually  
24 operates the truck-tractor or truck and if the



1 person contracting with the owner-operator is not  
2 the lessor of the truck-tractor or truck.

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

8 (9) a person referred to as a drive-away owner-  
9 operator who privately owns and utilizes a tow  
10 vehicle in drive-away operations and operates  
11 independently for hire, if the drive-away owner-  
12 operator actually utilizes the tow vehicle and if  
13 the person contracting with the drive-away owner-  
14 operator is not the lessor of the tow vehicle.

15 Provided, however, a drive-away owner-operator  
16 shall not be precluded from workers' compensation  
17 coverage under the Administrative Workers'  
18 Compensation Act if the drive-away owner-operator  
19 elects to participate as a sole proprietor, and

20 (10) any person who is employed as a domestic servant  
21 or as a casual worker in and about a private home  
22 or household, which private home or household had  
23 a gross annual payroll in the preceding calendar  
24

1                   year of less than Fifty Thousand Dollars  
2                   (\$50,000.00) for such workers;

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

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

19       21. "Evidence-based" means expert-based, literature-supported  
20 and outcomes validated by well-designed randomized trials when such  
21 information is available and which uses the best available evidence  
22 to support medical decision making;  
23  
24

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 the  
5 cause, nor the resulting injury bears any special relation to the  
6 work or to the conditions under which the act was being performed and  
7 though it occurs in the course of the employment, does not arise out  
8 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

1 "Guides to the Evaluation of Permanent  
2 Impairment".

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

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

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

21 ~~32.~~ 34. "Official Disability Guidelines" or "ODG" means the  
22 current edition of the Official Disability Guidelines and the ODG  
23 Treatment in Workers' Comp as published by the Work Loss Data  
24 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~~ act 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 employer who owns at least ten  
8 percent (10%) of the business engages in or specifically directs the  
9 act that is the proximate cause of the injury to the employee. An  
10 employee or owner of less than ten percent (10%) of the business  
11 shall not be released from liability pursuant to this section if he  
12 or she engaged in an intentional act that was the proximate cause of  
13 the injury or death. The issue of whether an act is ~~an~~ intentional  
14 ~~tort~~ shall be a question of law.

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

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

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

22 B. 1. Notwithstanding any other provision of this act, where a  
23 claim is for mental injury or illness, the employee shall be limited  
24 to twenty-six (26) weeks of disability benefits unless it is shown

1 by clear and convincing evidence that benefits should continue for a  
2 set period of time, not to exceed a total of fifty-two (52) weeks.

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

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

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

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

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

20 B. The primary obligation to pay compensation is on the  
21 employer, and the procurement of a policy of insurance by an  
22 employer to cover the obligation in respect to this act shall not  
23 relieve the employer of the obligation.



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

Section 45. A. Temporary Total Disability.

1. If the injured employee is temporarily unable to perform his or her job or any alternative work offered by the employer, he or she shall be entitled to receive compensation equal to seventy percent (70%) of the injured employee's average weekly wage, but not to exceed the state average weekly wage, for one hundred fifty-six (156) weeks. Provided, there shall be no payment for the first three (3) days of the initial period of temporary total disability. If an administrative law judge finds that a consequential injury has occurred and that additional time is needed to reach maximum medical improvement, temporary total disability may continue for a period of not more than an additional fifty-two (52) weeks. Such finding shall be based upon a showing of medical necessity by clear and convincing evidence. An employer shall have the right to recover any overpayment of temporary total disability payments from a subsequent permanent partial disability award if the offset is deemed justified by the Workers' Compensation Commission.

