

1 **SENATE FLOOR VERSION**

2 April 11, 2017

3 **AS AMENDED**

4 ENGROSSED HOUSE
5 BILL NO. 1462

6 By: Echols of the House

7 and

8 Sykes of the Senate

9 [Workers' compensation - modifying various
10 provisions relating to workers' compensation -
11 effective date]

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

13 SECTION 1. AMENDATORY Section 1, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2016, Section 1), is amended to read as
15 follows:

16 Section 1. Sections 1 through ~~106 and 150 through 168~~ 125 of
17 this ~~act~~ title shall be known and may be cited as the
18 "Administrative Workers' Compensation Act". The provisions of the
19 Administrative Workers' Compensation Act shall be strictly
20 construed.

21 SECTION 2. AMENDATORY Section 2, Chapter 208, O.S.L.
22 2013 (85A O.S. Supp. 2016, Section 2), is amended to read as
23 follows:

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

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

6 2. "Carrier" means any stock company, mutual company, or
7 reciprocal or interinsurance exchange authorized to write or carry
8 on the business of workers' compensation insurance in this state.

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

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

21 4. "Case manager" means a person who is a registered nurse with
22 a current, active unencumbered license from the Oklahoma Board of
23 Nursing, or possesses one or more of the following certifications
24 which indicate the individual has a minimum number of years of case

1 management experience, has passed a national competency test and
2 regularly obtains continuing education hours to maintain
3 certification:

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

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

21 6. "Child" means a natural or adopted son or daughter of the
22 employee under eighteen (18) years of age; or a natural or adopted
23 son or daughter of an employee eighteen (18) years of age or over
24 who is physically or mentally incapable of self-support; or any

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

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

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

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

22 ~~(1) was unintended, unanticipated, unforeseen,~~
23 ~~unplanned and unexpected,~~

24

- 1 ~~(2) occurred at a specifically identifiable time and~~
2 ~~place,~~
- 3 ~~(3) occurred by chance or from unknown causes, and~~
- 4 ~~(4) was independent of sickness, mental incapacity,~~
5 ~~bodily infirmity or any other cause.~~

6 b. "Compensable injury" does not include:

- 7 (1) injury to any active participant in assaults or
8 combats which, although they may occur in the
9 workplace, are the result of non-employment-
10 related hostility or animus of one, both, or all
11 of the combatants and which assault or combat
12 amounts to a deviation from customary duties;
13 provided, however, injuries caused by horseplay
14 shall not be considered to be compensable
15 injuries, except for innocent victims,
- 16 (2) injury incurred while engaging in or performing
17 or as the result of engaging in or performing any
18 recreational or social activities for the
19 employee's personal pleasure,
- 20 (3) injury which was inflicted on the employee at a
21 time when employment services were not being
22 performed or before the employee was hired or
23 after the employment relationship was terminated,
- 24

1 (4) injury where the accident was caused by the use
2 of alcohol, illegal drugs, or prescription drugs
3 used in contravention of physician's orders. If,
4 within twenty-four (24) hours of being injured or
5 reporting an injury, an employee tests positive
6 for intoxication, an illegal controlled
7 substance, or a legal controlled substance used
8 in contravention to a treating physician's
9 orders, or refuses to undergo the drug and
10 alcohol testing, there shall be a rebuttable
11 presumption that the injury was caused by the use
12 of alcohol, illegal drugs, or prescription drugs
13 used in contravention of physician's orders.
14 This presumption may only be overcome if the
15 employee proves by objective, clear and
16 convincing evidence that his or her state of
17 intoxication had no causal relationship to the
18 injury,

19 (5) any strain, degeneration, damage or harm to, or
20 disease or condition of, the eye or
21 musculoskeletal structure or other body part
22 resulting from the natural results of aging,
23 osteoarthritis, arthritis, or degenerative
24 process including, but not limited to,

1 degenerative joint disease, degenerative disc
2 disease, degenerative
3 spondylosis/spondylolisthesis and spinal
4 stenosis, or

5 (6) any injury that is related to a preexisting
6 condition except ~~when~~ if the treating physician
7 ~~clearly confirms~~ determines by objective findings
8 that the injury is an identifiable and
9 significant aggravation ~~incurred~~ of the
10 preexisting condition that:

11 (a) occurred in the course and scope of
12 employment,

13 (b) is not just a recurrence of symptoms
14 inherent in the etiology of the preexisting
15 condition, and

16 (c) is substantially caused by the work-related
17 accident.

18 c. The definition of "compensable injury" shall not be
19 construed to limit or abrogate the right to recover
20 for mental injuries as described in Section 13 of this
21 ~~act~~ title, heart or lung injury or illness as
22 described in Section 14 of this ~~act~~ title, or
23 occupational diseases as described in Section 65 of
24 this ~~act~~ title.

1 d. A compensable injury shall be established by medical
2 evidence supported by objective findings as defined in
3 paragraph ~~30~~ 26 of this section.

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

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

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

20 ~~10.~~ 9. "Compensation" means the money allowance payable to the
21 employee or to his or her dependents and includes the medical
22 services and supplies provided for in Section 50 of this ~~act~~ title
23 and funeral expenses;

1 ~~11. "Consequential injury" means injury or harm to a part of~~
2 ~~the body that is a direct result of the injury or medical treatment~~
3 ~~to the part of the body originally injured in the claim. The~~
4 ~~Commission shall not make a finding of a consequential injury unless~~
5 ~~it is established by objective medical evidence that medical~~
6 ~~treatment for such part of the body is required;~~

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

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

- 23 a. an employee's transportation to and from his or her
24 place of employment,

1 b. travel by an employee in furtherance of the affairs of
2 an employer if the travel is also in furtherance of
3 personal or private affairs of the employee,

4 c. any injury occurring in a parking lot or other common
5 area adjacent to an employer's place of business
6 before the employee clocks in or otherwise begins work
7 for the employer or after the employee clocks out or
8 otherwise stops work for the employer, or

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

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

23 ~~15.~~ 13. "Death" means only death resulting from compensable
24 injury as defined in paragraph ~~9~~ 8 of this section;

1 ~~16.~~ 14. "Disability" means ~~incapacity because of,~~ based on
2 objective findings, impairment of a portion of the total
3 physiological capabilities of the human body caused by a compensable
4 ~~injury to earn, in the same or any other employment, substantially~~
5 ~~the same amount of wages the employee was receiving at the time of~~
6 ~~the compensable injury;~~

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

12 ~~18.~~ 16.

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

1 orders and any authorized voluntary or uncompensated
2 worker, rendering services as a firefighter, peace
3 officer or emergency management worker. Travel by a
4 policeman, fireman, or a member of a first aid or
5 rescue squad, in responding to and returning from an
6 emergency, shall be deemed to be in the course of
7 employment.

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

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

18 (2) any person who is employed in agriculture or
19 horticulture by an employer who had a gross
20 annual payroll in the preceding calendar year of
21 less than One Hundred Thousand Dollars
22 (\$100,000.00) wages for agricultural or
23 horticultural workers, or any person who is
24

- 1 employed in agriculture or horticulture who is
2 not engaged in operation of motorized machines,
3 (3) any person who is a licensed real estate sales
4 associate or broker, paid on a commission basis,
5 (4) any person who is providing services in a medical
6 care or social services program, or who is a
7 participant in a work or training program,
8 administered by the Department of Human Services,
9 unless the Department is required by federal law
10 or regulations to provide workers' compensation
11 for such person. This division shall not be
12 construed to include nursing homes,
13 (5) any person employed by an employer with five or
14 fewer total employees, ~~all of whom~~ who are either
15 related within the second degree by blood or
16 marriage to the employer or are dependents living
17 in the household of the employer, if the employer
18 is a natural person or a general or limited
19 partnership, ~~or~~ an incorporator of a corporation
20 if the corporation is the employer, or a member
21 or manager of a limited liability company if the
22 limited liability company is the employer,
23 (6) 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 (7) 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 (8) 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 (9) 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 (10) 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 (11) 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.~~ 17. "Employer" means a person, partnership, association,
5 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. ~~Employer shall not include a qualified employer with~~
17 ~~an employee benefit plan as provided under the Oklahoma Employee~~
18 ~~Injury Benefit Act in Sections 107 through 120 of this act;~~

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

23 ~~21.~~ ~~"Evidence based" means expert based, literature supported~~
24 ~~and outcomes validated by well-designed randomized trials when such~~

1 ~~information is available and which uses the best available evidence~~
2 ~~to support medical decision making;~~

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

6 ~~23. 19. "Impairment" means a loss of, or loss of the formation~~
7 ~~of, a body part, organ or system;~~

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

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

19 ~~25. 21. "Insurance Commissioner" means the Insurance~~
20 ~~Commissioner of the State of Oklahoma;~~

21 ~~26. 22. "Insurance Department" means the Insurance Department~~
22 ~~of the State of Oklahoma;~~

23 ~~27. "Major cause" means more than fifty percent (50%) of the~~
24 ~~resulting injury, disease or illness. A finding of major cause~~

1 ~~shall be established by a preponderance of the evidence. A finding~~
2 ~~that the workplace was not a major cause of the injury, disease or~~
3 ~~illness shall not adversely affect the exclusive remedy provisions~~
4 ~~of this act and shall not create a separate cause of action outside~~
5 ~~this act;~~

6 ~~28.~~ 23. "Maximum medical improvement" means that no further
7 material improvement would reasonably be expected from medical
8 treatment or the passage of time;

9 ~~29.~~ 24. "Medical services" means those services specified in
10 Section 50 of this ~~act~~ title;

11 ~~30.~~ 25. "Misconduct" shall include the following:

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

24

1 i. a violation of a policy or rule adopted to ensure
2 orderly work or the safety of self or others;

3 ~~31.~~ 26.

4 a. (1) "Objective findings" ~~are those~~ means findings
5 based on objective medical evidence which cannot
6 come under the voluntary control of the patient.

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

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

18 (3) (a) Objective evidence necessary to prove
19 permanent disability in occupational hearing
20 loss cases may be established by medically
21 recognized and accepted clinical diagnostic
22 methodologies, including, but not limited
23 to, audiological tests that measure air and
24

1 bone conduction thresholds and speech
2 discrimination ability.

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

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

13 ~~32.~~ 27. "Official Disability Guidelines" or "~~ODG~~" means the
14 ~~current edition~~ Sixth Edition of the Official Disability Guidelines
15 and the ~~ODG~~ Treatment in Workers' ~~Comp~~ Compensation as published by
16 the Work Loss Data Institute;

17 ~~33.~~ 28. "Occupational disease" means a disease arising out of
18 and in the course and scope of employment that causes damage or harm
19 to the physical structure of the body. The term includes a disease
20 or infection that naturally results from the work-related disease.
21 The term does not include an ordinary disease of life to which the
22 general public is exposed outside of employment unless that disease
23 is an incident to a compensable injury or work-related disease;
24

1 29. "Permanent disability" means the ~~extent, expressed as a~~
2 ~~percentage, of the~~ permanent loss of a portion of the total
3 physiological capabilities of the human body ~~as established by~~
4 ~~competent medical evidence and~~ caused by a compensable injury based
5 on the ~~current edition~~ Sixth Edition of the American Medical
6 Association ~~guides~~ "Guides to the evaluation Evaluation of
7 ~~impairment~~ Permanent Impairment", if the impairment is contained
8 therein;

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

15 ~~35.~~ "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. Loss of both hands, both feet, both legs, or both eyes,~~
21 ~~or any two thereof, shall constitute permanent total disability;~~

22 ~~36.~~ 30. "Preexisting condition" means any illness, injury,
23 disease, or other physical or mental condition, whether or not work-

24

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

3 ~~37. "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.~~ 31. "Private self-insurer" means a private employer that
9 has been authorized to self-insure its workers' compensation
10 obligations pursuant to this ~~act~~ title, but does not include group
11 self-insurance associations authorized by this ~~act~~ title, or any
12 public employer that self-insures pursuant to this ~~act~~ title;

13 ~~39.~~ 32. "Prosthetic" means an artificial device used to replace
14 a part or joint of the body that is lost or injured in an accident
15 or illness covered by this ~~act~~ title;

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

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

1 ~~independent experts through a comparably rigorous, objective, and~~
2 ~~scientific review;~~

3 ~~42.~~ 33. "State average weekly wage" means the state average
4 weekly wage determined by the Oklahoma Employment Security
5 Commission in the preceding calendar year. If such determination is
6 not available, the Commission shall determine the wage annually
7 after reasonable investigation;

8 ~~43.~~ 34. "Subcontractor" means a person, firm, corporation or
9 other legal entity hired by the general or prime contractor to
10 perform a specific task for the completion of a work-related
11 activity;

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

14 ~~45.~~ 35. "Surviving spouse" means the employee's spouse by
15 reason of a legal marriage recognized by the State of Oklahoma or
16 under the requirements of a common law marriage in this state, as
17 determined by the Workers' Compensation Commission;

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

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

24

1 ~~48.~~ 36. "Total loss of use" means a one-hundred-percent
2 permanent partial disability rating to the specific body part; and

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

10 SECTION 3. AMENDATORY Section 3, Chapter 208, O.S.L.
11 2013 (85A O.S. Supp. 2016, Section 3), is amended to read as
12 follows:

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

19 B. This ~~act~~ title shall apply only to claims for injuries and
20 death based on accidents which occur on or after ~~the effective date~~
21 ~~of this act~~ February 1, 2014.

22 C. The Workers' Compensation Code in effect before ~~the~~
23 ~~effective date of this act~~ February 1, 2014, shall govern all rights
24

1 in respect to claims for injuries and death based on accidents
2 occurring before ~~the effective date of this act~~ February 1, 2014.

3 D. If an employee files a workers' compensation claim or
4 receives benefits in another jurisdiction, the employee is not
5 eligible to receive benefits under this title for the same injury.

6 SECTION 4. AMENDATORY Section 4, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2016, Section 4), is amended to read as
8 follows:

9 Section 4. A. If any part of this ~~act~~ title be decided by the
10 courts to be unconstitutional or invalid, the same shall not affect
11 the validity of this ~~act~~ title as a whole, or any part thereof other
12 than the part so decided to be unconstitutional or invalid.

