

<DateSubmitted>

HOUSE OF REPRESENTATIVES  
CONFERENCE COMMITTEE REPORT

Mr. President:  
Mr. Speaker:

The Conference Committee, to which was referred

**HB2375**

By: Kannady of the House and Thompson (Roger) of the Senate

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

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

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

Respectfully submitted,

House Action \_\_\_\_\_ Date \_\_\_\_\_ Senate Action \_\_\_\_\_ Date \_\_\_\_\_

**SENATE CONFEREES**

Thompson	_____
(Roger)	
Treat	_____
McCortney	_____
Daniels	_____
Floyd	_____

STATE OF OKLAHOMA

2nd Session of the 59th Legislature (2024)

CONFERENCE COMMITTEE  
SUBSTITUTE  
FOR ENGROSSED  
HOUSE BILL NO. 2375

By: Kannady of the House

and

Thompson (Roger) of the  
Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to workers' compensation; amending 85A O.S. 2021, Sections 2, 3, 5, 13, as amended by Section 1 of Enrolled Senate Bill No. 1457 of the 2nd Session of the 59th Oklahoma Legislature, 30, 32, 35, 40, 45, 46, 47, as amended by Section 1 of Enrolled House Bill No. 1738 of the 2nd Session of the 59th Oklahoma Legislature, 50, 67, 69, 80 and 112, 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

1 for independent medical examiner in certain  
2 circumstances; providing for service as independent  
3 medical examiner based on certain license status; and  
4 providing an effective date.

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

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

8 Section 2. As used in the Administrative Workers' Compensation  
9 Act:

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

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

18 3. "Case management" means the ongoing coordination, by a case  
19 manager, of health care services provided to an injured or disabled  
20 worker, including but not limited to systematically monitoring the  
21 treatment rendered and the medical progress of the injured or  
22 disabled worker; ensuring that any treatment plan follows all  
23 appropriate treatment protocols, utilization controls and practice  
24 parameters; assessing whether alternative health care services are

appropriate and delivered in a cost-effective manner based upon acceptable medical standards; and ensuring that the injured or disabled worker is following the prescribed health care plan;

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

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

5. "Certified workplace medical plan" means an organization of health care providers or any other entity, certified by the State Commissioner of Health, that is authorized to enter into a contractual agreement with an employer, group self-insurance association plan, an employer's workers' compensation insurance carrier, third-party administrator or an insured to provide medical care under the Administrative Workers' Compensation Act. Certified

1 plans shall only include plans which provide medical services and  
2 payment for services on a fee-for-service basis to medical  
3 providers;

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

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

20 8. "Commission" means the Oklahoma Workers' Compensation  
21 Commission;

22 9. a. "Compensable injury" means damage or harm to the  
23 physical structure of the body, or damage or harm to  
24 prosthetic appliances, including eyeglasses, contact

1 lenses, or hearing aids, of which the major cause is  
2 either an accident, cumulative trauma or occupational  
3 disease arising out of the course and scope of  
4 employment. An "accident" means an event involving  
5 factors external to the employee that:

6 (1) was unintended, unanticipated, unforeseen,  
7 unplanned and unexpected,

8 (2) occurred at a specifically identifiable time and  
9 place,

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

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

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

14 b. "Compensable injury" does not include:

15 (1) injury to any active participant in assaults or  
16 combats which, although they may occur in the  
17 workplace, are the result of non-employment-  
18 related hostility or animus of one, both, or all  
19 of the combatants and which assault or combat  
20 amounts to a deviation from customary duties;  
21 provided, however, injuries caused by horseplay  
22 shall not be considered to be compensable  
23 injuries, except for innocent victims,  
24

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



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

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

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

22 (7) any injury resulting from an idiopathic injury or  
23 condition, or

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

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

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

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

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

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

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

20        11. "Consequential injury" means injury or harm to a part of  
21        the body that is a direct result of the injury or medical treatment  
22        to the part of the body originally injured in the claim. The  
23        Commission shall not make a finding of a consequential injury unless  
24

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

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

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

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

1 before the employee clocks in or otherwise begins work  
2 for the employer or after the employee clocks out or  
3 otherwise stops work for the employer unless the  
4 employer owns or maintains exclusive control over the  
5 area, or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



1 from federal income taxation pursuant to federal  
2 law,

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

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

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

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

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

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

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

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

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

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

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

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

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

4        23. "Idiopathic" means an injury or condition, where neither 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~~ federal Bankruptcy  
13 Reform Act of 1978, and any subsequent amendments or is the subject  
14 of any 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;

1       ~~27.~~ 28. "Intentional act" means an injury occurring only when  
2       the employee is injured as a result of a willful, deliberate, and  
3       specific intent to cause such injury and only when the act that was  
4       the proximate cause of the injury was not normally within the  
5       employer-employee relationship and was not an employment risk related  
6       to the business of the employer. Knowledge that the injury was  
7       substantially certain to result from the conduct shall not constitute  
8       an intentional act;

9       29. "Major cause" means more than fifty percent (50%) of the  
10       resulting injury, disease or illness. A finding of major cause  
11       shall be established by a preponderance of the evidence. A finding  
12       that the workplace was not a major cause of the injury, disease or  
13       illness shall not adversely affect the exclusive remedy provisions  
14       of ~~this act~~ the Administrative Workers' Compensation Act and shall  
15       not create a separate cause of action outside ~~this act~~ the  
16       Administrative Workers' Compensation Act;

17       ~~28.~~ 30. "Maximum medical improvement" means that no further  
18       material improvement would reasonably be expected from medical  
19       treatment or the passage of time;

20       ~~29.~~ 31. "Medical services" means those services specified in  
21       Section 50 of this title;

22       ~~30.~~ 32. "Misconduct" shall include the following:

23             a. unexplained absenteeism or tardiness,  
24

- 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

1 shall use criteria established by the Sixth  
2 Edition of the American Medical Association  
3 "Guides to the Evaluation of Permanent  
4 Impairment".