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

1 physician, or otherwise abandons medical care, the employer shall be  
2 entitled to terminate temporary total disability by notifying the  
3 employee, or if represented, his or her counsel. If, however, an  
4 objection to the termination is filed by the employee within ten  
5 (10) days of termination, the Commission shall set the matter within  
6 twenty (20) days for a determination if temporary total disability  
7 compensation shall be reinstated. The temporary total disability  
8 shall remain terminated until such time as the employee complies  
9 with medical orders of the treating physician. Notwithstanding the  
10 provisions of this paragraph, benefits under this subsection shall  
11 be permanently terminated by order of the Commission if the employee  
12 is noncompliant or abandons treatment for sixty (60) days, or if  
13 benefits under this subsection have been suspended under this  
14 paragraph at least two times. The administrative law judge may  
15 appoint an independent medical examiner to determine if further  
16 medical treatment is reasonable and necessary. The independent  
17 medical examiner shall not provide treatment to the injured worker,  
18 unless agreed upon by the parties.

19 B. Temporary Partial Disability.

20 1. If the injured employee is temporarily unable to perform his  
21 or her job, but may perform alternative work offered by the  
22 employer, he or she shall be entitled to receive compensation equal  
23 to seventy percent (70%) of the difference between the injured  
24 employee's average weekly wage before the injury and his or her

1 weekly wage for performing alternative work after the injury, but  
2 only if his or her weekly wage for performing the alternative work  
3 is less than the temporary total disability rate. The injured  
4 employee's actual earnings plus temporary partial disability  
5 compensation shall not exceed the temporary total disability rate.

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

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

11 C. Permanent Partial Disability.

12 1. A permanent partial disability award or combination of  
13 awards granted an injured worker may not exceed a permanent partial  
14 disability rating of one hundred percent (100%) to any body part or  
15 to the body as a whole. The determination of permanent partial  
16 disability shall be the responsibility of the Commission through its  
17 administrative law judges. Any claim by an employee for  
18 compensation for permanent partial disability must be supported by  
19 competent medical testimony of a medical doctor, osteopathic  
20 physician, or chiropractor, and shall be supported by objective  
21 medical findings, as defined in this act. The opinion of the  
22 physician shall include employee's percentage of permanent partial  
23 disability and whether or not the disability is job-related and  
24 caused by the accidental injury or occupational disease. A

1 physician's opinion of the nature and extent of permanent partial  
2 disability to parts of the body other than scheduled members must be  
3 based solely on criteria established by the Sixth Edition of the  
4 American Medical Association's "Guides to the Evaluation of  
5 Permanent Impairment". A copy of any written evaluation shall be  
6 sent to both parties within seven (7) days of issuance. Medical  
7 opinions addressing compensability and permanent disability must be  
8 stated within a reasonable degree of medical certainty. Any party  
9 may submit the report of an evaluating physician.

10 2. Permanent partial disability shall not be allowed to a part  
11 of the body for which no medical treatment has been received. A  
12 determination of permanent partial disability made by the Commission  
13 or administrative law judge which is not supported by objective  
14 medical findings provided by a treating physician who is a medical  
15 doctor, doctor of osteopathy, chiropractor or a qualified  
16 independent medical examiner shall be considered an abuse of  
17 discretion.

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

20 4. In cases of permanent partial disability, the compensation  
21 shall be seventy percent (70%) of the employee's average weekly  
22 wage, not to exceed Three Hundred Fifty Dollars (\$350.00) per week  
23 which shall increase to Three Hundred Sixty Dollars (\$360.00) per  
24 week on July 1, 2021, ~~for a term.~~ Beginning on or after January 1,

1 2024, compensation for permanent partial disability shall be seventy  
2 percent (70%) of the employee's average weekly wage, not to exceed an  
3 amount equal to forty percent (40%) of the state's average weekly  
4 wage, rounded to the nearest dollar. Rates to be subsequently  
5 adjusted January 1, annually for injuries occurring on or after the  
6 date of the adjustment. Rate shall be established for each claim  
7 based upon the date of injury. Term not to exceed a total of three  
8 hundred sixty (360) weeks for the body as a whole.

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

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

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

11 7. No payments on any permanent partial disability order shall  
12 begin until payments on any preexisting permanent partial disability  
13 orders have been completed.