13 B. If the adjudication of unconstitutionality has the effect of
14 invalidating any payment of compensation under this ~~act~~ title, the
15 amount of any compensation paid under this ~~act~~ title on account of
16 the injury shall be deducted from the amount of damages awarded in
17 the action in respect to the injury.

18 SECTION 5. AMENDATORY Section 5, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2016, Section 5), is amended to read as
20 follows:

21 Section 5. A. The rights and remedies granted to an employee
22 subject to the provisions of the Administrative Workers'
23 Compensation Act shall be exclusive of all other rights and remedies
24 of the employee, his or her legal representative, dependents, next

1 of kin, or anyone else claiming rights to recovery on behalf of the
2 employee against the employer, or any principal, officer, director,
3 employee, stockholder, partner, or prime contractor of the employer
4 on account of injury, illness, or death. Negligent acts of a co-
5 employee may not be imputed to the employer. No role, capacity, or
6 persona of any employer, principal, officer, director, employee, or
7 stockholder other than that existing in the role of employer of the
8 employee shall be relevant for consideration for purposes of this
9 ~~aet~~ title, and the remedies and rights provided by this ~~aet~~ title
10 shall be exclusive regardless of the multiple roles, capacities, or
11 personas the employer may be deemed to have. For the purpose of
12 extending the immunity of this section, any operator or owner of an
13 oil or gas well or other operation for exploring for, drilling for,
14 or producing oil or gas shall be deemed to be an intermediate or
15 principal employer for services performed at a drill site or
16 location with respect to injured or deceased workers whose immediate
17 employer was hired by such operator or owner at the time of the
18 injury or death.

19 B. Exclusive remedy shall not apply if:

20 1. An employer fails to secure the payment of compensation due
21 to the employee as required by this ~~aet~~ title. An injured employee,
22 or his or her legal representative in case death results from the
23 injury, may, at his or her option, elect to claim compensation under
24

1 this act or to maintain a legal action in court for damages on
2 account of the injury or death; or

3 2. The injury was caused by an intentional tort committed by
4 the employer. An intentional tort shall exist only when the
5 employee is injured as a result of willful, deliberate, specific
6 intent of the employer to cause such injury. Allegations or proof
7 that the employer had knowledge that the injury was substantially
8 certain to result from the employer's conduct shall not constitute
9 an intentional tort. The employee shall plead facts that show it is
10 at least as likely as it is not that the employer acted with the
11 purpose of injuring the employee. The issue of whether an act is an
12 intentional tort shall be a question of law.

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

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

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

1 employer does not stand in the position of an intermediate or
2 principal employer to the immediate employer of the injured or
3 deceased worker.

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

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

18 H. For the purpose of extending the immunity of this section,
19 any architect, professional engineer, or land surveyor shall be
20 deemed an intermediate or principal employer for services performed
21 at or on the site of a construction project, but this immunity shall
22 not extend to the negligent preparation of design plans and
23 specifications.

24

1 I. If the employer has failed to secure ~~the payment of~~ workers'
2 compensation insurance or become an approved self-insured as
3 provided in this ~~act~~ title or in the case of an intentional tort,
4 the injured employee or his or her legal representative may maintain
5 an action either before the Commission or in the district court, but
6 not both.

7 SECTION 6. AMENDATORY Section 6, Chapter 208, O.S.L.
8 2013, as amended by Section 1, Chapter 390, O.S.L. 2015 (85A O.S.
9 Supp. 2016, Section 6), is amended to read as follows:

10 Section 6.

11 A. 1. a. Any person or entity who makes any material false
12 statement or representation, who willfully and
13 knowingly omits or conceals any material information,
14 or who employs any device, scheme, or artifice, or who
15 aids and abets any person for the purpose of:

- 16 (1) obtaining any benefit or payment,
- 17 (2) increasing any claim for benefit or payment, or
- 18 (3) obtaining workers' compensation coverage under
19 this ~~act~~ title,

20 shall be guilty of a felony punishable pursuant to
21 Section 1663 of Title 21 of the Oklahoma Statutes.

22 b. A material false statement or representation includes,
23 but is not limited to, attempting to obtain treatment
24

1 or compensation for body parts that were not injured
2 in the course and scope of employment.

3 c. Fifty percent (50%) of any criminal fine imposed and
4 collected under this section shall be paid and
5 allocated in accordance with applicable law to the
6 Workers' Compensation Fund administered by the
7 Workers' Compensation Commission.

8 2. Any person or entity with whom any person identified in
9 division (1) of subparagraph a of paragraph 1 of this subsection has
10 conspired to achieve the proscribed ends shall, by reason of such
11 conspiracy, be guilty as a principal of a felony.

12 B. A copy of division (1) of subparagraph a of paragraph 1 of
13 subsection A of this section shall be included on all forms
14 prescribed by the Commission for the use of injured employees
15 claiming benefits and for the use of employers in responding to
16 employees' claims under this ~~act~~ title.

17 C. ~~Where~~ If the Commission or the Attorney General finds that a
18 violation of division (1) of subparagraph a of paragraph 1 of
19 subsection A of this section has been committed, or that any other
20 criminal violations ~~in furtherance~~ of the provisions of this ~~act~~
21 title were committed, the chair of the Commission or the Attorney
22 General shall refer the matter for appropriate action to the
23 prosecuting attorney having criminal jurisdiction over the matter.

1 D. 1. a. There shall be established within the Office of the
2 Attorney General a Workers' Compensation Fraud
3 Investigation Unit, funded by the Commission. The
4 Attorney General shall appoint a Director of the
5 Workers' Compensation Fraud Investigation Unit, who
6 may also serve as the director of any other designated
7 insurance fraud investigation division within the
8 Attorney General's office.

9 b. (1) The Unit shall investigate workers' compensation
10 fraud, any additional criminal violations that
11 may be related to workers' compensation fraud,
12 and any other insurance fraud matters as may be
13 assigned at the discretion of the Attorney
14 General.

15 (2) The Attorney General shall designate the
16 personnel assigned to the Unit, who, on meeting
17 the qualifications established by the Oklahoma
18 Council on Law Enforcement Education and
19 Training, shall have the powers of specialized
20 law enforcement officers of the State of Oklahoma
21 for the purpose of conducting investigations
22 under this subparagraph. Personnel hired as
23 specialized law enforcement officers shall have a
24 minimum of three (3) years of certified law

1 enforcement experience or its equivalent in
2 national or military law enforcement experience
3 as approved by the Oklahoma Council on Law
4 Enforcement Education and Training.

5 2. The Attorney General and his or her deputies and assistants
6 and the Director of the Workers' Compensation Fraud Investigation
7 Unit and his or her deputies and assistants shall be vested with the
8 power of enforcing the requirements of this section.

9 3. It shall be the duty of the Unit to assist the Attorney
10 General in the performance of his or her duties. The Unit shall
11 determine the identity of employees in this state who have violated
12 division (1) of subparagraph a of paragraph 1 of subsection A of
13 this section and report the violation to the Office of the Attorney
14 General and the Commission. The Attorney General shall report the
15 violation to the prosecuting attorney having jurisdiction over the
16 matter.

17 4. a. In the course of any investigation being conducted by
18 the Unit, the Attorney General and his or her deputies
19 and assistants and the Director and his or her
20 deputies and assistants shall have the power of
21 subpoena and may:

22 (1) subpoena witnesses,

23 (2) administer oaths or affirmations and examine any
24 individual under oath, and

1 (3) require and compel the production of records,
2 books, papers, contracts, and other documents.

3 b. The issuance of subpoenas for witnesses shall be
4 served in the same manner as if issued by a district
5 court.

6 c. (1) Upon application by the ~~commissioner~~ Commission
7 or the Director of the Unit, the district court
8 located in the county where a subpoena was served
9 may issue an order compelling an individual to
10 comply with the subpoena to testify.

11 (2) Any failure to obey the order of the court may be
12 punished as contempt.

13 d. If any person has refused in connection with an
14 investigation by the Director to be examined under
15 oath concerning his or her affairs, then the Director
16 is authorized to conduct and enforce by all
17 appropriate and available means any examination under
18 oath in any state or territory of the United States in
19 which any officer, director, or manager may then
20 presently be to the full extent permitted by the laws
21 of the state or territory.

22 e. In addition to the punishments described in paragraph
23 1 of subsection A of this section, any person
24 providing false testimony under oath or affirmation in

1 this state as to any matter material to any
2 investigation or hearing conducted under this
3 subparagraph, or any workers' compensation hearing,
4 shall upon conviction be guilty of perjury.

5 5. Fees and mileage of the officers serving the subpoenas and
6 of the witnesses in answer to subpoenas shall be as provided by law.

7 6. a. Every carrier or employer who has reason to suspect
8 that a violation of division (1) of subparagraph a of
9 paragraph 1 of subsection A of this section has
10 occurred shall be required to report all pertinent
11 matters to the unit.

12 b. No carrier or employer who makes a report for a
13 suspected violation of division (1) of subparagraph a
14 of paragraph 1 of subsection A of this section by an
15 employee shall be liable to the employee unless the
16 carrier or employer knowingly and intentionally
17 included false information in the report.

18 c. (1) Any carrier or employer who willfully and
19 knowingly fails to report a violation under
20 division (1) of subparagraph a of paragraph 1 of
21 subsection A of this section shall be guilty of a
22 misdemeanor and on conviction shall be punished
23 by a fine not to exceed One Thousand Dollars
24 (\$1,000.00).

1 (2) Fifty percent (50%) of any criminal fine imposed
2 and collected under this subparagraph shall be
3 paid and allocated in accordance with applicable
4 law to the fund administered by the Commission.

5 d. Any employee may report suspected violations of
6 division (1) of subparagraph a of paragraph 1 of
7 subsection A of this section. No employee who makes a
8 report shall be liable to the employee whose suspected
9 violations have been reported.

10 E. 1. For the purpose of imposing criminal sanctions or a fine
11 for violation of the duties of this ~~act~~ title, the prosecuting
12 attorney shall have the right and discretion to proceed against any
13 person or organization responsible for such violations, both
14 corporate and individual liability being intended by this ~~act~~ title.

15 2. The prosecuting attorney of the district to whom a suspected
16 violation of subsection A of this section, or any other criminal
17 violations that may be related thereto, have been referred shall,
18 for the purpose of assisting him or her in such prosecutions, have
19 the authority to appoint as special deputy prosecuting attorneys
20 licensed attorneys-at-law in the employment of the Unit or any other
21 designated insurance fraud investigation division within the
22 Attorney General's office. Such special deputy prosecuting
23 attorneys shall, for the purpose of the prosecutions to which they
24

1 are assigned, be responsible to and report to the prosecuting
2 attorney.

3 F. Notwithstanding any other provision of law, investigatory
4 files as maintained by the Attorney General's office and by the Unit
5 shall be deemed confidential and privileged. The files may be made
6 open to the public once the investigation is closed by the Director
7 of the Workers' Compensation Fraud Investigation Unit with the
8 consent of the Attorney General.

9 G. The Attorney General, with the cooperation and assistance of
10 the Commission, is authorized to establish rules as may be necessary
11 to carry out the provisions of this section.

12 H. Nothing in this section shall be deemed to create a civil
13 cause of action.

14 I. The Commission shall include a statement on all forms for
15 notices and instructions to employees, employers, carriers and
16 third-party administrators that any person who commits workers'
17 compensation fraud, upon conviction, shall be guilty of a felony
18 punishable by imprisonment, a fine or both.

19 J. If an injured employee is charged with workers' compensation
20 fraud, any pending workers' compensation proceeding, including
21 benefits, shall be stayed after the preliminary hearing is concluded
22 and the ~~claimant~~ employee is bound over and shall remain stayed
23 until the final disposition of the criminal case. All notice
24 requirements shall continue during the stay.

1 K. If the Attorney General's Office is in compliance with the
2 discovery provisions of Section 258 of Title 22 of the Oklahoma
3 Statutes, medical records created for the purpose of treatment and
4 medical opinions obtained during the investigation shall be
5 admissible at the preliminary hearing without the appearance of the
6 medical professional creating such records or opinions. However,
7 when material evidence dispositive to the issues of whether there
8 was probable cause the crime was committed and whether the defendant
9 committed the crime, was not included in a report or opinion
10 admitted at preliminary hearing, but might be presented at a
11 pretrial hearing by a medical professional who created such report
12 or opinion, the judge may, upon the motion of either party, order
13 the appearance of the medical professional creating such report or
14 opinion. Questions of fact regarding the conduct of the defendant
15 that conflict with the findings of the medical professional
16 evaluating the defendant shall not constitute material evidence. In
17 the event of such motion, notice shall be given to the Attorney
18 General's Workers' Compensation Fraud ~~and~~ Investigation and
19 Prosecution Unit. A hearing shall be held and, if the motion is
20 granted, the evidence shall not be presented fewer than five (5)
21 days later.

22 L. Any person or entity who, in good faith and exercising due
23 care, reports suspected workers' compensation fraud or insurance
24 fraud, or who allows access to medical records or other information

1 pertaining to suspected workers' compensation or insurance fraud, by
2 persons authorized to investigate a report concerning the workers'
3 compensation and insurance fraud, shall have immunity from any civil
4 or criminal liability for such report or access. Any such person or
5 entity shall have the same immunity with respect to participation in
6 any judicial proceeding resulting from such reports. For purposes
7 of any civil or criminal proceeding, there shall be a presumption of
8 good faith of any person making a report, providing medical records
9 or providing information pertaining to a workers' compensation or
10 insurance fraud investigation by the Attorney General, and
11 participating in a judicial proceeding resulting from a subpoena or
12 a report.

13 SECTION 7. AMENDATORY Section 7, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2016, Section 7), is amended to read as
15 follows:

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

- 18 1. Filed a claim under this ~~act~~ title;
- 19 2. Retained a lawyer for representation regarding a claim under
20 this ~~act~~ title;
- 21 3. Instituted or caused to be instituted any proceeding under
22 the provisions of this ~~act~~ title; or
- 23 4. Testified or is about to testify in any proceeding under the
24 provisions of this ~~act~~ title.