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

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

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

23 ~~32.~~ 34. "Official Disability Guidelines" or "ODG" means the  
24 current edition of the Official Disability Guidelines and the ODG

1 Treatment in Workers' ~~Comp~~ Compensation as published by the Work  
2 Loss Data Institute;

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

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

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

23 ~~36.~~ 38. "Preexisting condition" means any illness, injury,  
24 disease, or other physical or mental condition, whether or not work-



1 related, for which medical advice, diagnosis, care or treatment was  
2 recommended or received preceding the date of injury;

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

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

15 ~~39.~~ 41. "Prosthetic" means an artificial device used to replace  
16 a part or joint of the body that is lost or injured in an accident  
17 or illness covered by ~~this act~~ the Administrative Workers'  
18 Compensation Act;

19 ~~40.~~ 42. "Scheduled member" or "member" means hands, fingers,  
20 arms, legs, feet, toes, and eyes. In addition, for purposes of the  
21 Multiple Injury Trust Fund only, "scheduled member" means hearing  
22 impairment;

23 ~~41.~~ 43. "Scientifically based" involves the application of  
24 rigorous, systematic, and objective procedures to obtain reliable

1 and valid knowledge relevant to medical testing, diagnoses and  
2 treatment; is adequate to justify the general conclusions drawn; and  
3 has been accepted by a peer-review journal or approved by a panel of  
4 independent experts through a comparably rigorous, objective, and  
5 scientific review;

6 ~~42.~~ 44. "State average weekly wage" means the state average  
7 weekly wage determined by the Oklahoma Employment Security  
8 Commission in the preceding calendar year. If such determination is  
9 not available, the Commission shall determine the wage annually  
10 after reasonable investigation;

11 ~~43.~~ 45. "Subcontractor" means a person, firm, corporation or  
12 other legal entity hired by the general or prime contractor to  
13 perform a specific task for the completion of a work-related  
14 activity;

15 ~~44.~~ 46. "Surgery" does not include an injection, or the forcing  
16 of fluids beneath the skin, for treatment or diagnosis;

17 ~~45.~~ 47. "Surviving spouse" means the employee's spouse by  
18 reason of a legal marriage recognized by the State of Oklahoma or  
19 under the requirements of a common law marriage in this state, as  
20 determined by the Oklahoma Workers' Compensation Commission;

21 ~~46.~~ 48. "Temporary partial disability" means an injured  
22 employee who is temporarily unable to perform his or her job, but  
23 may perform alternative work offered by the employer;

1       ~~47.~~ 49. "Time of accident" or "date of accident" means the time  
2 or date of the occurrence of the accidental incident from which  
3 compensable injury, disability, or death results; and

4       ~~48.~~ 50. "Wages" means money compensation received for  
5 employment at the time of the accident, including the reasonable  
6 value of board, rent, housing, lodging, or similar advantage  
7 received from the employer and includes the amount of tips required  
8 to be reported by the employer under Section 6053 of the Internal  
9 Revenue Code and the regulations promulgated pursuant thereto or the  
10 amount of actual tips reported, whichever amount is greater.

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

13       Section 3. A. Every employer and every employee, unless  
14 otherwise specifically provided in ~~this act~~ the Administrative  
15 Workers' Compensation Act, shall be subject and bound to the  
16 provisions of the Administrative Workers' Compensation Act and every  
17 employer shall pay or provide benefits according to the provisions  
18 of this act for the ~~accidental~~ compensable injury or death of an  
19 employee arising out of and in the course of his or her employment,  
20 without regard to fault for such injury, if the employee's contract  
21 of employment was made or if the injury occurred within this state.  
22 If an employee makes a claim for an injury in another jurisdiction,  
23 the employee is precluded from his or her right of action under the  
24 Administrative Workers' Compensation Act unless the Oklahoma

1 Workers' Compensation Commission determines that there is a change  
2 in circumstances that creates a good cause to bring the claim under  
3 the Administrative Workers' Compensation Act; provided, however,  
4 that the employee may not receive duplicate benefits to those  
5 received in the foreign jurisdiction and the employee's right to  
6 bring a claim under this act shall be subject to the limitations  
7 period for bringing a claim pursuant to paragraph 1 of subsection A  
8 of Section 69 of this title. Nothing in ~~this act~~ the Administrative  
9 Workers' Compensation Act shall be construed to conflict with any  
10 valid Act of Congress governing the liability of employers for  
11 injuries received by their employees.

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

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

4 D. The Workers' Compensation Code in effect before February 1,  
5 2014, shall govern all rights in respect to claims for injuries and  
6 death ~~based on accidents~~ occurring before February 1, 2014.

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

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

B. Exclusive remedy shall not apply if:

1. An employer fails to secure the payment of compensation due to the employee as required by ~~this act~~ the Administrative Workers' Compensation Act. An injured employee, or his or her legal representative in case death results from the injury, may, at his or her option, elect to claim compensation under ~~this act~~ the Administrative Workers' Compensation Act or to maintain a legal action in court for damages on account of the injury or death; or

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

1 C. The immunity from civil liability described in subsection A  
2 of this section shall apply regardless of whether the injured  
3 employee is denied compensation or deemed ineligible to receive  
4 compensation under ~~this act~~ the Administrative Workers' Compensation  
5 Act.

6 D. If an employer has failed to secure the payment of  
7 compensation for his or her injured employee as provided for in ~~this~~  
8 ~~act~~ the Administrative Workers' Compensation Act, an injured  
9 employee, or his or her legal representative if death results from  
10 the injury, may maintain an action in the district court for damages  
11 on account of such injury.

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

18 F. The immunity created by the provisions of this section shall  
19 not extend to action against another employer, or its employees, on  
20 the same job as the injured or deceased worker even though such  
21 other employer may be considered as standing in the position of a  
22 special master of a loaned servant where such special master neither  
23 is the immediate employer of the injured or deceased worker nor  
24

1 stands in the position of an intermediate or principal employer to  
2 the immediate employer of the injured or deceased worker.