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

16 9. The permanent partial disability rate of compensation for  
17 amputation or permanent total loss of use of a scheduled member  
18 specified in Section 46 of this title shall be seventy percent (70%)  
19 of the employee's average weekly wage, not to exceed Three Hundred  
20 Fifty Dollars (\$350.00), with an increase to Three Hundred Sixty  
21 Dollars (\$360.00) ~~on July 1, 2021,~~ Beginning on or after January 1,  
22 2024, compensation for permanent partial disability shall be seventy  
23 percent (70%) of the employee's average weekly wage, not to exceed an  
24 amount equal to forty percent (40%) of the state's average weekly

1 wage, rounded to the nearest dollar. Rates to be subsequently  
2 adjusted January 1, annually for injuries occurring on or after the  
3 date of the adjustment. Rate shall be established for each claim  
4 based upon the date of injury and multiplied by the number of weeks  
5 set forth for the member in Section 46 of this title, regardless of  
6 whether the injured employee is able to return to his or her pre-  
7 injury or equivalent job.

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

17 D. Permanent Total Disability.

18 1. In case of total disability adjudged to be permanent,  
19 seventy percent (70%) of the employee's average weekly wages, but  
20 not in excess of the state's average weekly wage, shall be paid to  
21 the employee during the continuance of the disability until such  
22 time as the employee reaches the age of maximum Social Security  
23 retirement benefits or for a period of fifteen (15) years, whichever  
24 is longer. In the event the claimant dies of causes unrelated to

1 the injury or illness, benefits shall cease on the date of death.  
2 Provided, however, any person entitled to revive the action shall  
3 receive a one-time lump-sum payment equal to twenty-six (26) weeks  
4 of weekly benefits for permanent total disability awarded the  
5 claimant. If more than one person is entitled to revive the claim,  
6 the lump-sum payment shall be evenly divided between or among such  
7 persons. In the event the Commission awards both permanent partial  
8 disability and permanent total disability benefits, the permanent  
9 total disability award shall not be due until the permanent partial  
10 disability award is paid in full. If otherwise qualified according  
11 to the provisions of this act, permanent total disability benefits  
12 may be awarded to an employee who has exhausted the maximum period  
13 of temporary total disability even though the employee has not  
14 reached maximum medical improvement.

15 2. The Workers' Compensation Commission shall annually review  
16 the status of any employee receiving benefits for permanent total  
17 disability against the last employer. The Commission shall require  
18 the employee to annually file an affidavit under penalty of perjury  
19 stating that he or she is not and has not been gainfully employed  
20 and is not capable of gainful employment. Failure to file such  
21 affidavit shall result in suspension of benefits; provided, however,  
22 reinstatement of benefits may occur after proper hearing before the  
23 Commission.

24



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

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

12 3. Upon receipt of such report, and after affording all parties  
13 an opportunity to be heard, the administrative law judge shall order  
14 that any rehabilitation services or training, recommended in the  
15 report, or such other rehabilitation services or training as the  
16 administrative law judge may deem necessary, provided the employee  
17 elects to receive such services, shall be provided at the expense of  
18 the employer. Except as otherwise provided in this subsection,  
19 refusal to accept rehabilitation services by the employee shall in  
20 no way diminish any benefits allowable to an employee.

21 4. The administrative law judge may order vocational  
22 rehabilitation before the injured employee reaches maximum medical  
23 improvement, if the treating physician believes that it is likely  
24 that the employee's injury will prevent the employee from returning

1 to his or her former employment. In granting early benefits for  
2 vocational rehabilitation, the Commission shall consider temporary  
3 restrictions and the likelihood that such rehabilitation will return  
4 the employee to gainful employment earlier than if such benefits are  
5 granted after the permanent partial disability hearing in the claim.

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

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

20 7. During the period when an employee is actively and in good  
21 faith being evaluated or participating in a retraining or job  
22 placement program for purposes of evaluating permanent total  
23 disability status, the employee shall be entitled to receive  
24 benefits at the same rate as the employee's temporary total

1 disability benefits for an additional fifty-two (52) weeks. All  
2 tuition related to vocational rehabilitation services shall be paid  
3 by the employer or the employer's insurer on a periodic basis  
4 directly to the facility providing the vocational rehabilitation  
5 services or training to the employee.