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

3 ~~C. If the Commission~~ a district court of this state determines
4 ~~that the defendant~~ an employer violated ~~subsection A~~ a provision of
5 ~~this section, the Commission may award the employee back pay up to a~~
6 ~~maximum of One Hundred Thousand Dollars (\$100,000.00),~~ such employer
7 shall be liable for reasonable compensatory damages suffered by an
8 employee as a result of the violation. The employee shall have the
9 burden of proof to show such violation by a preponderance of the
10 evidence. Interim earnings or amounts earnable with reasonable
11 diligence by the person discriminated against shall reduce the ~~back~~
12 ~~pay~~ compensatory damages otherwise allowable. Exemplary or punitive
13 damage awards made pursuant to this section shall not exceed One
14 Hundred Thousand Dollars (\$100,000.00).

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

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

21 ~~F. E.~~ E. Notwithstanding any other provision of this section, an
22 employer shall not be required to rehire or retain an employee who,
23 after temporary total disability has been exhausted, is determined
24

1 by a physician to be physically unable to perform his or her
2 assigned duties, or whose position is no longer available.

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

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

8 SECTION 8. AMENDATORY Section 8, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2016, Section 8), is amended to read as
10 follows:

11 Section 8. A. No agreement by an employee to waive his or her
12 right to compensation shall be valid. No contract, regulation, or
13 device shall operate to relieve the employer or carrier, in whole or
14 in part, from any liability created by this ~~act~~ title, except as
15 specifically provided in this ~~act~~ title.

16 B. Any officer of a corporation, sole proprietor, partner of a
17 partnership, member of a limited liability company, member of a
18 professional association, or self-employed employer who is not a
19 subcontractor and who owns and operates his or her own business may,
20 by agreement or contract, exclude himself or herself from coverage
21 or waive his or her right to coverage or compensation under this ~~act~~
22 title.

23

24

1 SECTION 9. AMENDATORY Section 9, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 9), is amended to read as
3 follows:

4 Section 9. No agreement by an employee to pay any portion of
5 the premium paid by his or her employer to a carrier or a benefit
6 fund or department maintained by the employer for the purpose of
7 providing compensation or medical services and supplies as required
8 by this ~~act~~ title shall be valid. Any employer who makes a
9 deduction for such purposes from the pay of any employee entitled to
10 the benefits of this ~~act~~ title shall be guilty of a misdemeanor.

11 SECTION 10. AMENDATORY Section 13, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2016, Section 13), is amended to read as
13 follows:

14 Section 13. A. 1. A mental injury or illness is not a
15 compensable injury unless caused by a physical injury to the
16 employee, and shall not be considered an injury arising out of and
17 in the course and scope of employment or compensable unless
18 demonstrated by a preponderance of the evidence; provided, however,
19 that this physical injury limitation shall not apply to any victim
20 of a crime of violence.

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

1 criteria established in the most current issue of the Diagnostic and
2 Statistical Manual of Mental Disorders.

3 B. 1. Notwithstanding any other provision of this ~~act~~ title,
4 ~~where~~ if a claim is for mental injury or illness, the employee shall
5 be limited to twenty-six (26) weeks of disability benefits unless it
6 is shown by clear and convincing evidence that benefits should
7 continue for a set period of time, not to exceed a total of fifty-
8 two (52) weeks.

9 2. a. In cases where death results directly from the mental
10 injury or illness within a period of one (1) year,
11 compensation shall be paid the dependents as provided
12 in other death cases under this ~~act~~ title.

13 b. Death directly or indirectly related to the mental
14 injury or illness occurring one (1) year or more from
15 the incident resulting in the mental injury or illness
16 shall not be a compensable injury.

17 SECTION 11. AMENDATORY Section 14, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2016, Section 14), is amended to read as
19 follows:

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

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

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

11 1. It occurred at a definite time and place;

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

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

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

18 SECTION 12. AMENDATORY Section 16, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2016, Section 16), is amended to read as
20 follows:

21 Section 16. A. The Official Disability Guidelines ~~Treatment~~
22 ~~in Workers Compensation (ODG), published by the Work Loss Data~~
23 ~~Institute, is to be recognized as the primary shall be the mandatory~~
24 ~~standard of reference, at the time of treatment, in determining the~~

1 frequency and extent of services presumed to be medically necessary
2 and appropriate for compensable injuries under this act, or in
3 resolving such matters in the event a dispute arises. ~~The medical~~
4 ~~treatment guidelines are not requirements, nor are they mandates or~~
5 ~~standards; they provide advice by identifying the care most likely~~
6 ~~to benefit injured workers. The guidelines shall be evidence-based,~~
7 ~~scientifically valid, outcome-focused, and designed to reduce~~
8 ~~excessive or inappropriate medical care while safeguarding necessary~~
9 ~~medical care.~~

10 B. Physicians providing care to an employee shall prescribe for
11 the employee any necessary prescription drugs and over-the-counter
12 alternatives to prescription medicine as clinically appropriate and
13 as recommended under the Official Disability Guidelines.
14 Prescriptions and nonprescription drugs that are not preferred,
15 exceed or are not addressed by ~~ODG~~ the Official Disability
16 Guidelines require preauthorization and the preauthorization request
17 shall include the prescribing doctor's drug regimen plan of care and
18 the anticipated dosage or range of dosages.

19 SECTION 13. AMENDATORY Section 17, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2016, Section 17), is amended to read as
21 follows:

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

24

1 1. The Governor shall appoint three members, one of whom shall
2 be licensed in this state as a doctor of medicine and surgery, one
3 of whom shall be engaged in the practice of family medicine in a
4 rural community of the state, and one of whom shall be an
5 osteopathic physician;

6 2. The President Pro Tempore of the Senate shall appoint three
7 members, one of whom shall be licensed in this state as a doctor of
8 medicine and orthopedic surgery, one of whom shall be licensed in
9 this state either as a doctor of medicine or a doctor of osteopathy
10 and a neurosurgeon, and one of whom shall be licensed in this state
11 as a podiatric physician; and

12 3. The Speaker of the House of Representatives shall appoint
13 three members, one of whom shall be licensed in this state as an
14 osteopathic physician, one of whom shall be licensed in this state
15 either as a doctor of medicine or a doctor of osteopathy and shall
16 be engaged in the practice of occupational medicine, and one of whom
17 shall be licensed in this state as a chiropractic physician.

18 Any member serving on the effective date of this section shall
19 serve the remainder of his or her term. Thereafter, each position
20 will be filled by the appointing official for a term of three (3)
21 years. Members shall be subject to reappointment, with any new
22 appointee to serve out the remainder of the unexpired term of the
23 Committee member so replaced.

24 B. The Committee shall:

1 1. Assist and advise the Workers' Compensation Commission
2 regarding utilization review as it relates to the medical practice
3 and treatment of work-related injuries. Such utilization review
4 shall include a review of reasonable and necessary medical
5 treatment; abusive practices; needless treatments, testing, or
6 procedures; or a pattern of billing in excess of or in violation of
7 the Schedule of Medical Fees. The Physician Advisory Committee
8 shall review and make findings and recommendations to the Commission
9 with respect to charges of inappropriate or unnecessary treatment or
10 procedures, abusive practices, or excessive billing disclosed
11 through utilization review;

12 2. Assist the Commission in reviewing medical practices of
13 health care providers, including evaluations of permanent disability
14 provided by health care providers. The Committee shall review and
15 make findings and recommendations to the Commission with respect to
16 charges of abusive practices by health care providers providing
17 medical services or evaluations of permanent partial disability
18 through the workers' compensation system;

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

22 4. After public hearing, adopt Physician Advisory Committee
23 Guidelines (PACG) and protocols for only medical treatment not
24

1 addressed by the latest edition of the Official Disability
2 Guidelines;

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

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

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

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

17 9. Assist the Commission in accessing medical information from
18 scientific literature; and

19 10. Report its progress annually to the Governor, the President
20 Pro Tempore of the Senate, and the Speaker of the House of
21 Representatives.

22 C. The Commission shall recognize the latest edition of the
23 Official Disability Guidelines as the primary standard of reference,
24 at the time of treatment, in determining the frequency and extent of

1 services presumed to be medically necessary and appropriate for
2 compensable injuries under this ~~act~~ title, or in resolving such
3 matters in the event a dispute arises.

4 D. Members of the Physician Advisory Committee shall receive no
5 compensation for serving on the Committee but shall be reimbursed by
6 the Commission for their necessary travel expenses incurred in the
7 performance of their duties in accordance with the State Travel
8 Reimbursement Act.

9 E. Meetings of the Physician Advisory Committee shall be called
10 by the Commission but held at least quarterly. The presence of a
11 majority of the members shall constitute a quorum. No action shall
12 be taken by the Physician Advisory Committee without the affirmative
13 vote of at least a majority of the members.

14 F. The Commission shall provide office supplies and personnel
15 of the Commission to assist the Committee in the performance of its
16 duties.

17 G. Upon written request, the Insurance Commissioner, CompSource
18 Oklahoma, and every approved self-insured employer in Oklahoma shall
19 provide the Committee with data necessary to the performance of its
20 duties.

21 H. Any health care provider acting in good faith and within the
22 scope of the provider's duties as a member of the Physician Advisory
23 Committee shall be immune from civil liability for making any report
24 or other information available to the judges of the Commission or to

1 the Commission or for assisting in the origination, investigation,
2 or preparation of the report or other information so provided.

3 SECTION 14. AMENDATORY Section 18, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2016, Section 18), is amended to read as
5 follows:

6 Section 18. A. No hospital, physician, or other health care
7 provider shall bill or attempt to collect any fee or any portion of
8 a fee for services rendered to an employee due to a work-related
9 injury or report to any credit-reporting agency any failure of the
10 employee to make the payment, when a claim for compensation has been
11 filed under this ~~act~~ title and the hospital, physician, or health
12 care provider has received actual notice given in writing by the
13 employee or the employee's representative. Actual notice shall be
14 deemed received by the hospital, physician, or health care provider
15 five (5) days after mailing by certified mail or sending by
16 facsimile, electronic mail or other electronic means with
17 confirmation of receipt by the employee or his or her representative
18 to the hospital, physician, or health care provider.

19 B. The notice shall include:

- 20 1. The name of the employer;
- 21 2. The name of the insurer, if known;
- 22 3. The name of the employee receiving the services;
- 23 4. The general nature of the injury, if known; and
- 24 5. Where a claim has been filed, the claim number, if known.

1 C. When an injury or bill is found to be noncompensable under
2 this act, the hospital, physician, or other health care provider
3 shall be entitled to pursue the employee for any unpaid portion of
4 the fee or other charges for authorized services provided to the
5 employee. Any applicable statute of limitations for an action for
6 the fees or other charges shall be tolled from the time notice is
7 given to the hospital, physician, or other health care provider
8 until a determination of noncompensability in regard to the injury
9 which is the basis of the services is made, or if there is an
10 appeal, until a final determination of noncompensability is rendered
11 and all appeal deadlines have passed.

12 D. This section shall not ~~avoid~~ void, modify, or amend any
13 other section ~~or subsection~~ of this act title.

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

16 SECTION 15. AMENDATORY Section 19, Chapter 208, O.S.L.
17 2013, as amended by Section 4, H.J.R. No. 1096, p. 1745, O.S.L. 2014
18 (85A O.S. Supp. 2016, Section 19), is amended to read as follows:

19 Section 19. A. ~~There is hereby created the~~ The Oklahoma
20 Workers' Compensation Commission, ~~is~~ is an executive agency of the
21 State of Oklahoma, which ~~shall have~~ has the exclusive responsibility
22 and duty to carry out the provisions of this ~~act~~ title, except as
23 otherwise provided.

24

1 B. The Commission shall consist of three (3) full-time
2 commissioners, ~~each~~ two of whom must have been involved in the
3 workers' compensation field for at least three (3) years, appointed
4 by the Governor: one of whom is chosen from a slate of three
5 selected by the Speaker of the House of Representatives, with all
6 three confirmed by the Senate. The term of each appointee shall be
7 six (6) years to administer the provisions of this ~~act~~ title. The
8 Governor may request a subsequent slate of nominees from the Speaker
9 of the House of Representatives if a suitable nominee is not found.
10 Any or all of the commissioners may be reappointed for additional
11 six-year terms upon reconfirmation by the Senate. However, the
12 initial commissioners shall serve staggered terms of two (2), four
13 (4), and six (6) years, respectively, as determined by the Governor.
14 If the Legislature is not in session at the time of appointment, the
15 appointment shall be subject to confirmation by the Senate upon
16 convening of the next regular session of the Legislature.
17 Membership on the Commission shall be a full-time position and no
18 commissioner shall have any other employment, unless authorized or
19 excused by law. Each commissioner shall receive a salary equal to
20 that paid to a district judge of this state; provided however, the
21 commissioners shall not receive any increase in salary as a result
22 of the provisions of Section 1 of ~~this resolution~~ House Joint
23 Resolution No. 1096 of the 2nd Session of the 54th Oklahoma
24 Legislature.

1 C. The Commission shall have the authority to adopt reasonable
2 rules within its respective areas of responsibility including the
3 rules of procedure for administrative hearings, after notice and
4 public hearing, for effecting the purposes of this ~~act~~ title, in
5 accordance with the Oklahoma Administrative Procedures Act. All
6 rules, upon adoption, shall be published and be made available to
7 the public and, if not inconsistent with the law, shall be binding
8 in the administration of this ~~act~~ title.

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

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

19 1. To organize, direct and develop the administrative work of
20 the administrative law judges, including but not limited to
21 docketing, clerical, technical and financial work and establishment
22 of hours of operation;

23 2. To employ administrative staff for the Commission, within
24 budgetary limitation; and

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

3 F. All appeals or disputes arising from actions of the
4 Commission shall be governed by provisions of this ~~act~~ title and the
5 Commission shall not be subject to the provisions of the Oklahoma
6 Administrative Procedures Act, except as provided in this ~~act~~ title.

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

1 provisions of this title or the constitutionality of application of
2 the provisions of this title.