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

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

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

23 SECTION 4. AMENDATORY 85A O.S. 2021, Section 13, as  
24 amended by Section 1 of Enrolled Senate Bill No. 1457 of the 2nd



1 Session of the 59th Oklahoma Legislature, is amended to read as  
2 follows:

3       Section 13. A. 1. A mental injury or illness is not a  
4 compensable injury unless caused by a physical injury to the  
5 employee, and shall not be considered an injury arising out of and  
6 in the course and scope of employment or compensable unless  
7 demonstrated by a preponderance of the evidence; provided, however,  
8 that this physical injury limitation shall not apply to any victim  
9 of a crime of violence, a law enforcement officer, paid or volunteer  
10 firefighter, or emergency medical technician employed on a full-time  
11 basis by a municipality, county, or this state, or a volunteer  
12 firefighter, who suffers post-traumatic stress disorder, as defined  
13 in subsection E of this section, while responding to an emergency.  
14 For the purposes of this section, such employee shall be referred to  
15 as a first responder.

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

21       B. 1. Notwithstanding any other provision of the  
22 Administrative Workers' Compensation Act, where a claim is for  
23 mental injury or illness, the employee shall be limited to twenty-  
24 six (26) weeks of disability benefits unless it is shown by clear

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

15 2. Notwithstanding any other provision of this section, a first  
16 responder who receives benefits provided herein for a mental injury  
17 or illness not accompanied by a physical injury who, after reaching  
18 maximum medical improvement, is unable to perform the essential  
19 functions of his or her employment position and who is not eligible  
20 to receive a disability retirement through his or her pension or  
21 retirement system shall be eligible to be awarded permanent  
22 disability benefits not to exceed Fifty Thousand Dollars  
23 (\$50,000.00) as provided for in this act.

24

1        3.    a.    In cases where death results directly from the mental  
2                    injury or illness within a period of one (1) year,  
3                    compensation shall be paid to the dependents as  
4                    provided in other death cases under the Administrative  
5                    Workers' Compensation Act.

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

10        C.    1.    In the event that the Oklahoma Workers' Compensation  
11 Commission finds that a first responder has suffered post-traumatic  
12 stress disorder not accompanied by a physical injury, the employer  
13 shall provide reasonable and necessary medical treatment for such  
14 injury, subject to the Oklahoma Workers' Compensation Commission's  
15 Fee Schedule, for a period not longer than one (1) year. The  
16 employer shall not be responsible for medical treatment in the form  
17 of prescription medicine in excess of Ten Thousand Dollars  
18 (\$10,000.00).

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

1 D. For the purposes of this section, claim payments for  
2 volunteer firefighters shall be paid pursuant to the Volunteer  
3 Firefighter Group Insurance Pool.

4 E. For the purposes of this section:

5 1. "Post-traumatic stress disorder" means an injury or  
6 condition in which a first responder has been exposed to a traumatic  
7 event and:

8 a. has experienced, witnessed, or was confronted with an  
9 event that involved actual or threatened death or  
10 serious injury, or a threat to the physical integrity  
11 of others, and the response involved fear,  
12 helplessness, or horror,

13 b. the traumatic event is persistently re-experienced in  
14 one or more of the following ways:

15 (1) recurrent and intrusive distressing recollections  
16 of the event,

17 (2) recurrent distressing dreams,

18 (3) acting or feeling as if the traumatic event was  
19 recurring,

20 (4) intense psychological distress at exposure to  
21 cues that symbolize an aspect of the traumatic  
22 event, or

23 (5) physiological reactivity on exposure to cues that  
24 symbolize an aspect of the traumatic event,

- c. persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness such as efforts to avoid thoughts, feelings, or conversations associated with the trauma, markedly diminished interest or participation in significant activities, or a feeling of detachment or estrangement from others,
- d. persistent symptoms of increased arousal such as difficulty falling or staying asleep, irritability or outbursts of anger, difficulty concentrating, or hypervigilance,
- e. the duration of the disturbance is more than one (1) month, and
- f. the disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning;

2. "Volunteer firefighter" means a person who is enrolled as a member of a volunteer fire department with two or less salaried firefighters and who serves in such capacity without receiving a regular salary; and

3. "Emergency medical technician" means a person who holds a license as an emergency medical technician, an intermediate or advanced emergency medical technician, or a paramedic, issued by the State Department of Health to perform emergency medical services in

1 accordance with the Oklahoma Emergency Response Systems Development  
2 Act and the rules and standards promulgated by the State  
3 Commissioner of Health.

4 SECTION 5. AMENDATORY 85A O.S. 2021, Section 30, is  
5 amended to read as follows:

6 Section 30. A. For the purposes of Sections 31 through 35 of  
7 this title, the term "physically impaired person" means a person  
8 who, as a result of accident, disease, birth, military action, or  
9 any other cause, has suffered:

10 1. The loss of the sight of one eye;

11 2. The loss by amputation of the whole or a part of a member of  
12 the body, or loss of use of more than thirty-five percent (35%) of a  
13 member of the body proven by objective medical evidence; or

14 3. Any previous adjudications of compensable permanent partial  
15 disability adjudged and determined by the Workers' Compensation  
16 Court, the Workers' Compensation Court of Existing Claims or the  
17 Oklahoma Workers' Compensation Commission.

18 B. This section shall apply to all adjudications of Multiple  
19 Injury Trust Fund claims in which the last injury occurred on or  
20 after July 1, 2019.

21 SECTION 6. AMENDATORY 85A O.S. 2021, Section 32, is  
22 amended to read as follows:

23 Section 32. A. If an employee who is a "physically impaired  
24 person" receives an accidental personal injury compensable under the

1 Administrative Workers' Compensation Act which results in additional  
2 permanent disability so that the degree of disability caused by the  
3 combination of both disabilities results in disability materially  
4 greater than that which would have resulted from the subsequent  
5 injury alone, the employee may proceed against the Multiple Injury  
6 Trust Fund for permanent total disability. ~~Only disability due to~~  
7 ~~an injury to the body as a whole at a subsequent employer shall be~~  
8 ~~combinable with a prior body disability, except that disability to a~~  
9 ~~member may be combined with disability to the body as a whole.~~ If  
10 such combined disabilities constitute permanent total disability, as  
11 defined in Section 2 of this title, the employee shall receive full  
12 compensation as provided by law for the disability resulting  
13 directly and specifically from the subsequent injury. In addition,  
14 the employee shall receive compensation for permanent total  
15 disability if the combination of injuries renders the employee  
16 permanently and totally disabled. The employer shall be liable only  
17 for the degree of percent of disability which would have resulted  
18 from the subsequent injury if there had been no preexisting  
19 impairment. The compensation rate for permanent total disability  
20 awards from the Multiple Injury Trust Fund shall be the compensation  
21 rate for permanent partial disability paid by the employer in the  
22 last combinable compensable injury.