6 F. Disfigurement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8        B. The permanent partial disability rate of compensation for  
9 amputation or permanent total loss of use of a scheduled member  
10 specified in this section shall be seventy percent (70%) of the  
11 employee's average weekly wage, not to exceed Three Hundred  
12 Fifty Dollars (\$350.00) with an increase to Three Hundred Sixty  
13 Dollars (\$360.00) on July 1, 2021~~7~~. Beginning on or after  
14 January 1, 2024, compensation for permanent partial disability  
15 shall be seventy percent (70%) of the employee's average weekly  
16 wage, not to exceed an amount equal to forty percent (40%) of  
17 the state's average weekly wage, rounded to the nearest dollar.  
18 Rates to be subsequently adjusted January 1, annually for  
19 injuries occurring on or after the date of the adjustment.  
20 Rate shall be established for each claim based upon the date of  
21 injury multiplied by the number of weeks as set forth in this  
22 section, regardless of whether or not the injured employee is  
23 able to return to his or her pre-injury job.

1 C. Other cases: In cases in which the Workers' Compensation  
2 Commission finds an injury to a part of the body not specifically  
3 covered by the foregoing provisions of this section, the employee  
4 may be entitled to compensation for permanent partial disability.  
5 The compensation ordered paid shall be seventy percent (70%) of the  
6 employee's average weekly wage, not to exceed Three Hundred Fifty  
7 Dollars (\$350.00) with an increase to Three Hundred Sixty Dollars  
8 (\$360.00) on July 1, 2021~~7~~. Beginning January 1, 2024, an amount  
9 equal to forty percent (40%) of the state's average weekly wage,  
10 rounded to the nearest whole dollar. Rate to be subsequently  
11 adjusted January 1, annually, for injuries occurring on or after the  
12 date of the adjustment for the number of weeks which the partial  
13 disability of the employee bears to ~~three hundred fifty (350)~~ three  
14 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;

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

20 6. If there is no surviving spouse, children, parents,  
21 brothers, sisters, grandparents or grandchildren, to each legal  
22 guardian, if financially dependent on the employee at the time of  
23 death and upon proof of pecuniary loss shall receive an amount not  
24 to exceed Five Thousand Dollars (\$5,000.00); and

1       ~~5.~~ 7. The employer shall pay the actual funeral expenses, not  
2 exceeding the sum of Ten Thousand Dollars (\$10,000.00).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 H. Fee Schedule.

20 1. The Commission shall conduct a review and update of the  
21 Current Procedural Terminology (CPT) in the Fee Schedule every two  
22 (2) years pursuant to the provisions of paragraph 14 of this  
23 subsection. The Fee Schedule shall establish the maximum rates that  
24 medical providers shall be reimbursed for medical care provided to

1 injured employees including, but not limited to, charges by  
2 physicians, chiropractors, dentists, counselors, hospitals,  
3 ambulatory and outpatient facilities, clinical laboratory services,  
4 diagnostic testing services, and ambulance services, and charges for  
5 durable medical equipment, prosthetics, orthotics, and supplies.  
6 The most current Fee Schedule established by the Administrator of  
7 the Workers' Compensation Court prior to February 1, 2014, shall  
8 remain in effect, unless or until the Legislature approves the  
9 Commission's proposed Fee Schedule.

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

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

- 17            a. No reimbursement shall be allowed for any magnetic  
18                resonance imaging (MRI) unless the MRI is provided by  
19                an entity that meets Medicare requirements for the  
20                payment of MRI services or is accredited by the  
21                American College of Radiology, the Intersocietal  
22                Accreditation Commission or the Joint Commission on  
23                Accreditation of Healthcare Organizations. For all  
24                other radiology procedures, the reimbursement rate

1 shall be the lesser of the reimbursement rate allowed  
2 by the 2010 Oklahoma Fee Schedule and two hundred  
3 seven percent (207%) of the Medicare Fee Schedule.

4 b. For reimbursement of medical services for Evaluation  
5 and Management of injured employees as defined in the  
6 Fee Schedule adopted by the Commission, the  
7 reimbursement rate shall not be less than one hundred  
8 fifty percent (150%) of the Medicare Fee Schedule.