3 SECTION 16. AMENDATORY Section 20, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2016, Section 20), is amended to read as
5 follows:

6 Section 20. A. In addition to its other duties and powers, the
7 Workers' Compensation Commission is given and granted full power and
8 authority:

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

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

18 3. To assess penalties;

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

22 5. To make available all records in connection with all cases
23 of personal injury to the Oklahoma Department of Labor. The
24 Commissioner of Labor may propose rules for the prevention of

1 injuries and transmit the rules to the Commission. The Commission
2 may recommend proposed rules for prevention of injuries to the
3 Commissioner of Labor; and

4 6. To have and exercise all other powers and duties conferred
5 or imposed by this ~~act~~ title.

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

11 2. The administrative fees shall be established by regulation
12 of the Commission.

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

16 SECTION 17. AMENDATORY Section 21, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2016, Section 21), is amended to read as
18 follows:

19 Section 21. A. Commissioners shall be considered officers ~~and~~
20 ~~shall take the oath prescribed by the Oklahoma Constitution and the~~
21 ~~laws~~ of this state.

22 B. 1. A majority of the Workers' Compensation Commission shall
23 constitute a quorum for the transaction of business, and vacancies
24 shall not impair the right of the remaining commissioners to

1 exercise all the powers of the full Commission, so long as a
2 majority remains.

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

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

10 D. Except with respect to the Commission's authority to hear
11 appeals of decisions from administrative law judges other than as
12 provided pursuant to subsection B of Section 78 of this title, any
13 reference in this ~~act~~ title to the Commission's ability to hear and
14 decide the rights of interested parties under this ~~act~~ title shall
15 not prevent it from delegating that responsibility to an
16 administrative law judge.

17 SECTION 18. AMENDATORY Section 22, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2016, Section 22), is amended to read as
19 follows:

20 Section 22. A. 1. For the purpose of administering the
21 provisions of this ~~act~~ title, the Workers' Compensation Commission
22 is authorized:

23 a. to make rules necessary for the administration and
24 operation of the Commission,

1 b. to appoint and fix the compensation of temporary
2 technical assistants, medical and legal advisers,
3 clerical assistants and other officers and employees,
4 and

5 c. to make such expenditures, including those for
6 personal service, rent, books, periodicals, office
7 equipment, and supplies, and for printing and binding
8 as may be necessary.

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

13 ~~b. The notice shall include a statement of the terms or
14 substance of the intended action or description of the
15 subjects and issues involved, and the time, place, and
16 manner in which interested persons may present their
17 views thereon.~~

18 ~~c. The notice shall be mailed to any person specified by
19 law or who shall have requested advance notice of
20 rule-making proceedings.~~

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

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

4 ~~5. All expenditures of the Commission in the administration of~~
5 ~~this act shall be allowed and paid from the Workers' Compensation~~
6 ~~Fund on the presentation of itemized vouchers approved by the The~~
7 ~~Commission shall comply with the provisions of the Administrative~~
8 ~~Procedures Act applicable to the filing and publication requirements~~
9 ~~for rules.~~

10 B. 1. The Commission may appoint as many persons as may be
11 necessary to be administrative law judges and in addition may
12 appoint such examiners, investigators, medical examiners, clerks,
13 and other employees as it deems necessary to effectuate the
14 provisions of this ~~act~~ title.

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

17 C. Additionally, the Commission shall have the following powers
18 and duties:

19 1. To hear and approve compromise settlements;

20 2. To review and approve own-risk applications and group self-
21 insurance association applications;

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

24

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

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

10 ~~6.~~ 5. To hear and determine claims concerning disputed medical
11 bills;

12 ~~7.~~ 6. To promulgate necessary rules for administering this ~~act~~
13 title and develop uniform forms and procedures for use by
14 administrative law judges. Such rules shall be reviewable by the
15 Legislature;

16 ~~8.~~ 7. To invest funds on behalf of the Multiple Injury Trust
17 Fund;

18 ~~9.~~ 8. To appoint a Commission Mediator to conduct informal
19 sessions to attempt to resolve assigned disputes; and

20 ~~10.~~ 9. Such other duties and responsibilities authorized by
21 law.

22 D. It shall be the duty of an administrative law judge, under
23 the rules adopted by the Commission, to hear and determine claims
24 for compensation and to conduct hearings and investigations and to

1 make such judgments, decisions, and determinations as may be
2 required by any rule or judgment of the Commission.

3 SECTION 19. AMENDATORY Section 24, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2016, Section 24), is amended to read as
5 follows:

6 Section 24. On or before the first day of the regular session
7 of the Legislature, the Workers' Compensation Commission shall
8 submit to the Governor and the Legislature a report of the
9 administration of this ~~act~~ title for the preceding biennial period,
10 together with such recommendations as the Commission may deem
11 advisable.

12 SECTION 20. AMENDATORY Section 25, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2016, Section 25), is amended to read as
14 follows:

15 Section 25. The Workers' Compensation Commission shall publish
16 annually, on an aggregate basis, information pertaining to the
17 distribution of workers' compensation insurance premiums, losses,
18 expenses, and net income to be compiled from reports required to be
19 filed with the Insurance Commissioner or any similar information
20 required to be filed by the Insurance Commissioner regarding
21 workers' compensation insurance. The Commission shall also publish
22 in the annual report information regarding aggregate workers'
23 compensation benefit distribution to ~~claimants~~ employees, medical
24 providers, and attorneys, if available.

1 SECTION 21. AMENDATORY Section 27, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 27), is amended to read as
3 follows:

4 Section 27. A. The Workers' Compensation Commission shall be
5 vested with jurisdiction over all claims filed pursuant to the
6 Administrative Workers' Compensation Act. All claims so filed shall
7 be heard by the administrative law judge sitting without a jury.
8 The Commission shall have full power and authority to determine all
9 questions in relation to claims for compensation under the
10 provisions of the Administrative Workers' Compensation Act. The
11 Commission, upon application of either party, shall order a hearing.
12 Upon a hearing, either party may present evidence and be represented
13 by counsel. Except as provided in this ~~act~~ title, the decision of
14 the administrative law judge shall be final as to all questions of
15 fact and law. The decision of the administrative law judge shall be
16 issued within thirty (30) days following the submission of the case
17 by the parties. The power and jurisdiction of the Commission over
18 each case shall be continuing and it may, from time to time, make
19 such modifications or changes with respect to former findings or
20 orders relating thereto if, in its opinion, it may be justified.

21 B. In addition to the duties set forth in this section, the
22 administrative law judges shall have the following duties and
23 powers:
24

1 1. To hear and determine claims for compensation, to conduct
2 hearings and investigations, and to make such judgments, decisions,
3 and determinations as may be required by any rule or judgment of the
4 Commission;

5 2. To hear and determine challenges to an agreement to
6 arbitrate under the Workers' Compensation Arbitration Act;

7 3. To assume duties within the Workers' Compensation Court of
8 Existing Claims as assigned by the Commission; and

9 4. To have and exercise all other powers and duties conferred
10 or imposed by the Commission or this ~~act~~ title.

11 SECTION 22. AMENDATORY Section 29, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2016, Section 29), is amended to read as
13 follows:

14 Section 29. A. Each carrier writing compensation insurance in
15 this state shall pay to the Workers' Compensation Commission at the
16 time of securing or renewing a license to transact business in this
17 state an annual fee of One Thousand Dollars (\$1,000.00) for the
18 privilege of qualifying with the Commission for the writing of
19 compensation insurance.

20 B. Each self-insurer shall pay to the Commission an annual fee
21 of One Thousand Dollars (\$1,000.00) at the time it is approved to
22 self-insure the obligations under this ~~act~~ title.

23 C. The Commission may assess third-party administrators an
24 annual fee of One Thousand Dollars (\$1,000.00).

1 D. Fees required pursuant to this section shall be deposited
2 into the Workers' Compensation Fund.

3 SECTION 23. AMENDATORY Section 30, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2016, Section 30), is amended to read as
5 follows:

6 Section 30. A. For the purposes of Sections 31 through 35 of
7 this ~~act~~ 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;

13 3. The loss of use or partial loss of use of a member such as
14 is obvious and apparent from observation or examination by a person
15 who is not skilled in the medical profession; or

16 4. Any previous adjudications of disability adjudged and
17 determined by the Workers' Compensation Court or the Workers'
18 Compensation Commission or any disability resulting from separately
19 adjudicated injuries and adjudicated occupational diseases even
20 though arising at the same time. Provided, that any adjudication of
21 preexisting disability to a part of the body shall not be combinable
22 for purposes of the Multiple Injury Trust Fund unless that part of
23 the body was deemed to have been injured in the claim being
24 adjudicated.

1 B. This section shall apply to all adjudications of Multiple
2 Injury Trust Fund claims heard by the Commission on or after ~~the~~
3 ~~effective date of this act~~ February 1, 2014.

4 SECTION 24. AMENDATORY Section 31, Chapter 208, O.S.L.
5 2013, as amended by Section 3, Chapter 344, O.S.L. 2015 (85A O.S.
6 Supp. 2016, Section 31), is amended to read as follows:

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

9 1. As soon as practicable after January 1 of each year, ~~the~~
10 ~~commissioners of~~ the Workers' Compensation Commission shall
11 establish an assessment rate applicable to each mutual or
12 interinsurance association, stock company, CompSource Oklahoma, or
13 other insurance carrier writing workers' compensation insurance in
14 this state, each employer carrying its own risk, and each group
15 self-insurance association, for amounts for purposes of computing
16 the assessment authorized by this section necessary to pay the
17 annual obligations of the Multiple Injury Trust Fund determined on
18 or before December 31 of each year by the MITF Director, provided
19 for in subsection P of this section, to be outstanding for the next
20 calendar year, and to pay the allocations provided for in subsection
21 I of this section. The rate shall be equal for all parties required
22 to pay the assessment. If CompSource begins operating as a mutual
23 insurance company, the Board of Directors for CompSource Mutual
24 Insurance Company shall have the power to disapprove the rate

1 established by the MITF Director until the Multiple Injury Trust
2 Fund repays in full the amount due on any loan from CompSource
3 Mutual Insurance Company or its predecessor CompSource Oklahoma. If
4 the MITF Director and CompSource have not agreed on the assessment
5 rate within thirty (30) days, the Commission shall set an assessment
6 rate sufficient to cover all foreseeable obligations of the Multiple
7 Injury Trust Fund, including interest and principal owed by the Fund
8 on any loan. The rate in effect on ~~the effective date of this act~~
9 February 1, 2014, shall remain effective through June 30, 2014;

10 2. The Oklahoma Tax Commission shall assess and collect from
11 any uninsured employer a temporary assessment at the rate of five
12 percent (5%) of the total compensation for permanent total
13 disability awards, permanent partial disability awards, and death
14 benefits paid out during each quarter of the calendar year by the
15 employers;

16 3. The assessments shall be paid to the Tax Commission.
17 Insurance carriers, self-insurers, group self-insurance associations
18 and CompSource Oklahoma shall pay the assessment in four equal
19 installments not later than the fifteenth day of the month following
20 the close of each quarter of the calendar year of the assessment.
21 Assessments shall be determined based upon gross direct written
22 premiums, normal premiums or actual paid losses of the paying party,
23 as applicable, during the calendar quarter for which the assessment
24 is due. Uninsured employers shall pay the assessment not later than

1 the fifteenth day of the month following the close of each quarter
2 of the calendar year of the assessment. For purposes of this
3 section, "uninsured employer" means an employer required by law to
4 carry workers' compensation insurance but who has failed or
5 neglected to do so.

6 a. The assessment authorized in this section shall be
7 determined using a rate equal to the proportion that
8 the sum of the outstanding obligations of the Multiple
9 Injury Trust Fund as determined pursuant to paragraph
10 1 of this subsection and the allocations provided for
11 in subsection I of this section bear to the combined
12 gross direct written premiums of all such insurers;
13 all actual paid losses of all individual self-
14 insureds; and the normal premium of all group self-
15 insurance associations, for the year period from
16 January 1 to December 31 preceding the assessment.

17 b. For purposes of this subsection:

18 (1) "actual paid losses" means all medical and
19 indemnity payments, including temporary
20 disability, permanent disability, and death
21 benefits, and excluding loss adjustment expenses
22 and reserves, and

23 (2) "normal premium" means a standard premium less
24 any discounts;

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

5 5. Each mutual or interinsurance association, stock company,
6 CompSource Oklahoma, or other insurance carrier writing workers'
7 compensation insurance in this state, and each employer carrying its
8 own risk, including each group self-insurance association, shall be
9 notified by the Commission in writing of the rate for the assessment
10 on or before May 1 of each year in which a rate is determined. The
11 rate determined by the Commission shall be in effect for four
12 calendar quarters beginning July 1 following determination by the
13 Commission; and

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

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

1 c. No group self-insurance association may be assessed in
2 any year an amount greater than six percent (6%) of
3 the normal premium of that group self-insurance
4 association.

5 d. If the maximum assessment does not provide in any one
6 year an amount sufficient to make all necessary
7 payments for obligations of the Multiple Injury Trust
8 Fund and for the allocations provided for in
9 subsection I of this section, the unpaid portion shall
10 be paid as soon thereafter as funds become available.

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

13 C. It shall be the duty of the Tax Commission to collect the
14 payments provided for in this act. The Tax Commission is hereby
15 authorized to bring an action for the recovery of any delinquent or
16 unpaid payments required in this section.

17 D. Any mutual or interinsurance association, stock company, or
18 other insurance company, which is subject to regulation by the
19 Insurance Commissioner, or CompSource Oklahoma, failing to make
20 payments required in this ~~act~~ title promptly and correctly, and
21 failing to report payment of the same to the Insurance ~~Commission~~
22 Commissioner within ten (10) days of payment shall be subject to
23 administrative penalties as allowed by law, including but not
24 limited to a fine in the amount of Five Hundred Dollars (\$500.00) or

1 an amount equal to one percent (1%) of the unpaid amount, whichever
2 is greater, to be paid to the Insurance Commissioner.