23 B. Permanent total disability awards from the Multiple Injury  
24 Trust Fund shall be payable in periodic installments for a period of

1 eight (8) years or until the employee reaches sixty-five (65) years  
2 of age, whichever period is longer.

3 C. Permanent total disability awards from the Multiple Injury  
4 Trust Fund shall accrue from the file date of the order of the  
5 Oklahoma Workers' Compensation Commission finding the claimant to be  
6 permanently and totally disabled.

7 D. Before a physically impaired person can proceed against the  
8 Multiple Injury Trust Fund, the previously adjudicated compensable  
9 permanent partial disability adjudged and determined by the Workers'  
10 Compensation Court, the Workers' Compensation Court of Existing  
11 Claims or the Oklahoma Workers' Compensation Commission and the  
12 permanent partial disability from the last injury must exceed fifty  
13 percent (50%) to the body as a whole. However, amputations and loss  
14 of use of a scheduled member qualifying as previous impairment under  
15 paragraph 2 of subsection A of Section 30 of this title shall be  
16 considered in lieu of previously adjudicated compensable permanent  
17 partial disability.

18 E. Awards under this section shall abate upon the death, from  
19 any cause, of the employee.

20 F. Reopening any prior claim other than the last injury claim  
21 against the employer shall not give a claimant the right to  
22 additional Multiple Injury Trust Fund benefits.

23 G. The Multiple Injury Trust Fund shall have authority to  
24 compromise a claim for less than the indicated amount of permanent



1 total disability. Orders shall be paid in periodic installments  
2 beginning on the date of the award, unless commuted to a lump-sum  
3 payment or payments, by agreement of the claimant and the Multiple  
4 Injury Trust Fund. All offers made by the Multiple Injury Trust  
5 Fund pursuant to this section shall be conveyed by the claimant's  
6 attorney to the claimant within five (5) days of receipt of the  
7 offer.

8 H. If an order is entered finding an employee to be permanently  
9 totally disabled as a result of combined disability, and such order  
10 is the result of a compromised settlement, the employee is  
11 thereafter prohibited from making an additional claim against the  
12 Multiple Injury Trust Fund. An attorney for a claimant against the  
13 Multiple Injury Trust Fund shall be entitled to a fee equal to  
14 twenty percent (20%) of permanent disability benefits awarded. The  
15 attorney fee shall be paid in periodic installments by the attorney  
16 receiving every fifth check. All benefits awarded to the attorney  
17 shall be vested at the time the award becomes final.

18 I. In the event a claimant receiving benefits for permanent and  
19 total disability from the Multiple Injury Trust Fund dies as a  
20 result of his or her injury before the award has been fully paid,  
21 payments shall continue to the surviving spouse for five (5) years  
22 or upon remarriage, whichever occurs first. In no event shall  
23 payments to the surviving spouse extend beyond the period of  
24 benefits awarded to the claimant.

1       SECTION 7.       AMENDATORY       85A O.S. 2021, Section 35, is  
2 amended to read as follows:

3       Section 35. A. 1. Every employer shall secure compensation as  
4 provided under ~~this act~~ the Administrative Workers' Compensation Act  
5 to its employees for compensable injuries without regard to fault.

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

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

16       SECTION 8.       AMENDATORY       85A O.S. 2021, Section 40, is  
17 amended to read as follows:

18       Section 40. A. 1. Any employer who fails to secure  
19 compensation required under the Administrative Workers' Compensation  
20 Act, upon conviction, shall be guilty of a misdemeanor and subject  
21 to a fine of up to Ten Thousand Dollars (\$10,000.00) to be deposited  
22 in the Workers' Compensation Commission Revolving Fund.

23       2. The Attorney General shall have concurrent authority with  
24 the Commission to investigate and enforce any violations of the laws

1 regarding workers' compensation and may perform unannounced on-site  
2 inspections of any employer to determine compliance with this  
3 section.

4 3. This subsection shall not affect any other liability of the  
5 employer under the Administrative Workers' Compensation Act.

6 B. 1. Whenever the Oklahoma Workers' Compensation Commission  
7 has reason to believe that any employer required to secure the  
8 payment of compensation under the Administrative Workers'  
9 Compensation Act has failed to do so, the Commission shall serve on  
10 the employer a proposed judgment declaring the employer to be in  
11 violation of the Administrative Workers' Compensation Act and  
12 containing the amount, if any, of the civil penalty to be assessed  
13 against the employer under paragraph 5 of this subsection.

14 2. a. An employer may contest a proposed judgment of the  
15 Commission issued under paragraph 1 of this subsection  
16 by filing with the Commission, within twenty (20) days  
17 of receipt of the proposed judgment, a written request  
18 for a hearing.

19 b. The request for a hearing does not need to be in any  
20 particular form but shall specify the grounds on which  
21 the person contests the proposed judgment, the  
22 proposed assessment, or both.

23 c. If a written request for hearing is not filed with the  
24 Commission within the time specified in subparagraph a

1 of this paragraph, the proposed judgment, the proposed  
2 penalty or both, shall be a final judgment of the  
3 Commission ~~and shall not be subject to further review~~  
4 ~~by any court, except if the employer shows good cause~~  
5 ~~why it did not timely contest the judgment or penalty~~  
6 and terms of the proposed judgment shall be reflected  
7 in an order signed by an administrative law judge of  
8 the Commission.

9 d. ~~A proposed judgment by the Commission under this~~  
10 ~~section shall be prima facie correct, and the burden~~  
11 ~~is on the employer to prove that the proposed judgment~~  
12 ~~is incorrect~~ If the employer objects to the proposed  
13 judgment and requests a hearing, the Commission shall  
14 prove by a preponderance of evidence each and every  
15 allegation of law and fact contained in the proposed  
16 judgment. The administrative law judge shall make  
17 specific findings of fact and law.