9 c. Any entity providing durable medical equipment,  
10 prosthetics, orthotics or supplies shall be accredited  
11 by a CMS-approved accreditation organization. If a  
12 physician provides durable medical equipment,  
13 prosthetics, orthotics, prescription drugs, or  
14 supplies to a patient ancillary to the patient's  
15 visit, reimbursement shall be no more than ten percent  
16 (10%) above cost.

17 d. The Commission shall develop a reasonable stop-loss  
18 provision of the Fee Schedule to provide for adequate  
19 reimbursement for treatment for major burns, severe  
20 head and neurological injuries, multiple system  
21 injuries, and other catastrophic injuries requiring  
22 extended periods of intensive care. An employer or  
23 insurance carrier shall have the right to audit the  
24 charges and question the reasonableness and necessity



1 of medical treatment contained in a bill for treatment  
2 covered by the stop-loss provision.

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

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

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

19 7. The Commission's review of medical and treatment charges  
20 pursuant to this section shall be conducted pursuant to the Fee  
21 Schedule in existence at the time the medical care or treatment was  
22 provided. The judgment approving the medical and treatment charges  
23 pursuant to this section shall be enforceable by the Commission in  
24

1 the same manner as provided in the Administrative Workers'  
2 Compensation Act for the enforcement of other compensation payments.

3 8. Charges for prescription drugs dispensed by a pharmacy shall  
4 be limited to ninety percent (90%) of the average wholesale price of  
5 the prescription, plus a dispensing fee of Five Dollars (\$5.00) per  
6 prescription. "Average wholesale price" means the amount determined  
7 from the latest publication designated by the Commission.

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

20 9. When medical care includes prescription drugs dispensed by a  
21 physician or other medical care provider and the NDC for the drug  
22 product dispensed is for a repackaged drug, then the maximum  
23 reimbursement shall be the lesser of the original labeler's NDC and  
24 the lowest-cost therapeutic equivalent drug product. Payment shall

1 be based upon a sum of the allowable fee for each ingredient plus a  
2 dispensing fee of Five Dollars (\$5.00) per prescription. Compounded  
3 medications shall be billed by the compounding pharmacy.

4 10. Implantables are paid in addition to procedural  
5 reimbursement paid for medical or surgical services. A  
6 manufacturer's invoice for the actual cost to a physician, hospital  
7 or other entity of an implantable device shall be adjusted by the  
8 physician, hospital or other entity to reflect, at the time  
9 implanted, all applicable discounts, rebates, considerations and  
10 product replacement programs and shall be provided to the payer by  
11 the physician or hospital as a condition of payment for the  
12 implantable device. If the physician, or an entity in which the  
13 physician has a financial interest other than an ownership interest  
14 of less than five percent (5%) in a ~~publically~~ publicly traded  
15 company, provides implantable devices, this relationship shall be  
16 disclosed to patient, employer, insurance company, third-party  
17 commission, certified workplace medical plan, case managers, and  
18 attorneys representing claimant and defendant. If the physician, or  
19 an entity in which the physician has a financial interest other than  
20 an ownership interest of less than five percent (5%) in a publicly  
21 traded company, buys and resells implantable devices to a hospital  
22 or another physician, the markup shall be limited to ten percent  
23 (10%) above cost.

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

14        12. If an employee fails to appear for a scheduled appointment  
15 with a physician or chiropractor, the employer or insurance company  
16 shall pay to the physician or chiropractor a reasonable charge, to  
17 be determined by the Commission, for the missed appointment. In the  
18 absence of a good-faith reason for missing the appointment, the  
19 Commission shall order the employee to reimburse the employer or  
20 insurance company for the charge.