3 E. Any employer carrying its own risk, or group self-insurance
4 association failing to make payments required in this ~~act~~ title
5 promptly and correctly, and failing to report payment of the same to
6 the Workers' Compensation Commission within ten (10) days of payment
7 shall be subject to administrative penalties as allowed by law,
8 including but not limited to a fine in the amount of Five Hundred
9 Dollars (\$500.00) or an amount equal to one percent (1%) of the
10 unpaid amount, whichever is greater, to be paid to the Commission.

11 F. ~~1.~~ On or before the first day of April of each year, the
12 State Treasurer shall advise the Workers' Compensation Commission,
13 the MITF Director and the Tax Commission of the amount of money held
14 as of March 1 of that year by the State Treasurer to the credit of
15 the Multiple Injury Trust Fund. On or before the first day of
16 November of each year, the State Treasurer shall advise the
17 Commission, the MITF Director and the Tax Commission of the amount
18 of money held as of October 1 of that year by the State Treasurer to
19 the credit of the Multiple Injury Trust Fund.

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

24

- 1 ~~a. advise the Chief Executive Officer of CompSource on or~~
2 ~~before the first day of April of the money held as of~~
3 ~~March 1 of that year by the State Treasurer to the~~
4 ~~credit of the Multiple Injury Trust Fund, and~~
5 ~~b. advise the Chief Executive Officer of CompSource on or~~
6 ~~before the first day of November of the money held as~~
7 ~~of October 1 of that year by the State Treasurer to~~
8 ~~the credit of the Multiple Injury Trust Fund.~~

9 G. Eighty percent (80%) of all sums held by the State Treasurer
10 to the credit of the Multiple Injury Trust Fund may by order of the
11 MITF Director be invested in or loaned on the pledge of any of the
12 securities in which a state bank may invest the monies deposited
13 therein by the State Treasurer; or may be deposited in state or
14 national banks or trust companies upon insured time deposit bearing
15 interest at a rate no less than currently being paid upon insured
16 savings accounts in the institutions. As used in this section,
17 "insured" means insurance as provided by an agency of the federal
18 government. All such securities or evidence of indebtedness shall
19 be placed in the hands of the State Treasurer, who shall be the
20 custodian thereof, who shall collect the principal and interest when
21 due, and pay the same into the Multiple Injury Trust Fund. The
22 State Treasurer shall pay by vouchers drawn on the Multiple Injury
23 Trust Fund for the making of such investments, when signed by the
24 MITF Director, upon delivery of such securities or evidence of

1 indebtedness to the State Treasurer. The MITF Director may sell any
2 of such securities, the proceeds thereof to be paid over to the
3 State Treasurer for the Multiple Injury Trust Fund.

4 H. The refund provisions of Sections 227 through 229 of Title
5 68 of the Oklahoma Statutes shall be applicable to any payments made
6 to the Multiple Injury Trust Fund. Refunds shall be paid from and
7 out of the Multiple Injury Trust Fund.

8 I. The Tax Commission shall pay, monthly, to the State
9 Treasurer to the credit of the Multiple Injury Trust Fund all monies
10 collected pursuant to the provisions of this section. The State
11 Treasurer shall pay out of the Multiple Injury Trust Fund only upon
12 the order and direction of the Workers' Compensation Commission
13 acting under the provisions hereof.

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

16 K. The Insurance Commissioner shall promulgate rules relating
17 to insurers as defined in Title 36 of the Oklahoma Statutes, as the
18 Insurance Commissioner deems necessary to effectuate the provisions
19 of this section.

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

22 M. The Multiple Injury Trust Fund may enter into an agreement
23 with any reinsurer licensed to sell reinsurance by the Insurance
24 Commissioner pursuant to a competitive process administered by the

1 Director of Central Purchasing in the Office of Management and
2 Enterprise Services.

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

7 1. In the event of failure of the Multiple Injury Trust Fund to
8 meet all lawful obligations, the monies shall be credited to the
9 Multiple Injury Trust Fund and shall be used by the Multiple Injury
10 Trust Fund to meet all lawful obligations of the Multiple Injury
11 Trust Fund; and

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

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

18 P. The person serving as the Administrator of the Multiple
19 Injury Trust Fund on ~~the date of passage and approval of this act~~
20 May 5, 2013, shall serve as the initial MITF Director, provided such
21 person is serving as the Administrator of the Multiple Injury Trust
22 Fund on ~~the effective date of this act~~ February 1, 2014. The MITF
23 Director shall be appointed by and serve at the pleasure of the
24 Governor.

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

5 R. The State Treasurer shall allocate to the Commission out of
6 the Multiple Injury Trust Fund sufficient funds for administration
7 expenses thereof in amounts to be fixed and approved by the
8 Administrator for the Multiple Injury Trust Fund, unless rejected by
9 the Commission.

10 SECTION 25. AMENDATORY Section 32, Chapter 208, O.S.L.
11 2013 (85A O.S. Supp. 2016, Section 32), is amended to read as
12 follows:

13 Section 32. A. For actions in which the subsequent injury
14 occurred on or after November 1, 2005, if such combined disabilities
15 constitute permanent total disability, as ~~defined~~ provided for in
16 subsection D of Section 2 45 of this act title, the employee shall
17 receive full compensation as provided by law for the disability
18 resulting directly and specifically from the subsequent injury. In
19 addition, the employee shall receive compensation for permanent
20 total disability if the combination of injuries renders the employee
21 permanently and totally disabled. The employer shall be liable only
22 for the degree of percent of disability which would have resulted
23 from the subsequent injury if there had been no preexisting
24 ~~impairment~~ disability. The compensation rate for permanent total

1 disability awards from the Multiple Injury Trust Fund shall be the
2 compensation rate for permanent partial disability paid by the
3 employer in the last combinable compensable injury.

4 B. Permanent total disability awards from the Multiple Injury
5 Trust Fund shall be payable in periodic installments for a period of
6 fifteen (15) years or until the employee reaches sixty-five (65)
7 years of age, whichever period is longer.

8 C. Permanent total disability awards from the Multiple Injury
9 Trust Fund shall accrue from the file date of the order of the
10 Workers' Compensation Commission finding the ~~claimant~~ employee to be
11 permanently and totally disabled.

12 D. Awards under this section shall abate upon the death, from
13 any cause, of the employee.

14 E. Reopening any prior claim other than the last claim against
15 the employer shall not give a ~~claimant~~ an employee the right to
16 additional Multiple Injury Trust Fund benefits.

17 F. The Multiple Injury Trust Fund shall have authority to
18 compromise a claim for less than the indicated amount of permanent
19 total disability. An order entered after ~~the effective date of this~~
20 ~~act~~ February 1, 2014, may be paid in periodic installments beginning
21 on the date of the award, or may be commuted to a lump-sum payment
22 or payments, by agreement of the ~~claimant~~ employee and the Multiple
23 Injury Trust Fund.

24

1 G. An attorney for a ~~claimant~~ an employee against the Multiple
2 Injury Trust Fund shall be entitled to a fee equal to twenty percent
3 (20%) of permanent disability benefits awarded. For awards entered
4 after ~~the effective date of this act~~ February 1, 2014, the attorney
5 fee shall be paid in periodic installments by the attorney receiving
6 every fifth check. All benefits awarded to the attorney shall be
7 vested.

8 H. In the event a ~~claimant~~ an employee receiving benefits for
9 permanent and total disability from the Multiple Injury Trust Fund
10 dies as a result of his or her injury before the award has been
11 fully paid, payments shall continue to the surviving spouse for five
12 (5) years or upon remarriage, whichever occurs first. In no event
13 shall payments to the surviving spouse extend beyond the period of
14 benefits awarded to the ~~claimant~~ employee.

15 SECTION 26. AMENDATORY Section 33, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2016, Section 33), is amended to read as
17 follows:

18 Section 33. A. The right to claim compensation for benefits
19 from the Multiple Injury Trust Fund shall be forever barred unless a
20 Notice of Claim, on a form prescribed by the Workers' Compensation
21 Commission, shall be filed with the Commission within two (2) years
22 of the date of the last order for permanent partial disability from
23 the latest claim against the employer.

24

1 B. When a claim for benefits from the Multiple Injury Trust
2 Fund is filed, unless ~~claimant~~ the employee shall in good faith
3 request a hearing and final determination thereon within three (3)
4 years of the filing thereof, the same shall be barred.

5 C. An attorney who represents a respondent or insurance carrier
6 in a claim against the last employer shall not represent the
7 employee in a subsequent claim against the Multiple Injury Trust
8 Fund.

9 SECTION 27. AMENDATORY Section 35, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2016, Section 35), is amended to read as
11 follows:

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

15 2. There shall be no liability for compensation under this ~~act~~
16 ~~where~~ title if the injury or death was substantially occasioned by
17 the willful intention of the injured employee to bring about such
18 compensable injury or death.

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

23

24

1 SECTION 28. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 36.1 of Title 85A, unless there
3 is created a duplication in numbering, reads as follows:

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

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

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

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

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

24

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

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

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

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

19 SECTION 29. AMENDATORY Section 38, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2016, Section 38), is amended to read as
21 follows:

22 Section 38. A. An employer shall secure compensation to
23 employees under this ~~act~~ title in one of the following ways:

24

1 1. By insuring and keeping insured the payment of compensation
2 with any stock corporation, mutual association, or other concerns
3 authorized to transact the business of workers' compensation
4 insurance in this state. When an insurer issues a policy to provide
5 workers' compensation benefits under the provisions of this ~~act~~
6 title, it shall file a notice with the Workers' Compensation
7 Commission containing the name, address, and principal occupation of
8 the employer, the number, effective date, and expiration date of the
9 policy, and such other information as may be required by the
10 Commission. The notice shall be filed by the insurer within thirty
11 (30) days after the effective date of the policy. Any insurer who
12 does not file the notice required by this paragraph shall be subject
13 to a fine by the Commission of not more than One Thousand Dollars
14 (\$1,000.00);

15 2. By obtaining and keeping in force guaranty insurance with
16 any company authorized to do guaranty business in this state. Each
17 company that issues workers' compensation guaranty insurance shall
18 file a copy of the contract with the Commission within thirty (30)
19 days after the effective date of the contract. Any company that
20 does not file a copy of the contract as required by this paragraph
21 shall be subject to a fine by the Commission of not more than One
22 Thousand Dollars (\$1,000.00);

23 3. By furnishing satisfactory proof to the Commission of the
24 employer's financial ability to pay the compensation. The

1 Commission, under rules adopted by the ~~Insurance Department~~

2 Commission, shall require any employer that has:

3 a. less than one hundred employees or less than One
4 Million Dollars (\$1,000,000.00) in net assets to:

5 (1) deposit with the Commission securities, an
6 irrevocable letter of credit or a surety bond
7 payable to the state, in an amount determined by
8 the Commission which shall be at least an average
9 of the yearly claims for the last three (3)
10 years, or

11 (2) provide proof of excess coverage with such terms
12 and conditions as is commensurate with their
13 ability to pay the benefits required by the
14 provisions of this ~~act~~ title, and

15 b. one hundred or more employees and One Million Dollars
16 (\$1,000,000.00) or more in net assets to:

17 (1) secure a surety bond payable to the state, or an
18 irrevocable letter of credit, in an amount
19 determined by the Commission which shall be at
20 least an average of the yearly claims for the
21 last three (3) years, or

22 (2) provide proof of excess coverage with terms and
23 conditions that are commensurate with their
24

1 ability to pay the benefits required by the
2 provisions of this ~~act~~ title;

3 4. By forming a group self-insurance association consisting of
4 two or more employers which shall have a common interest and which
5 shall have entered into an agreement to pool their liabilities under
6 the Administrative Workers' Compensation Act. Such agreement shall
7 be subject to rules of the Commission. Any employer, upon
8 application to become a member of a group self-insurance
9 association, shall file with the Commission a notice, in such form
10 as prescribed by the Commission, acknowledging that the employer
11 accepts joint and several liability. Upon approval by the
12 Commission of such application for membership, said member shall be
13 a qualified self-insured employer; or

14 5. By any other security as may be approved by the Commission
15 and the Insurance Department.

16 B. The Commission may waive the requirements of this section in
17 an amount which is commensurate with the ability of the employer to
18 pay the benefits required by the provisions of this ~~act~~ title.

19 Irrevocable letters of credit required by this subsection shall
20 contain such terms as may be prescribed by the Commission and shall
21 be issued for the benefit of the state by a financial institution
22 whose deposits are insured by the Federal Deposit Insurance
23 Corporation.

1 C. An employer who does not fulfill the requirements of this
2 section is not relieved of the obligation to pay compensation under
3 this ~~act~~ title. The security required under this section, including
4 any interest, shall be maintained by the Commission as provided in
5 this ~~act~~ title until each claim for benefits is paid, settled, or
6 lapses under this ~~act~~ title, and costs of administration of such
7 claims are paid.

8 D. Failure on the part of any employer to secure the payment of
9 compensation provided in this act shall have the effect of enabling
10 the Commission to assert the rights of an injured employee against
11 the employer.

12 E. Any employer that knowingly provides false information to
13 the Commission for purposes of securing or maintaining a self-
14 insurance permit shall be guilty of a felony and subject to a
15 maximum fine of Ten Thousand Dollars (\$10,000.00).

16 SECTION 30. AMENDATORY Section 39, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2016, Section 39), is amended to read as
18 follows:

19 Section 39. A. In order that the liability for compensation
20 may be effectively administered, the employer's carrier may
21 discharge the obligations and duties of the employer under this ~~act~~
22 title if the employer is not a self-insurer.

23 B. For the purpose of an employer's carrier discharging the
24 obligation and duties of the employer:

1 1. An employer's knowledge of an injury shall constitute the
2 carrier's knowledge of the injury;

3 2. The Workers' Compensation Commission shall have jurisdiction
4 over the carrier to the same extent it has over the employer under
5 this ~~act~~ title; and

6 3. Any determinations by the Commission shall be binding on the
7 carrier to the same extent as they are on the employer.

8 SECTION 31. AMENDATORY Section 40, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2016, Section 40), is amended to read as
10 follows:

11 Section 40. A. 1. Any employer who fails to secure
12 compensation required under this ~~act~~ title, upon conviction, shall
13 be guilty of a misdemeanor and subject to a fine of up to Ten
14 Thousand Dollars (\$10,000.00) to be deposited in the Workers'
15 Compensation Fund.