18 3. a. If the employer alleges that a carrier has contracted  
19 to provide it workers' compensation insurance coverage  
20 for the period in question, the employer shall include  
21 the allegation in its request for hearing and shall  
22 name the carrier.

23 b. The Commission shall promptly notify the carrier of  
24 the employer's allegation and of the date of hearing.

1           c.    The carrier shall promptly, and no later than five (5)  
2                days before the hearing, respond in writing to the  
3                employer's allegation by providing evidence of  
4                coverage for the period in question or by  
5                affirmatively denying the employer's allegation.

6           4.   Hearings under this section shall be procedurally conducted  
7 as provided in Sections 69 through 78 of this title.

8           5.   The Commission may assess a fine against an employer who  
9 fails to secure the payment of compensation in an amount up to One  
10 Thousand Dollars (\$1,000.00) per day of violation payable to the  
11 Workers' Compensation Commission Revolving Fund, not to exceed a  
12 total of Fifty Thousand Dollars (\$50,000.00) for the first  
13 violation.

14          6.   If an employer fails to secure the payment of compensation  
15 or pay any civil penalty assessed against the employer after a  
16 judgment issued under this section has become final by operation of  
17 law or on appeal, the Commission may petition ~~the Oklahoma County~~  
18 ~~District Court or~~ the district court of the county where the  
19 employer's principal place of business is located for an order  
20 enjoining the employer from engaging in further employment until  
21 such time as the employer secures the payment of compensation or  
22 makes full payment of all civil penalties.

23          7.   Upon any penalty becoming final under this section, the  
24 Commission may institute collection proceedings against any assets

1 of the employer independently or in district court including, but  
2 not limited to, an asset hearing, garnishment of income and wages,  
3 judgment lien or an intercept of an income tax refund consistent  
4 with Section 205.2 of Title 68 of the Oklahoma Statutes. The  
5 collection proceedings shall be filed in the county in which the  
6 principal office of the employer is located. The clerk of the  
7 Commission shall have the authority to certify a final order in  
8 which a penalty has been assessed. Such certification shall be  
9 necessary to invoke the jurisdiction of the district court.

10 8. Information subject to subsection A or B of Section 4-508 of  
11 Title 40 of the Oklahoma Statutes may be disclosed to the employees  
12 of the Commission for purposes of investigation and enforcement of  
13 workers' compensation coverage requirements pursuant to this title,  
14 and such information shall be admissible in any hearing before an  
15 administrative law judge of the Commission.

16 9. Litigation files and investigatory reports of the Commission  
17 arising from enforcement of the provisions of this section shall be  
18 confidential pursuant to Section 24A.12 of Title 51 of the Oklahoma  
19 Statutes.

20 SECTION 9. AMENDATORY 85A O.S. 2021, Section 45, is  
21 amended to read as follows:

22 Section 45. A. Temporary Total Disability.

23 1. If the injured employee is temporarily unable to perform his  
24 or her job or any alternative work offered by the employer, he or

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

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

1 twenty (20) days for a determination if temporary total disability  
2 compensation shall be reinstated. The temporary total disability  
3 shall remain terminated until such time as the employee complies  
4 with medical orders of the treating physician. Notwithstanding the  
5 provisions of this paragraph, benefits under this subsection shall  
6 be permanently terminated by order of the Commission if the employee  
7 is noncompliant or abandons treatment for sixty (60) days, or if  
8 benefits under this subsection have been suspended under this  
9 paragraph at least two times. The administrative law judge may  
10 appoint an independent medical examiner to determine if further  
11 medical treatment is reasonable and necessary. The independent  
12 medical examiner shall not provide treatment to the injured worker,  
13 unless agreed upon by the parties.

14 B. Temporary Partial Disability.

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



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

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

6        C. Permanent Partial Disability.

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

1 copy of any written evaluation shall be sent to both parties within  
2 seven (7) days of issuance. Medical opinions addressing  
3 compensability and permanent disability must be stated within a  
4 reasonable degree of medical certainty. Any party may submit the  
5 report of an evaluating physician.

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

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

16 4. In cases of permanent partial disability, the compensation  
17 shall be seventy percent (70%) of the employee's average weekly  
18 wage, not to exceed Three Hundred Fifty Dollars (\$350.00) per week  
19 which shall increase to Three Hundred Sixty Dollars (\$360.00) per  
20 week on July 1, 2021~~7~~. Beginning on or after January 1, 2025,  
21 compensation for permanent partial disability shall be seventy  
22 percent (70%) of the employee's average weekly wage, not to exceed an  
23 amount equal to forty percent (40%) of the state's average weekly  
24 wage, rounded to the nearest dollar. Rates are to be subsequently

1 adjusted January 1, annually for injuries occurring on or after the  
2 date of the adjustment. Rates shall be established for each claim  
3 based upon the date of injury for a term not to exceed a total of  
4 three hundred sixty (360) weeks for the body as a whole.

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

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

1 amount of permanent partial disability determined to be preexisting.  
2 If workers' compensation benefits have not previously been awarded  
3 through settlement or judicial or administrative determination in  
4 Oklahoma, the amount of preexisting permanent partial disability  
5 shall be established by competent evidence and determined by the  
6 Commission.

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

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

12 9. The permanent partial disability rate of compensation for  
13 amputation or permanent total loss of use of a scheduled member  
14 specified in Section 46 of this title shall be seventy percent (70%)  
15 of the employee's average weekly wage, not to exceed Three Hundred  
16 Fifty Dollars (\$350.00), with an increase to Three Hundred Sixty  
17 Dollars (\$360.00) ~~on July 1, 2021,~~. Beginning on or after January 1,  
18 2025, compensation for permanent partial disability shall be seventy  
19 percent (70%) of the employee's average weekly wage, not to exceed an  
20 amount equal to forty percent (40%) of the state's average weekly  
21 wage, rounded to the nearest dollar. Rates are to be subsequently  
22 adjusted January 1, annually for injuries occurring on or after the  
23 date of the adjustment. Rates shall be established for each claim  
24 based upon the date of injury and multiplied by the number of weeks

1 set forth for the member in Section 46 of this title, regardless of  
2 whether the injured employee is able to return to his or her pre-  
3 injury or equivalent job.