21        13. Physicians or chiropractors providing treatment under the  
22 Administrative Workers' Compensation Act shall disclose under  
23 penalty of perjury to the Commission, on a form prescribed by the  
24 Commission, any ownership or interest in any health care facility,

1 business, or diagnostic center that is not the physician's or  
2 chiropractor's primary place of business. The disclosure shall  
3 include any employee leasing arrangement between the physician or  
4 chiropractor and any health care facility that is not the  
5 physician's or chiropractor's primary place of business. A  
6 physician's or chiropractor's failure to disclose as required by  
7 this section shall be grounds for the Commission to disqualify the  
8 physician or chiropractor from providing treatment under the  
9 Administrative Workers' Compensation Act.

10 14. a. Beginning on May 28, 2019, the Commission shall  
11 conduct an evaluation of the Fee Schedule, which shall  
12 include an update of the list of Current Procedural  
13 Terminology (CPT) codes, a line item adjustment or  
14 renewal of all rates, and amendment as needed to the  
15 rules applicable to the Fee Schedule.

16 b. The Commission shall contract with an external  
17 consultant with knowledge of workers' compensation fee  
18 schedules to review regional and nationwide  
19 comparisons of Oklahoma's Fee Schedule rates and date  
20 and market for medical services. The consultant shall  
21 receive written and oral comment from employers,  
22 workers' compensation medical service and insurance  
23 providers, self-insureds, group self-insurance  
24 associations of this state and the public. The

1 consultant shall submit a report of its findings and a  
2 proposed amended Fee Schedule to the Commission.

3 c. The Commission shall adopt the proposed amended Fee  
4 Schedule in whole or in part and make any additional  
5 updates or adjustments. The Commission shall submit a  
6 proposed updated and adjusted Fee Schedule to the  
7 President Pro Tempore of the Senate, the Speaker of  
8 the House of Representatives and the Governor. The  
9 proposed Fee Schedule shall become effective on July 1  
10 following the legislative session, if approved by  
11 Joint Resolution of the Legislature during the session  
12 in which a proposed Fee Schedule is submitted.

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

20 I. Formulary. The Commission by rule shall adopt a closed  
21 formulary. Rules adopted by the Commission shall allow an appeals  
22 process for claims in which a treating doctor determines and  
23 documents that a drug not included in the formulary is necessary to  
24 treat an injured employee's compensable injury. The Commission by

1 rule shall require the use of generic pharmaceutical medications and  
2 clinically appropriate over-the-counter alternatives to prescription  
3 medications unless otherwise specified by the prescribing doctor, in  
4 accordance with applicable state law.

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

7 Section 69. A. Time for Filing.

8 1. A claim for benefits under this act, other than an  
9 occupational disease, shall be barred unless it is filed with the  
10 Workers' Compensation Commission within one (1) year from the date  
11 of the injury or, if the employee has received benefits under this  
12 title for the injury, six (6) months from the date of the last  
13 ~~issuance of such benefits~~ payment of indemnity benefits or date of  
14 service for medical treatment, whichever is later. For purposes of  
15 this section, the date of the injury shall be defined as the date an  
16 injury is caused by an accident as set forth in paragraph 9 of  
17 Section 2 of this title.

18 2. a. A claim for compensation for disability on account of  
19 injury which is either an occupational disease or  
20 occupational infection shall be barred unless filed  
21 with the Commission within two (2) years from the date  
22 of the last injurious exposure to the hazards of the  
23 disease or infection.

24

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

7           c. A claim for compensation for disability on account of  
8           a disease condition caused by exposure to X-rays,  
9           radioactive substances, or ionizing radiation only  
10          shall be filed with the Commission within two (2)  
11          years from the date the condition is made known to an  
12          employee following examination and diagnosis by a  
13          medical doctor.

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

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

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

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



1 then on motion by the employer, the claim shall be dismissed with  
2 prejudice.

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

9 C. Persons under Disability.

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

15 2. Subsection A of this section shall not apply to a mental  
16 incompetent or minor so long as the person has no guardian or  
17 similar legal representative. The limitations prescribed in  
18 subsection A of this section shall apply to the mental incompetent  
19 or minor from the date of the appointment of a guardian or similar  
20 legal representative for that person, and when no guardian or  
21 similar representative has been appointed, to a minor on reaching  
22 the age of majority.