16 2. This subsection shall not affect any other liability of the
17 employer under this ~~act~~ title.

18 B. 1. Whenever the Workers' Compensation Commission has reason
19 to believe that any employer required to secure the payment of
20 compensation under this ~~act~~ title has failed to do so, the
21 Commission shall serve on the employer a proposed judgment declaring
22 the employer to be in violation of this ~~act~~ title and containing the
23 amount, if any, of the civil penalty to be assessed against the
24 employer under paragraph 5 of this subsection.

- 1 2. a. An employer may contest a proposed judgment of the
2 Commission issued under paragraph 1 of this subsection
3 by filing with the Commission, within twenty (20) days
4 of receipt of the proposed judgment, a written request
5 for a hearing.
- 6 b. The request for a hearing does not need to be in any
7 particular form but shall specify the grounds on which
8 the person contests the proposed judgment, the
9 proposed assessment, or both.
- 10 c. If a written request for hearing is not filed with the
11 Commission within the time specified in subparagraph a
12 of this paragraph, the proposed judgment, the proposed
13 penalty, or both, shall be a final judgment of the
14 Commission and shall not be subject to further review
15 by any court, except if the employer shows good cause
16 why it did not timely contest the judgment or penalty.
- 17 d. A proposed judgment by the Commission under this
18 section shall be prima facie correct, and the burden
19 is on the employer to prove that the proposed judgment
20 is incorrect.
- 21 3. a. If the employer alleges that a carrier has contracted
22 to provide it workers' compensation insurance coverage
23 for the period in question, the employer shall include
24

1 the allegation in its request for hearing and shall
2 name the carrier.

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

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

10 4. Hearings under this section shall be procedurally conducted
11 as provided in Sections 69 through 78 of this ~~act~~ title.

12 5. The Commission may assess a fine against an employer who
13 fails to secure the payment of compensation in an amount up to One
14 Thousand Dollars (\$1,000.00) per day of violation payable to the
15 Workers' Compensation Fund.

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

1 SECTION 32. AMENDATORY Section 41, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 41), is amended to read as
3 follows:

4 Section 41. A. Every employer who has secured compensation
5 under the provisions of ~~this act~~ the Administrative Workers'
6 Compensation Act shall keep posted in a conspicuous place in and
7 about the employer's place of business typewritten or printed
8 notices in accordance with a form prescribed by the Workers'
9 Compensation Commission. The notices shall state that the employer
10 has secured the payment of compensation in accordance with the
11 provisions of this ~~act~~ title.

12 B. The notices shall contain the name and address of the
13 carrier, if any, with whom the employer has secured payment of
14 compensation and the date of the expiration of the policy.

15 SECTION 33. AMENDATORY Section 42, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2016, Section 42), is amended to read as
17 follows:

18 Section 42. A. Contents. Every policy or contract of
19 insurance issued by a carrier to an employer to secure the payment
20 of compensation under ~~this act~~ the Administrative Workers'
21 Compensation Act shall contain:

22 1. a. Provisions that identify the insured employer and
23 either identify each covered employee or describe
24 covered employees by class or type of labor performed

1 and the estimated number of employees of each such
2 class or type.

3 b. No single policy of workers' compensation insurance
4 may be issued to any group of employers who are
5 unaffiliated with one another in terms of ownership,
6 control, or right to participate in the profits of the
7 affiliated enterprises;

8 2. Provisions that insolvency or bankruptcy of the employer or
9 discharge therein shall not relieve the carrier from payment of
10 compensation for compensable injuries sustained by an employee
11 during the term of the policy or contract;

12 3. a. The agreement of the carrier that it shall promptly
13 pay to the person entitled to compensation every
14 installment of compensation that may be awarded or
15 agreed on and that this obligation shall not be
16 affected by any default of the employer or by any
17 default in the giving of any notice required by the
18 policy or otherwise.

19 b. The agreement shall be construed to be a direct
20 obligation by the carrier to the person entitled to
21 compensation, enforceable in that person's name; and

22 4. Such other provisions as the Insurance Department allows or
23 requires carriers to include in workers' compensation policies.

24 B. Cancellation.

1 1. An employer may cancel coverage with a carrier by giving the
2 carrier at least thirty (30) days' notice, unless a shorter period
3 is permitted under subparagraph b of this paragraph.

4 a. Cancellation of coverage is effective at 12:01 a.m.
5 thirty (30) days after the date the cancellation
6 notice is received by the carrier, unless a later date
7 is specified in the notice to the carrier.

8 b. (1) An employer may cancel coverage effective less
9 than thirty (30) days after written notice is
10 received by the carrier ~~where~~ if the employer
11 obtains other coverage or becomes a self-insurer.

12 (2) A cancellation under this subsection is effective
13 immediately on the effective date of the other
14 coverage or on authorization as a self-insurer.

15 2. a. A notice of cancellation from the carrier shall state
16 the hour and date that cancellation is effective.

17 b. A carrier shall not cancel coverage issued to an
18 employer under ~~this act~~ the Administrative Workers'
19 Compensation Act before the date specified for
20 expiration in the policy or contract or until at least
21 thirty (30) days have elapsed after a notice of
22 cancellation has been mailed to the Workers'
23 Compensation Commission and to the employer, or until
24 ten (10) days have elapsed after the notice has been

1 mailed to the employer and to the Commission if the
2 cancellation is for nonpayment of premium.

3 c. If the employer procures other insurance within the
4 notice period, the effective date of the new policy
5 shall be the cancellation date of the old policy.

6 3. Cancellation of coverage by an employer or a carrier shall
7 in no way limit liability that was incurred under the policy or
8 contract before the effective date of cancellation.

9 C. Coverage.

10 1. No policy or contract of insurance shall be issued against
11 liability under ~~this act~~ the Administrative Workers' Compensation
12 Act unless the policy or contract covers the entire liability of the
13 employer. Split coverage whereby some employees of an employer are
14 insured by one carrier and other employees are insured by another
15 carrier, or a plan of self-insurance, is expressly prohibited except
16 for a policy issued covering the liability of an employer or of
17 multiple employers as to specific jobs, ventures, contracts, or
18 undertakings, but only if the policy meets with the reasonable
19 satisfaction and approval of the Insurance Commissioner that the
20 policy is in the best interest of the employers and the employees
21 concerned and does not unduly or improperly affect the continuity of
22 workers' compensation coverage by seriously and negatively affecting
23 other carriers and agents with outstanding policies issued to any of
24 the employers in issue.

1 2. The terms of the policy or contract shall govern any
2 questions of liability between the employer and the carrier.

3 D. Under such rules as may be adopted by the Insurance
4 Commissioner, and notwithstanding other provisions of this ~~act~~
5 title, he or she may certify five or more employers as an insurance
6 group which shall be considered an employer for the purposes of this
7 ~~act~~ title.

8 SECTION 34. AMENDATORY Section 43, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2016, Section 43), is amended to read as
10 follows:

11 Section 43. A. ~~Liability Unaffected.~~

12 ~~1.~~ a. The ~~making of a claim for~~ acceptance of compensation
13 benefits from or the making of a claim for
14 compensation against ~~any~~ an employer or ~~carrier~~
15 insurer for the injury or death of an employee shall
16 not affect the right of the employee, or his or her
17 dependents, to ~~make a claim or maintain an action in~~
18 ~~court against~~ sue any ~~third~~ other party for ~~the~~ such
19 injury or death.

20 b. The employer ~~or~~ and the ~~employer's~~ insurance carrier
21 shall ~~be entitled to reasonable notice and opportunity~~
22 ~~to join in the action.~~

23 c. ~~If the employer or employer's carrier join in the~~
24 ~~action against a third party for injury or death, they~~

1 ~~shall be entitled to a~~ have an automatic first lien on
2 ~~two-thirds (2/3) of the net proceeds~~ the amount
3 ~~recovered in the action that remain after the payment~~
4 ~~of the reasonable costs of collection, for the payment~~
5 ~~to them of the amount paid and to be paid by them as~~
6 ~~compensation to~~ by the injured employee or his or her
7 ~~dependents-~~ or legal representative from a third
8 ~~party, which shall be applied as follows:~~

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

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

20 ~~a. reasonable fees and costs of collection shall be~~
21 ~~deducted,~~

22 ~~b. the employer or~~ and insurance carrier, ~~as applicable,~~
23 ~~shall receive two-thirds (2/3) of the remainder of the~~

1 recovery or the amount of the workers' compensation
2 lien, whichever is less^r; and

3 ~~e. the remainder of the recovery~~

4 3. Any excess shall ~~go~~ belong to the injured employee or his or
5 her dependents.

6 B. Subrogation.

7 1. An employer or carrier liable for compensation under this
8 ~~act~~ title for the injury or death of an employee shall have the
9 right to maintain an action in tort against any third party
10 responsible for the injury or death. However, the employer or the
11 carrier shall notify the ~~claimant~~ employee in writing that the
12 ~~claimant~~ employee has the right to hire a private attorney to pursue
13 any benefits to which the ~~claimant~~ employee is entitled in addition
14 to the subrogation interest against any third party responsible for
15 the injury or death.

16 2. After reasonable notice and opportunity to be represented in
17 the action has been given to the injured employee, the liability of
18 the third party to the compensation beneficiary shall be determined
19 in the action, as well as the third party's liability to the
20 employer and carrier.

21 3. If the employer recovers against the third party, by suit or
22 otherwise, the injured employee shall be entitled to any amount
23 recovered in excess of the amount that the employer and carrier have
24

1 paid or are liable for in compensation, after deducting reasonable
2 costs of collection.

3 4. An employer or carrier who is liable for compensation under
4 this ~~act~~ title on account of injury or death of an employee shall be
5 entitled to maintain a third-party action against the employer's
6 uninsured motorist coverage or underinsured motorist coverage.

7 SECTION 35. AMENDATORY Section 44, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2016, Section 44), is amended to read as
9 follows:

10 Section 44. A. Any benefits payable to an injured employee
11 under this ~~act~~ title shall be reduced in an amount equal to, dollar-
12 for-dollar, the amount of benefits the injured employee has
13 previously received for the same medical services or period of
14 disability, whether those benefits were paid under a group health
15 care service plan, a group disability policy, a group loss of income
16 policy, a group accident, health, or accident and health policy, a
17 self-insured employee health or welfare benefit plan, or a group
18 hospital or medical service contract; provided, however, such
19 reduction does not apply to any benefit received from a group policy
20 for disability if the injured employee has paid for the policy.

21 B. The ~~claimant~~ employee shall be required to disclose in a
22 manner to be determined by the Workers' Compensation Commission the
23 identity, address, or phone number of any person or entity which has
24

1 paid benefits described in this section in connection with any claim
2 under this ~~act~~ title.

3 SECTION 36. AMENDATORY Section 45, Chapter 208, O.S.L.
4 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S.
5 Supp. 2016, Section 45), is amended to read as follows:

6 Section 45. A. Temporary Total Disability.

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

23 2. When the injured employee is released from active medical
24 treatment by the treating physician for all body parts found by the

1 Commission to be injured, or in the event that the employee, ~~without~~
2 ~~a valid excuse, misses three consecutive medical treatment~~
3 ~~appointments,~~ fails to comply with medical orders of the treating
4 physician, or otherwise abandons medical care, the employer shall be
5 entitled to terminate temporary total disability by notifying the
6 employee, or if represented, his or her counsel. If, however, an
7 objection to the termination of temporary total disability is filed
8 by the employee within ten (10) days of termination, the Commission
9 shall set the matter within twenty (20) days for a determination if
10 temporary total disability compensation shall be reinstated. The
11 temporary total disability shall remain terminated unless the
12 employee proves the existence of a valid excuse for his or her
13 failure to comply with medical orders of the treating physician or
14 his or her abandonment of medical care. The administrative law
15 judge may appoint an independent medical examiner to determine if
16 further medical treatment is reasonable and necessary. The
17 independent medical examiner shall not provide treatment to the
18 injured ~~worker~~ employee, unless agreed upon by the parties.

19 B. Temporary Partial Disability.

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

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

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

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

12 C. Permanent Partial Disability.

13 1. If the injured employee has a permanent disability after
14 reaching maximum medical improvement, he or she shall be entitled to
15 receive compensation equal to seventy percent (70%) of the
16 employee's average weekly wage per week, not to exceed Three Hundred
17 Fifty Dollars (\$350.00) per week, for three and one-half (3 1/2)
18 weeks for each percentage point of impairment but not to exceed the
19 earlier of three hundred fifty (350) weeks or the date of the
20 injured employee's death.

21 2. A permanent partial disability award or combination of
22 awards granted an injured worker may not exceed a permanent partial
23 disability rating of one hundred percent (100%) to any body part or
24 to the body as a whole. The determination of permanent partial

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

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

1 medical doctor, doctor of osteopathy, chiropractor or a qualified
2 independent medical examiner shall be considered an abuse of
3 discretion.

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

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

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

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

24

1 ~~b. If, for any reason other than misconduct as defined in~~
2 ~~Section 2 of this act, the employer terminates the~~
3 ~~employee or the position offered is not the pre-injury~~
4 ~~or equivalent job, the remaining permanent partial~~
5 ~~disability award shall be paid in a lump sum. If the~~
6 ~~employee is discharged for misconduct, the employer~~
7 ~~shall have the burden to prove that the employee~~
8 ~~engaged in misconduct.~~

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

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

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

1 4. If an employee is eligible to receive permanent total
2 disability benefits, he or she shall not also receive permanent
3 partial disability benefits.

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

12 6. Previous Disability: The fact that an employee has suffered
13 previous disability or received compensation therefor shall not
14 preclude the employee from compensation for a later accidental
15 personal injury or occupational disease. In the event there exists
16 a previous permanent partial disability, including a previous non-
17 work-related injury or condition which produced permanent partial
18 disability and the same is aggravated or accelerated by an
19 accidental personal injury or occupational disease, compensation for
20 permanent partial disability shall be only for such amount as was
21 caused by such accidental personal injury or occupational disease
22 and no additional compensation shall be allowed for the preexisting
23 disability ~~or impairment~~. Any such reduction shall not apply to
24

1 temporary total disability, nor shall it apply to compensation for
2 medical treatment.