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

13 D. Permanent Total Disability.

14 1. In case of total disability adjudged to be permanent,  
15 seventy percent (70%) of the employee's average weekly wages, but  
16 not in excess of the state's average weekly wage, shall be paid to  
17 the employee during the continuance of the disability until such  
18 time as the employee reaches the age of maximum Social Security  
19 retirement benefits or for a period of fifteen (15) years, whichever  
20 is longer. In the event the claimant dies of causes unrelated to  
21 the injury or illness, benefits shall cease on the date of death.  
22 Provided, however, any person entitled to revive the action shall  
23 receive a one-time lump-sum payment equal to twenty-six (26) weeks  
24 of weekly benefits for permanent total disability awarded the

1 claimant. If more than one person is entitled to revive the claim,  
2 the lump-sum payment shall be evenly divided between or among such  
3 persons. In the event the Commission awards both permanent partial  
4 disability and permanent total disability benefits, the permanent  
5 total disability award shall not be due until the permanent partial  
6 disability award is paid in full. If otherwise qualified according  
7 to the provisions of ~~this act~~ the Administrative Workers'  
8 Compensation Act, permanent total disability benefits may be awarded  
9 to an employee who has exhausted the maximum period of temporary  
10 total disability even though the employee has not reached maximum  
11 medical improvement.

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

21 E. 1. The Oklahoma Workers' Compensation Commission may hire  
22 or contract for a Vocational Rehabilitation Director to oversee the  
23 vocational rehabilitation program of the Commission.  
24

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

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

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

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

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

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

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



1 directly to the facility providing the vocational rehabilitation  
2 services or training to the employee.

3 F. Disfigurement.

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

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

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

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

21 SECTION 10. AMENDATORY 85A O.S. 2021, Section 46, is  
22 amended to read as follows:

23 Section 46. A. An injured employee who is entitled to receive  
24 permanent partial disability compensation under Section 45 of this

1 title shall receive compensation for each part of the body in  
2 accordance with the number of weeks for the scheduled loss set forth  
3 below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 B. The permanent partial disability rate of compensation for  
6 amputation or permanent total loss of use of a scheduled member  
7 specified in this section shall be seventy percent (70%) of the  
8 employee's average weekly wage, not to exceed Three Hundred Fifty  
9 Dollars (\$350.00) with an increase to Three Hundred Sixty Dollars  
10 (\$360.00) on July 1, 2021~~7~~. Beginning on or after January 1, 2025,  
11 compensation for permanent partial disability shall be seventy  
12 percent (70%) of the employee's average weekly wage, not to exceed  
13 an amount equal to forty percent (40%) of the state's average weekly  
14 wage, rounded to the nearest dollar. Rates are to be subsequently  
15 adjusted January 1, annually for injuries occurring on or after the  
16 date of the adjustment. Rates shall be established for each claim  
17 based upon the date of injury and multiplied by the number of weeks  
18 as set forth in this section, regardless of whether or not the  
19 injured employee is able to return to his or her pre-injury job.

20 C. Other cases: In cases in which the Oklahoma Workers'  
21 Compensation Commission finds an injury to a part of the body not  
22 specifically covered by the foregoing provisions of this section,  
23 the employee may be entitled to compensation for permanent partial  
24 disability. The compensation ordered paid shall be seventy percent

(70%) of the employee's average weekly wage, not to exceed Three Hundred Fifty Dollars (\$350.00) with an increase to Three Hundred Sixty Dollars (\$360.00) on July 1, 2021~~7~~. Beginning January 1, 2025, an amount equal to forty percent (40%) of the state's average weekly wage, rounded to the nearest whole dollar. Rates are to be subsequently adjusted January 1, annually, for injuries occurring on or after the date of the adjustment for the number of weeks which the partial disability of the employee bears to ~~three hundred fifty (350)~~ three hundred sixty (360) weeks.

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

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

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

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

F. Compensation for amputation or loss of use of two or more digits or one or more phalanges of two or more digits of a hand or a foot may be proportioned to the total loss of use of the hand or the

1 foot occasioned thereby but shall not exceed the compensation for  
2 total loss of a hand or a foot.

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

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

8 SECTION 11. AMENDATORY 85A O.S. 2021, Section 47, as  
9 amended by Section 1 of Enrolled House Bill No. 1738 of the 2nd  
10 Session of the 59th Oklahoma Legislature, is amended to read as  
11 follows:

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

17 B. Common law spouse. A common law spouse shall not be  
18 entitled to benefits under this section unless he or she obtains an  
19 order from the Oklahoma Workers' Compensation Commission ruling that  
20 a common law marriage existed between the decedent and the surviving  
21 spouse. The ruling by the Commission shall be exclusive in regard  
22 to benefits under this section regardless of any district court  
23 decision regarding the probate of the decedent's estate.

1 C. Beneficiaries - Amounts. If an injury or occupational  
2 illness causes death, weekly income benefits shall be payable as  
3 follows:

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

10 2. If there is a surviving spouse and one (1) child, the child  
11 shall receive a lump-sum payment of Twenty-five Thousand Dollars  
12 (\$25,000.00) and fifteen percent (15%) of the lesser of the deceased  
13 employee's average weekly wage and the state average weekly wage.  
14 If there is more than one (1) child but less than five (5) children,  
15 each child shall receive a lump-sum payment of Twenty-five Thousand  
16 Dollars (\$25,000.00) and a pro rata share of thirty percent (30%) of  
17 the deceased employee's average weekly wage for claims with a date  
18 of accident occurring on or after the effective date of this act.  
19 If there are five (5) or more children, each child shall receive a  
20 pro rata share of One Hundred Thousand Dollars (\$100,000.00) and a  
21 pro rata share of thirty percent (30%) of the deceased employee's  
22 average weekly wage for claims with a date of accident occurring on  
23 or after the effective date of this act;

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

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

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

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

6       ~~5.~~ 7. The employer shall pay the actual funeral expenses, not  
7 exceeding the sum of Ten Thousand Dollars (\$10,000.00).