23 D. A latent injury or condition shall not delay or toll the  
24 limitation periods specified in this section. This subsection shall

1 not apply to the limitation period for occupational diseases  
2 specified in paragraph 2 of subsection A of this section.

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

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

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

1        2. The Workers' Compensation Commission may review any  
2 compensation judgment, award, or decision at any time, and without  
3 limitation upon a filing of an application for a finding of a change  
4 of condition for the better. Such review may be filed for good  
5 cause shown. On review, the Commission may make a judgment or award  
6 terminating, continuing, or decreasing for the future the  
7 compensation previously awarded, subject to the limits provided for  
8 in this act.

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

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

16        D. Aging and the effects of aging on a compensable injury are  
17 not to be considered in determining whether there has been a change  
18 in physical condition. Aging or the effect of aging on a  
19 compensable injury shall not be considered in determining permanent  
20 disability under this section or any other section in this act.

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

23        Section 112. A. The Workers' Compensation Commission shall  
24 create, maintain and review a list of licensed physicians who shall

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

15 B. An administrative law judge may appoint an independent  
16 medical examiner to assist in determining any issue before the  
17 Commission. In the event surgery is recommended by a treating  
18 physician, upon request of the employer, an independent medical  
19 examiner shall be appointed to determine the reasonableness and  
20 necessity of the recommended surgery. Upon request of the employee,  
21 an independent medical examiner may be appointed to determine the  
22 reasonableness and necessity of surgery recommended by a treating  
23 physician.

1       Such independent medical examiner shall be qualified to perform  
2 the type of surgery recommended.

3       C. An independent medical examiner shall be selected from the  
4 list of independent medical examiners within ten (10) days when the  
5 employer or the employee petitions the Commission for the selection  
6 of an independent medical examiner. The independent medical  
7 examiner shall be certified by a recognized specialty board in the  
8 area or areas appropriate to the condition under review.

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

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

14       F. After a physical examination and review of medical records  
15 and other appropriate information, including depositions and  
16 surveillance video, the independent medical examiner shall submit a  
17 verified written report to the Commission and to the parties. In  
18 the event the independent medical examiner determines that more  
19 medical treatment is necessary, the employer shall designate a  
20 treating physician to provide the indicated treatment.

21       G. Any independent medical examiner selected pursuant to the  
22 provisions of this section shall be reimbursed for the medical  
23 examination, reports and fees in a reasonable and customary amount  
24

1 set by the Commission, and these costs shall be borne by the  
2 employer.

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

6 I. If the Commission does not follow the opinion of the  
7 independent medical examiner on any issue, the administrative law  
8 judge or member of the Board of Review shall set out its reasons for  
9 deviating from the opinion of the independent medical examiner. The  
10 opinion of the independent medical examiner shall be followed unless  
11 there is clear and convincing evidence to the contrary.

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

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

21 Section 400. A. The Workers' Compensation Court shall be  
22 renamed the Workers' Compensation Court of Existing Claims for the  
23 purpose of hearing disputes relating to claims that arise before  
24 February 1, 2014. ~~The Court shall consist of the existing judges~~

~~for the remainder of his or her term. Each judge of the Court shall continue to serve as the appointment to a designated position on the Court. The terms of the judges by position number shall expire on the following dates:~~

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

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

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

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

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

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

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

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

5 E. If a vacancy occurs on the Court of Existing Claims, the  
6 Governor shall appoint a judge to serve the remainder of the term  
7 from a list of three applicants submitted to the Governor by the  
8 Judicial Nominating Commission, with confirmation of the State  
9 Senate. If the list is not acceptable to the Governor, the Governor  
10 may request from the Judicial Nominating Commission a list of the  
11 names of three additional applicants.

12 F. 1. ~~Effective January 1, 2020, the~~ The Governor shall  
13 appoint an Administrator of the Court of Existing Claims, who shall  
14 serve at the pleasure of the Governor. The Administrator shall be  
15 appointed by the Governor with the advice and consent of the Senate.  
16 The compensation for the Administrator shall be set at ninety  
17 percent (90%) of the compensation of a district court judge.