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

14 b. In all cases, the applicable reduction shall be
15 calculated as follows:

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

1 value shall be calculated by multiplying the
2 percentage of preexisting permanent partial
3 disability by the compensation rate in effect on
4 the date of the accident or injury against which
5 the reduction will be applied, and

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

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

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

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

23 ~~10.~~ An injured employee who is eligible for permanent partial
24 disability under this subsection shall be entitled to receive

1 vocational rehabilitation services provided by a technology center
2 or public secondary school offering vocational-technical education
3 courses, or a member institution of The Oklahoma State System of
4 Higher Education, which shall include retraining and job placement
5 to restore the employee to gainful employment. Vocational
6 rehabilitation services or training shall not extend for a period of
7 more than fifty-two (52) weeks.

8 D. Permanent Total Disability.

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

1 ~~permanent total disability awarded the claimant. If more than one~~
2 ~~person is entitled to revive the claim, the lump-sum payment shall~~
3 ~~be evenly divided between or among such persons. In the event the~~
4 ~~Commission awards both permanent partial disability and permanent~~
5 ~~total disability benefits, the permanent total disability award~~
6 ~~shall not be due until the permanent partial disability award is~~
7 ~~paid in full. If otherwise qualified according to the provisions of~~
8 ~~this act title, 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 Commission shall annually review the status of any~~
13 ~~employee receiving benefits for permanent total disability against~~
14 ~~the last employer. The Commission shall require the employee to~~
15 ~~annually file an affidavit under penalty of perjury stating that he~~
16 ~~or she is not and has not been gainfully employed and is not capable~~
17 ~~of gainful employment. Failure to file such affidavit shall result~~
18 ~~in suspension of benefits; provided, however, reinstatement of~~
19 ~~benefits may occur after proper hearing before the Commission.~~

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

23 ~~2. The Vocational Rehabilitation Director shall help injured~~
24 ~~workers return to the work force. If the injured employee is unable~~

1 ~~to return to his or her pre-injury or equivalent position due to~~
2 ~~permanent restrictions as determined by the treating physician, upon~~
3 ~~the request of either party, the Vocational Rehabilitation Director~~
4 ~~shall determine if it is appropriate for a claimant to receive~~
5 ~~vocational rehabilitation training or services, and will oversee~~
6 ~~such training. If appropriate, the Vocational Rehabilitation~~
7 ~~Director shall issue administrative orders, including, but not~~
8 ~~limited to, an order for a vocational rehabilitation evaluation for~~
9 ~~any injured employee unable to work for at least ninety (90) days.~~
10 ~~In addition, the Vocational Rehabilitation Director may assign~~
11 ~~injured workers to vocational rehabilitation counselors for~~
12 ~~coordination of recommended services. The cost of the services~~
13 ~~shall be paid by the employer. All administrative orders are~~
14 ~~subject to appeal to the full Commission.~~

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

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

24

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

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

19 4. ~~Upon the request of either party, or by order of an~~
20 ~~administrative law judge, the Vocational Rehabilitation Director~~
21 ~~shall assist the Workers' Compensation Commission in determining if~~
22 ~~it is appropriate for a claimant to receive vocational~~
23 ~~rehabilitation training or services. If appropriate, the~~
24 ~~administrative law judge shall refer the employee to a qualified~~

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

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

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

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

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

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

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

8 E. Vocational Rehabilitation.

9 1. If the injured employee has a permanent disability after
10 reaching maximum medical improvement and, as a result, is unable to
11 return to his or her pre-injury job or another job that pays at
12 least eighty percent (80%) of the injured employee's pre-injury
13 wages, the injured employee shall be entitled to vocational
14 rehabilitation services provided by a technology center or public
15 secondary school offering vocational-technical education courses or
16 a member institution of The Oklahoma State System of Higher
17 Education, which shall include retraining and job placement to
18 restore the employee to full-time employment. Vocational
19 rehabilitation services or training shall not extend for a period of
20 more than fifty-two (52) weeks.

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

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

7 F. Disfigurement.

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

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

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

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

1 SECTION 37. AMENDATORY Section 46, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 46), is amended to read as
3 follows:

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

- 14 1. Arm amputated at the elbow, or between the elbow and
15 shoulder, two hundred seventy-five (275) weeks;
- 16 2. Arm amputated between the elbow and wrist, two hundred
17 twenty (220) weeks;
- 18 3. Leg amputated at the knee, or between the knee and the hip,
19 two hundred seventy-five (275) weeks;
- 20 4. Leg amputated between the knee and the ankle, two hundred
21 twenty (220) weeks;
- 22 5. Hand amputated, two hundred twenty (220) weeks;
- 23 6. Thumb amputated, sixty-six (66) weeks;
- 24 7. First finger amputated, thirty-nine (39) weeks;

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

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

21 C. ~~Other cases: In cases in which the Commission finds an~~
22 ~~injury to a part of the body not specifically covered by the~~
23 ~~foregoing provisions of this section, the employee may be entitled~~
24 ~~to compensation for permanent partial disability. The compensation~~

1 ~~ordered paid shall be seventy percent (70%) of the employee's~~
2 ~~average weekly wage, not to exceed Three Hundred Twenty-three~~
3 ~~Dollars (\$323.00) for the number of weeks which the partial~~
4 ~~disability of the employee bears to three hundred fifty (350) weeks.~~

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

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

10 ~~E.~~ C. 1. Compensation for the permanent loss of eighty percent
11 (80%) or more of the vision of an eye shall be the same as for the
12 loss of an eye.

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

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

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

23

24

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

4 SECTION 38. AMENDATORY Section 48, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2016, Section 48), is amended to read as
6 follows:

7 Section 48. When an injury or death is sustained by a minor
8 employed in violation of federal or state statutes relating to
9 minimum ages for employment of minors, disability or death benefits
10 provided for by this ~~act~~ title shall be doubled; provided, however,
11 such penalty shall not apply when the minor misrepresents his or her
12 age, in writing, to the employer.

13 SECTION 39. AMENDATORY Section 49, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2016, Section 49), is amended to read as
15 follows:

16 Section 49. Notwithstanding any other provision of this ~~act~~
17 title, no compensation for temporary total disability shall be
18 payable to an injured employee for any week for which the injured
19 employee receives unemployment insurance benefits under the laws of
20 this state or the unemployment insurance law of any other state. If
21 a claim for temporary total disability is controverted and later
22 determined to be compensable, temporary total disability shall be
23 payable to an injured employee for any week for which the injured
24 employee receives unemployment benefits but only to the extent that

1 the temporary total disability otherwise payable exceeds the
2 unemployment benefits.

3 SECTION 40. AMENDATORY Section 50, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2016, Section 50), is amended to read as
5 follows:

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

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

20 C. Diagnostic tests shall not be repeated sooner than six (6)
21 months from the date of the test unless agreed to by the parties or
22 ordered by the Workers' Compensation Commission for good cause
23 shown.

24

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

12 E. An employee claiming or entitled to benefits under this ~~act~~
13 title, shall, if ordered by the Commission or requested by the
14 employer or insurance carrier, submit himself or herself for medical
15 examination. If an employee refuses to submit himself or herself to
16 examination, his or her right to prosecute any proceeding under this
17 ~~act~~ section shall be suspended, and no compensation shall be payable
18 for the period of such refusal.

19 F. For compensable injuries resulting in the use of a medical
20 device, ongoing service for the medical device shall be provided in
21 situations including, but not limited to, medical device battery
22 replacement, ongoing medication refills related to the medical
23 device, medical device repair, or medical device replacement.

24

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

11 H. Fee Schedule.

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

24

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

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

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

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

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

24

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

9 d. The Commission shall develop a reasonable stop-loss
10 provision of the Fee Schedule to provide for adequate
11 reimbursement for treatment for major burns, severe
12 head and neurological injuries, multiple system
13 injuries, and other catastrophic injuries requiring
14 extended periods of intensive care.

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

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

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

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

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

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

19 Physicians shall prescribe and pharmacies shall dispense generic
20 equivalent drugs when available. If the National Drug Code, or
21 "NDC", for the drug product dispensed is for a repackaged drug, then
22 the maximum reimbursement shall be the lesser of the original
23 labeler's NDC and the lowest-cost therapeutic equivalent drug
24 product. Compounded medications shall be billed by the compounding

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

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

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

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

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

23 12. If an employee fails to appear for a scheduled appointment
24 with a physician, the employer or insurance company shall pay to the

1 physician a reasonable charge, to be determined by the Commission,
2 for the missed appointment. In the absence of a good-faith reason
3 for missing the appointment, the Commission shall order the employee
4 to reimburse the employer or insurance company for the charge.

5 13. Physicians providing treatment under this ~~act~~ title shall
6 disclose under penalty of perjury to the Commission, on a form
7 prescribed by the Commission, any ownership or interest in any
8 health care facility, business, or diagnostic center that is not the
9 physician's primary place of business. The disclosure shall include
10 any employee leasing arrangement between the physician and any
11 health care facility that is not the physician's primary place of
12 business. A physician's failure to disclose as required by this
13 section shall be grounds for the Commission to disqualify the
14 physician from providing treatment under this ~~act~~ title.

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

24

1 SECTION 41. AMENDATORY Section 52, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 52), is amended to read as
3 follows:

4 Section 52. The employer shall not be liable for any of the
5 payments for medical services and supplies under this ~~act~~ title if
6 the Workers' Compensation Commission determines that there was not a
7 compensable injury.

8 SECTION 42. AMENDATORY Section 53, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2016, Section 53), is amended to read as
10 follows:

11 Section 53. A. An injured employee claiming to be entitled to
12 benefits under this ~~act~~ title shall submit to physical examination
13 and treatment by another qualified physician, designated or approved
14 by the Workers' Compensation Commission, as the Commission may
15 require from time to time if reasonable and necessary.

16 B. In cases where the Commission directs examination or
17 treatment, proceedings shall be suspended, and no compensation shall
18 be payable for any period during which the employee refuses to
19 submit to examination and treatment or otherwise obstructs the
20 examination or treatment.

21 C. Failure of the employee to obey a judgment of the Commission
22 for an examination or treatment for a period of one (1) month from
23 the date of the judgment shall bar the right of the ~~claimant~~
24 employee to further compensation in respect to the injury.

1 SECTION 43. AMENDATORY Section 54, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 54), is amended to read as
3 follows:

4 Section 54. ~~Except in cases of hernia, which are specifically~~
5 ~~covered by Section 61 of this act, where~~ If an injured employee
6 unreasonably refuses to submit to a surgical operation which has
7 been advised by at least two qualified physicians and ~~where~~ if the
8 recommended operation does not involve unreasonable risk of life or
9 additional serious physical ~~impairment~~ disability, the Workers'
10 Compensation Commission shall take the refusal into consideration
11 when determining compensation for permanent partial or permanent
12 total disability.

13 SECTION 44. AMENDATORY Section 55, Chapter 208, O.S.L.
14 2013 (85A O.S. Supp. 2016, Section 55), is amended to read as
15 follows:

16 Section 55. A. If an employer or carrier believes that a
17 charge for medical services or supplies under this ~~act~~ title is
18 unreasonable, it may submit the charge to the Workers' Compensation
19 Commission for review. If the Commission determines that the charge
20 is unreasonable, it may amend the charges to reflect the Fee
21 Schedule established under Section 50 of this ~~act~~ title, if
22 applicable, or in accordance with reasonable market rates for the
23 services or supplies provided.

24

1 B. The provisions of this section relating to charges shall not
2 apply if a written contract exists between the employer and the
3 person who renders the medical service or supplies.

4 SECTION 45. AMENDATORY Section 56, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2016, Section 56), is amended to read as
6 follows:

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

14 B. If the employer is not covered by a certified workplace
15 medical plan, the employer shall select the treating physician
16 regardless of the number of body parts being treated. The Workers'
17 Compensation Commission on application of the employee shall order
18 one change of treating physician. Upon the Commission's granting of
19 the application, the employer shall provide a list of three
20 physicians from whom the employee may select the replacement. The
21 employer may identify physicians within the same practice, facility
22 or hospital as the treating physician. The only requirement for the
23 list of three physicians is that they be licensed and accredited to
24 perform the necessary treatment.

1 SECTION 46. AMENDATORY Section 57, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 57), is amended to read as
3 follows:

4 Section 57. A. If an injured employee misses ~~two~~ three or more
5 scheduled appointments for treatment, he or she shall no longer be
6 eligible to receive benefits under this ~~act~~ title, unless his or her
7 absence was:

8 1. Caused by extraordinary circumstances beyond the employee's
9 control as determined by the Workers' Compensation Commission; or

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

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

15 SECTION 47. AMENDATORY Section 59, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2016, Section 59), is amended to read as
17 follows:

18 Section 59. A. 1. Compensation under this ~~act~~ title based on
19 the employee's average weekly wage shall be computed by dividing the
20 employee's gross earnings by the number of full weeks of employment
21 with the employer, up to a maximum of fifty-two (52) weeks.

22 2. If the injured employee was working on a piece basis, the
23 average weekly wage shall be determined by dividing the earnings of
24 the employee by the number of hours required to earn the wages

1 during the period not to exceed fifty-two (52) weeks preceding the
2 week in which the accident occurred and by multiplying this hourly
3 wage by the number of hours in a full-time workweek in the
4 employment.

5 B. Overtime earnings are to be added to the regular weekly
6 wages and shall be computed by dividing the overtime earnings by the
7 number of weeks worked by the employee in the same employment under
8 the contract of hire in force at the time of the accident, not to
9 exceed a period of fifty-two (52) weeks preceding the accident.

10 C. If, because of exceptional circumstances, the average weekly
11 wage cannot be fairly and justly determined by the above formulas,
12 the Workers' Compensation Commission may determine the average
13 weekly wage by a method that is just and fair to all parties
14 concerned.