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

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

17       2. Enrolled as a full-time student in any accredited  
18 institution of higher education or vocational or technology  
19 education; or

20       3. Physically or mentally incapable of self-support,  
21 then he or she may continue to receive weekly income benefits under  
22 this section until the earlier of reaching the age of twenty-three  
23 (23) or, with respect to paragraphs 1 and 2 of this subsection, no  
24



1 longer being enrolled as a student, and with respect to paragraph 3  
2 of this subsection, becoming capable of self-support.

3 E. If any member of the class of beneficiaries who receive a  
4 pro rata share of weekly income benefits becomes ineligible to  
5 continue to receive benefits, the remaining members of the class  
6 shall receive adjusted weekly income benefits equal to the new class  
7 size.

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

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

19 Section 50. A. The employer shall promptly provide an injured  
20 employee with medical, surgical, hospital, optometric, podiatric,  
21 chiropractic and nursing services, along with any medicine,  
22 crutches, ambulatory devices, artificial limbs, eyeglasses, contact  
23 lenses, hearing aids, and other apparatus as may be reasonably  
24 necessary in connection with the injury received by the employee.

1 The employer shall have the right to choose the treating physician  
2 or chiropractor.

3 B. If the employer fails or neglects to provide medical  
4 treatment within five (5) days after actual knowledge is received of  
5 an injury, the injured employee may select a physician or  
6 chiropractor to provide medical treatment at the expense of the  
7 employer; provided, however, that the injured employee, or another  
8 in the employee's behalf, may obtain emergency treatment at the  
9 expense of the employer where such emergency treatment is not  
10 provided by the employer.

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

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

1 E. An employee claiming or entitled to benefits under ~~the~~  
2 ~~Administrative Workers' Compensation Act~~ this act, shall, if ordered  
3 by the Commission or requested by the employer or insurance carrier,  
4 submit himself or herself for medical examination. If an employee  
5 refuses to submit himself or herself to examination, his or her  
6 right to prosecute any proceeding under ~~the Administrative Workers'~~  
7 ~~Compensation Act~~ this act shall be suspended, and no compensation  
8 shall be payable for the period of such refusal.

9 F. For compensable injuries resulting in the use of a medical  
10 device, ongoing service for the medical device shall be provided in  
11 situations including, but not limited to, medical device battery  
12 replacement, ongoing medication refills related to the medical  
13 device, medical device repair, or medical device replacement.

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

24 H. Fee Schedule.

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

15        2. Reimbursement for medical care shall be prescribed and  
16 limited by the Fee Schedule. The director of the Employees Group  
17 Insurance Division of the Office of Management and Enterprise  
18 Services shall provide the Commission such information as may be  
19 relevant for the development of the Fee Schedule. The Commission  
20 shall develop the Fee Schedule in a manner in which quality of  
21 medical care is assured and maintained for injured employees. The  
22 Commission shall give due consideration to additional requirements  
23 for physicians treating an injured worker under the Administrative  
24 Workers' Compensation Act, including, but not limited to,

1 communication with claims representatives, case managers, attorneys,  
2 and representatives of employers, and the additional time required  
3 to complete forms for the Commission, insurance carriers, and  
4 employers.

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

21           a. No reimbursement shall be allowed for any magnetic  
22                resonance imaging (MRI) unless the MRI is provided by  
23                an entity that meets Medicare requirements for the  
24                payment of MRI services or is accredited by the

1 American College of Radiology, the Intersocietal  
2 Accreditation Commission or the Joint Commission ~~on~~  
3 ~~Accreditation of Healthcare Organizations~~. For all  
4 other radiology procedures, the reimbursement rate  
5 shall be the lesser of the reimbursement rate allowed  
6 by the 2010 Oklahoma Fee Schedule and two hundred  
7 seven percent (207%) of the Medicare Fee Schedule.

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

13 c. Any entity providing durable medical equipment,  
14 prosthetics, orthotics or supplies shall be accredited  
15 by a CMS-approved accreditation organization. If a  
16 physician provides durable medical equipment,  
17 prosthetics, orthotics, prescription drugs, or  
18 supplies to a patient ancillary to the patient's  
19 visit, reimbursement shall be no more than ten percent  
20 (10%) above cost.

21 d. The Commission shall develop a reasonable stop-loss  
22 provision of the Fee Schedule to provide for adequate  
23 reimbursement for treatment for major burns, severe  
24 head and neurological injuries, multiple system

1 injuries, and other catastrophic injuries requiring  
2 extended periods of intensive care. An employer or  
3 insurance carrier shall have the right to audit the  
4 charges and question the reasonableness and necessity  
5 of medical treatment contained in a bill for treatment  
6 covered by the stop-loss provision.

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

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

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

23 7. The Commission's review of medical and treatment charges  
24 pursuant to this section shall be conducted pursuant to the Fee

1 Schedule in existence at the time the medical care or treatment was  
2 provided. The judgment approving the medical and treatment charges  
3 pursuant to this section shall be enforceable by the Commission in  
4 the same manner as provided in the Administrative Workers'  
5 Compensation Act for the enforcement of other compensation payments.

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

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

23 9. When medical care includes prescription drugs dispensed by a  
24 physician or other medical care provider and the NDC for the drug



product dispensed is for a repackaged drug, then the maximum reimbursement shall be the lesser of the original labeler's NDC and the lowest-cost therapeutic equivalent drug product. Payment shall be based upon a sum of the allowable fee for each ingredient plus a dispensing fee of Five Dollars (\$5.00) per prescription. Compounded medications shall be billed by the compounding pharmacy.

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

1 or another physician, the markup shall be limited to ten percent  
2 (10%) above cost.

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

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

23 13. Physicians or chiropractors providing treatment under the  
24 Administrative Workers' Compensation Act shall disclose under

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

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

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

1 providers, self-insureds, group self-insurance  
2 associations of this state and the public. The  
3 consultant shall submit a report of its findings and a  
4 proposed amended Fee Schedule to the Commission.