18 2. The Administrator shall employ and supervise the work of  
19 employees of the Court and shall have the authority to expend funds  
20 and contract on behalf of the Court. The Administrator may contract  
21 with the Workers' Compensation Commission to provide support  
22 services or personnel needs necessary to carry out the purposes of  
23 the Court and shall supervise the work of any such personnel as  
24 necessary to maintain the Court as a Court of Record.



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

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

9       I. The Court is hereby designated and confirmed as a court of  
10 record, with respect to any matter within the limits of its  
11 jurisdiction, and within such limits the judges thereof shall  
12 possess the powers and prerogatives of the judges of the other  
13 courts of record of this state including the power to punish for  
14 contempt those persons who disobey a subpoena, or refuse to be sworn  
15 or to answer as a witness, when lawfully ordered to do so.

16       J. The principal office of the Court shall be situated in the  
17 City of Oklahoma City in quarters assigned by the Office of  
18 Management and Enterprise Services. The Court may hold hearings in  
19 any city of this state.

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

1 L. Judges of the Workers' Compensation Court of Existing Claims  
2 may punish for direct contempt pursuant to Sections 565, 565.1 and  
3 566 of Title 21 of the Oklahoma Statutes.

4 M. The Court shall be vested with jurisdiction over all claims  
5 filed pursuant to the Workers' Compensation Code or previous statute  
6 in effect on the date of an injury that occurred before February 1,  
7 2014. All claims so filed shall be heard by the judge sitting  
8 without a jury. The Court shall have full power and authority to  
9 determine all questions in relation to payment of claims for  
10 compensation under the provisions of the Workers' Compensation Code  
11 or previous statute in effect on the date of an injury that occurred  
12 before February 1, 2014. The Court, upon application of either  
13 party, shall order a hearing. Upon a hearing, either party may  
14 present evidence and be represented by counsel. The decision of the  
15 Court shall be final as to all questions of fact and law; provided,  
16 the decision of the Court may be appealed to the Court en banc or  
17 the Supreme Court as provided by the Workers' Compensation Code or  
18 previous statute in effect on the date of an injury that occurred  
19 before February 1, 2014. In the event that an insufficient number  
20 of active judges are available to comprise the three-judge en banc  
21 panel, retired or former judges of the district court, Workers'  
22 Compensation Court or Workers' Compensation Court of Existing Claims  
23 may be designated by the Presiding Judge of the Court of Existing  
24 Claims as eligible to serve on such panel. The Governor shall

1 provide to the Court of Existing Claims a list of designated judges  
2 eligible for service on the Court en banc. The decision of the  
3 Court shall be issued within thirty (30) days following the  
4 submission of the case by the parties. The power and jurisdiction  
5 of the Court over each case shall be continuing and it may, from  
6 time to time, make such modifications or changes with respect to  
7 former findings or orders relating thereto if, in its opinion, it  
8 may be justified.

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

13 O. All accrued rights and penalties incurred pursuant to a  
14 final order of the Workers' Compensation Court shall be preserved.  
15 No accrued right, penalty incurred, or proceeding begun by virtue of  
16 a statute repealed by this act shall be abrogated by the terms of  
17 this act.

18 P. Annually, on or before the first day of July, ~~commencing~~  
19 ~~with July 2019,~~ the Administrator shall prepare and submit a report  
20 for the prior calendar year to the Governor, the Chief Justice of  
21 the Supreme Court, the President Pro Tempore of the Senate and the  
22 Speaker of the House of Representatives which shall include a  
23 statement of the number of awards made and the causes of the  
24 accidents leading to the injuries for which the awards were made,

1 total work load data of the Court, a detailed report of the work  
2 load of the judges of the Court, a detailed statement of the  
3 expenses of the office of the Administrator of Workers' Compensation  
4 Court of Existing Claims, together with any other matter which the  
5 Administrator deems proper to report to the Governor including any  
6 recommendations he or she may desire to make.

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

14 SECTION 14. Sections 1 through 12 of this act shall become  
15 effective November 1, 2023.

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