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

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

22 I. Formulary. The Commission by rule shall adopt a closed  
23 formulary. Rules adopted by the Commission shall allow an appeals  
24 process for claims in which a treating doctor determines and

documents that a drug not included in the formulary is necessary to treat an injured employee's compensable injury. The Commission by rule shall require the use of generic pharmaceutical medications and clinically appropriate over-the-counter alternatives to prescription medications unless otherwise specified by the prescribing doctor, in accordance with applicable state law.

SECTION 13. AMENDATORY 85A O.S. 2021, Section 67, is amended to read as follows:

Section 67. A. Except as otherwise provided in this section, notice of disability resulting from an occupational disease or cumulative trauma shall be the same as in cases of accidental injury.

B. Written notice shall be given to the employer of an occupational disease or cumulative trauma by the employee, or a representative of the employee in the case of incapacity or death, within six (6) months after the first distinct manifestation of the disease or cumulative trauma or within six (6) months after death.

C. The date of injury for cumulative trauma shall be the last date of injurious exposure prior to the filing date of the Employee's First Notice of Claim for Compensation.

SECTION 14. AMENDATORY 85A O.S. 2021, Section 69, is amended to read as follows:

Section 69. A. Time for Filing. 1. A claim for benefits under ~~this act~~ the Administrative Workers' Compensation Act, other

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

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

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

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

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

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

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

17 b. receive or seek benefits, including medical treatment,  
18 under this title for a period of six (6) months,  
19 then on motion by the employer, the claim shall be dismissed ~~with~~  
20 without prejudice.

21 B. Failure to File. Failure to file a claim within the period  
22 prescribed in subsection A of this section shall not be a bar to the  
23 right to benefits hereunder unless objection to the failure is made  
24 at the first hearing on the claim in which all parties in interest

1 have been given a reasonable notice and opportunity to be heard by  
2 the Commission.

3 C. Persons under Disability.

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

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

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

21 SECTION 15. AMENDATORY 85A O.S. 2021, Section 80, is  
22 amended to read as follows:

23 Section 80. A. A final order for permanent disability is a  
24 final adjudication of all issues pending in the claim unless



1 reserved in the order or by operation of law. Except where a joint  
2 petition settlement has been approved, the Oklahoma Workers'  
3 Compensation Commission may review any compensation judgment, award,  
4 or decision.

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

19 2. The Oklahoma Workers' Compensation Commission may review any  
20 compensation judgment, award, or decision at any time and without  
21 limitation upon a filing of an application for a finding of a change  
22 of condition for the better. Such review may be filed for good  
23 cause shown. On review, the Commission may make a judgment or award  
24 terminating, continuing, or decreasing for the future the

1 compensation previously awarded, subject to the limits provided for  
2 in this act.

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

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

10 D. Aging and the effects of aging on a compensable injury are  
11 not to be considered in determining whether there has been a change  
12 in physical condition. Aging or the effect of aging on a  
13 compensable injury shall not be considered in determining permanent  
14 disability under this section or any other section in ~~this act~~ the  
15 Administrative Workers' Compensation Act.

16 SECTION 16. AMENDATORY 85A O.S. 2021, Section 112, is  
17 amended to read as follows:

18 Section 112. A. The Oklahoma Workers' Compensation Commission  
19 shall create, maintain and review a list of licensed physicians who  
20 shall serve as independent medical examiners from a list of licensed  
21 physicians who have completed such course study as the Commission  
22 may require. An independent medical examiner must agree to examine  
23 an employee within forty-five (45) days of appointment. The  
24 Commission shall, to the best of its ability, include the most

1 experienced and competent physicians in the specific fields of  
2 expertise utilized most often in the treatment of injured employees.  
3 The period of qualification shall be two (2) years. Physicians may  
4 be qualified for successive two-year periods. Physicians serving as  
5 independent medical examiners on ~~the effective date of this act~~  
6 February 1, 2014, shall serve the remainder of their respective two-  
7 year qualification periods and may reapply for successive  
8 qualification periods. The Commission may remove an independent  
9 medical examiner from the list for cause.

10 B. An administrative law judge may appoint an independent  
11 medical examiner to assist in determining any issue before the  
12 Commission. In the event surgery is recommended by a treating  
13 physician, upon request of the employer or employee, an independent  
14 medical examiner shall be appointed to determine the reasonableness  
15 and necessity of the recommended surgery. The request of the  
16 employer or employee for an independent medical examiner, and a  
17 request for a deposition of the treating physician, shall be filed  
18 within fifteen (15) days of the receipt of the recommendation for  
19 surgery, or the recommended surgery shall be approved by the  
20 Commission. The Commission shall set a request for an independent  
21 medical examiner that is timely filed on an accelerated prehearing  
22 docket within ten (10) days of the filing of the request. The  
23 appointment with the independent medical examiner regarding the  
24 reasonableness and necessity of a recommended surgery shall occur

1 within thirty (30) days of the appointment. Such independent  
2 medical examiner shall be qualified to perform the type of surgery  
3 recommended. In the event the independent medical examiner agrees  
4 with the treating physician's recommendation for surgery, the  
5 employer shall pay to the employee the sum of One Thousand Dollars  
6 (\$1,000.00) for the delay in medical treatment in addition to other  
7 benefits provided for in this act. If the employer fails to  
8 schedule a requested deposition of either the treating physician or  
9 the independent medical examiner within twenty (20) days of filing a  
10 request for deposition, the employer shall pay to the employee the  
11 sum of One Thousand Dollars (\$1,000.00) for the delay in medical  
12 treatment in addition to other benefits provided for in this act.

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

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

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

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

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

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

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

22 J. Upon receipt of an independent medical examiner's report,  
23 any party shall have the right to object to the introduction of the  
24 report into evidence. The objection and any request for a

1 deposition of the independent medical examiner must be made by  
2 giving written notification to all parties and to the Commission  
3 within ten (10) days after receipt of the report, subject to the  
4 limitations set forth in subsection B of this section. The employer  
5 shall be responsible for the reasonable charges of the physician for  
6 such testimony, preparation time, and the expense of the deposition.

7 SECTION 17. This act shall become effective November 1, 2024.

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