15 D. The benefit level for members of the National Guard and any
16 authorized voluntary or uncompensated worker rendering services as a
17 firefighter, peace officer or civil defense worker shall be
18 determined by using the wages of the employee in his or her regular
19 occupation.

20 SECTION 48. AMENDATORY Section 62, Chapter 208, O.S.L.
21 2013 (85A O.S. Supp. 2016, Section 62), is amended to read as
22 follows:

23 Section 62. A. Notwithstanding the provisions of Section 45 of
24 this ~~act~~ title, if an employee suffers a nonsurgical soft tissue

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

21 B. For purposes of this section, "surgery" does not include an
22 injection, or the forcing of fluids beneath the skin, for treatment
23 or diagnosis.

24

1 C. For purposes of this section, "soft tissue injury" means
2 damage to one or more of the tissues that surround bones and joints.
3 Soft tissue injury includes, but is not limited to, sprains,
4 strains, contusions, tendonitis and muscle tears. Cumulative trauma
5 is to be considered a soft tissue injury. Soft tissue injury does
6 not include any of the following:

7 1. Injury to or disease of the spine, spinal discs, spinal
8 nerves or spinal cord, where corrective surgery is performed;

9 2. Brain or closed-head injury as evidenced by:

10 a. sensory or motor disturbances,

11 b. communication disturbances,

12 c. complex integrated disturbances of cerebral function,

13 d. episodic neurological disorders, or

14 e. other brain and closed-head injury conditions at least
15 as severe in nature as any condition provided in
16 subparagraphs a through d of this paragraph; or

17 3. Any joint replacement.

18 SECTION 49. AMENDATORY Section 64, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2016, Section 64), is amended to read as
20 follows:

21 Section 64. A. Any person or entity may make written
22 application to the State Commissioner of Health to have a workplace
23 medical plan certified that provides management of quality treatment
24 to injured employees for injuries and diseases compensable under

1 this ~~act~~ title. Each application for certification shall be
2 accompanied by a fee of One Thousand Five Hundred Dollars
3 (\$1,500.00). A workplace medical plan may be certified to provide
4 services to a limited geographic area. A certificate is valid for a
5 five-year period, unless revoked or suspended. Application for
6 certification shall be made in the form and manner and shall set
7 forth information regarding the proposed program for providing
8 services as the State Commissioner of Health may prescribe. The
9 information shall include, but not be limited to:

10 1. A list of the names of all medical providers who shall
11 provide services under the plan, together with appropriate evidence
12 of compliance with any licensing or certification requirements for
13 those providers to practice in this state; and

14 2. A description of the places and manner of providing services
15 under the plan.

16 B. The State Commissioner of Health shall not certify a plan
17 unless he or she finds that the plan:

18 1. Proposes to provide quality services for all medical
19 services which:

20 a. may be required by this ~~act~~ title in a manner that is
21 timely, effective and convenient for the employee, and

22 b. utilize medical treatment guidelines and protocols
23 consistent with those established by the Official
24 Disability Guidelines;

- 1 2. Is reasonably geographically convenient to residents of the
2 area for which it seeks certification;
- 3 3. Provides appropriate financial incentives to reduce service
4 costs and utilization without sacrificing the quality of service;
- 5 4. Provides adequate methods of peer review, utilization review
6 and dispute resolution to prevent inappropriate, excessive or
7 medically unnecessary treatment, and excludes participation in the
8 plan by those providers who violate these treatment standards;
- 9 5. Provides aggressive case management for injured employees
10 and a program for early return to work;
- 11 6. Provides a timely and accurate method of reporting to the
12 State Commissioner of Health necessary information regarding medical
13 service costs and utilization to enable the State Commissioner of
14 Health to determine the effectiveness of the plan;
- 15 7. Authorizes necessary emergency medical treatment for an
16 injury provided by a provider of medical, surgical, and hospital
17 services who is not a part of the plan; and
- 18 8. Does not discriminate against or exclude from participation
19 in the plan any category of providers of medical, surgical, or
20 hospital services and includes an adequate number of each category
21 of providers of medical, surgical, and hospital services to give
22 participants access to all categories of providers and does not
23 discriminate against ethnic minority providers of medical services.
- 24

1 C. The State Commissioner of Health may accept findings,
2 licenses or certifications of other state agencies as satisfactory
3 evidence of compliance with a particular requirement of this
4 section.

5 D. Except for self-insured employers, if any insurer does not
6 contract with or provide access to a certified workplace medical
7 plan, an insured, after sixty (60) days' written notice to its
8 insurance carrier, shall be authorized to contract independently
9 with a plan of his or her choice for a period of one (1) year, to
10 provide medical care under this ~~act~~ title. The insured shall be
11 authorized to contract, after sixty (60) days' written notice to its
12 insurance carrier, for additional one-year periods if the insurer
13 has not contracted with or provided access to a certified workplace
14 medical plan.

15 E. If an employer is not experience-rated when it participates
16 in a certified workplace medical plan, its workers' compensation
17 insurer shall grant a ten-percent premium reduction.

18 F. The State Commissioner of Health shall refuse to certify or
19 shall revoke or suspend the certification of a plan if the State
20 Commissioner of Health finds that the program for providing medical
21 or health care services fails to meet the requirements of this
22 section, or service under the plan is not being provided in
23 accordance with the terms of the plan.

24

1 G. The State Commissioner of Health shall implement a site
2 visit protocol for employees of the State Department of Health to
3 perform an inspection of a certified workplace medical plan to
4 ensure that medical services to an employee and the medical
5 management of the employee's needs are adequately met in a timely
6 manner and that the certified workplace medical plan is complying
7 with all other applicable provisions of this act and the State
8 Department of Health. This protocol shall include, but not be
9 limited to:

10 1. A site visit shall be made to each certified workplace
11 medical plan not less often than once every year, but not later than
12 thirty (30) days following the anniversary date of issuance of the
13 initial or latest renewal certificate;

14 2. A site visit shall determine whether or not a certified
15 workplace medical plan is operating in accordance with its latest
16 application to the State Department of Health;

17 3. Compliant operations shall include, but not be limited to:

18 a. timely and effective medical services available with
19 reasonable geographic convenience,

20 b. treatment guidelines and protocols consistent with the
21 Official Disability Guidelines, and

22 c. effective programs for utilization review, case
23 management, grievances, and dispute resolution;

24 4. Performance of a site visit shall include:

- a. inspection of organizational documentation,
- b. inspection of systems documentation and processes,
- c. random or systematic sampling of closed and open case management cases,
- d. workplace medical plan employee and management interviews, as appropriate;

5. An initial site visit may occur with an interval of less than twelve (12) months to a recently certified plan, or a site visit may occur more often than once in every twelve (12) months if the State Commissioner of Health has reason to suspect that a plan is not operating in accordance with its certification;

6. If a deficient practice is identified during a site visit, the State Department of Health shall require a certified workplace medical plan to submit a timely and acceptable written plan of correction, and then may perform a follow-up visit or visits to ensure that the deficient practice has been eliminated;

7. If a deficient practice is not remedied by a certified workplace medical plan on a timely basis, the State Commissioner of Health shall revoke or suspend the certification of the plan;

8. In addition to the certification fee required pursuant to subsection A of this section, certified workplace medical plans shall pay the State Department of Health:

- a. One Thousand Five Hundred Dollars (\$1,500.00) for an initial annual site visit, and

1 b. One Thousand Dollars (\$1,000.00) for each follow-up
2 visit, but only if less than two site visits occur in
3 a twelve-month period; and

4 9. In addition to the site visit fee required pursuant to
5 paragraph 8 of this subsection, employees of the State Department of
6 Health may charge to the certified workplace medical plan reasonable
7 travel and travel-related expenses for the site visit such as
8 overnight lodging and meals. A certified workplace medical plan
9 shall reimburse travel expenses to the State Department of Health at
10 rates equal to the amounts then currently allowed under the State
11 Travel Reimbursement Act.

12 I. The State Board of Health shall adopt such rules as may be
13 necessary to implement the provisions of this section. Such rules
14 shall authorize any person to petition the State Commissioner of
15 Health for decertification of a certified workplace medical plan for
16 a material violation of any rules promulgated pursuant to this
17 section.

18 SECTION 50. AMENDATORY Section 65, Chapter 208, O.S.L.
19 2013, as amended by Section 3, Chapter 390, O.S.L. 2015 (85A O.S.
20 Supp. 2016, Section 65), is amended to read as follows:

21 Section 65. A. If an employee suffers from an occupational
22 disease ~~as defined in this section~~ and is disabled or dies as a
23 result of the disease, the employee, or, in case of death, his or
24 her dependents, shall be entitled to compensation as if the

1 disability or death were caused by injury arising out of work
2 activities within the scope of employment, except as otherwise
3 provided in this section.

4 B. No compensation shall be payable for an occupational disease
5 if the employee, at the time of entering into the employment of the
6 employer by whom the compensation would otherwise be payable,
7 falsely represented himself or herself in writing as not having
8 previously been disabled, laid off, or compensated in damages or
9 otherwise, because of the disease.

10 C. 1. If an occupational disease is aggravated by any other
11 disease or infirmity, not itself compensable, or if disability or
12 death from any other cause, not itself compensable, is aggravated,
13 prolonged, accelerated, or in any way contributed to by an
14 occupational disease, the compensation payable shall be reduced and
15 limited to the proportion ~~only of the compensation that would be~~
16 ~~payable if~~ of the occupational disease ~~were the major cause of the~~
17 ~~disability or death as the occupational disease, as a causative~~
18 ~~factor, bears to all the causes of the disability or death~~ that is
19 compensable.

20 2. The reduction in compensation is to be effected by reducing
21 the number of weekly or monthly payments or the amounts of the
22 payments, as under the circumstances of the particular case may be
23 for the best interest of the ~~claimant~~ employee.

24

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

9 2. No compensation shall be payable for any contagious or
10 infectious disease unless contracted in the course and scope of
11 employment.

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

14 E. 1. When compensation is payable for an occupational
15 disease, the employer in whose employment the employee was last
16 injuriously exposed to the hazards of the disease and the carrier,
17 if any, on the risk when the employee was last injuriously exposed
18 under the employer shall be liable.

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

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

- 1 a. the disease is due to the nature of an employment in
2 which the hazards of the disease actually exist and is
3 actually incurred in the course and scope of his or
4 her employment. This includes any disease due to or
5 attributable to exposure to or contact with any
6 radioactive material by an employee in the course and
7 scope of his or her employment,
- 8 b. disablement or death results within three (3) years in
9 case of silicosis or asbestosis, or one (1) year in
10 case of any other occupational disease, except a
11 diseased condition caused by exposure to X-rays,
12 radioactive substances, or ionizing radiation, after
13 the last injurious exposure to the disease in the
14 employment, or
- 15 c. in case of death, death follows continuous disability
16 from the disease, commencing within the period, for
17 which compensation has been paid or awarded or timely
18 claim made as provided in subparagraph b of this
19 paragraph and results within seven (7) years after the
20 last exposure.

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

1 SECTION 51. AMENDATORY Section 66, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 66), is amended to read as
3 follows:

4 Section 66. A. As used in this ~~act~~ title, unless the context
5 otherwise requires:

6 1. "Asbestosis" means the characteristic fibrotic condition of
7 the lungs caused by the inhalation of asbestos dust; and

8 2. "Silicosis" means the characteristic fibrotic condition of
9 the lungs caused by the inhalation of silica dust.

10 B. In the absence of conclusive evidence in favor of the claim,
11 disability or death from silicosis or asbestosis shall be presumed
12 not to be due to the nature of any occupation within the provision
13 of this section unless during the ten (10) years immediately
14 preceding the date of disablement the employee has been exposed to
15 the inhalation of silica dust or asbestos dust over a period of not
16 less than five (5) years, two (2) years of which shall have been in
17 this state, under a contract of employment performed in this state.
18 However, if the employee has been employed by the same employer
19 during the entire five-year period, his or her right to compensation
20 against the employer shall not be affected by the fact that he or
21 she had been employed during any part of the period outside of this
22 state.

23 C. Except as otherwise provided in this section, compensation
24 for disability from uncomplicated silicosis or asbestosis shall be

1 payable in accordance with the provisions of Sections 45 and 48 of
2 this ~~act~~ title.

3 D. 1. In case of disability or death from silicosis or
4 asbestosis complicated with tuberculosis of the lungs, compensation
5 shall be payable as for uncomplicated silicosis or asbestosis,
6 provided that the silicosis or asbestosis was an essential factor in
7 the causing of disability or death.

8 2. In case of disability or death from silicosis or asbestosis
9 complicated with any other disease, or from any other disease
10 complicated with silicosis or asbestosis, the compensation shall be
11 reduced as provided in subsection C of Section 65 of this ~~act~~ title.

12 E. 1. When an employee, though not actually disabled, is found
13 by the Workers' Compensation Commission to be affected by silicosis
14 or asbestosis to such a degree as to make it unduly hazardous for
15 him or her to continue in an employment involving exposure to the
16 hazards of the disease, the Commission may order that he or she be
17 removed from his or her employment. In such a case, or in case he
18 or she has already been discharged from the employment and is
19 unemployed, he or she shall be entitled to compensation until he or
20 she can obtain steady employment in some other suitable occupation
21 in which there are no hazards of the disease.

22 2. When in any case the forced change of employment shall, in
23 the opinion of the Commission, require that the employee be given
24 special training in order to qualify him or her for another

1 occupation, the employer liable for compensation shall pay for the
2 vocational rehabilitation and training provided for in this act
3 title.

4 SECTION 52. AMENDATORY Section 68, Chapter 208, O.S.L.
5 2013 (85A O.S. Supp. 2016, Section 68), is amended to read as
6 follows:

7 Section 68. A. ~~Unless an~~ An employee ~~gives oral or written~~
8 must give notice to the employer within ~~thirty (30)~~ fifteen (15)
9 days of ~~the~~ :

10 1. The date an the injury occurs, the; or

11 2. If the injury is an occupational disease or cumulative
12 trauma, the date the employee knew or should have known that the
13 injury may be related to the employment.

14 B. If the employee does not give timely notice of an injury,
15 there shall be a rebuttable presumption ~~shall be~~ that the injury was
16 ~~not work-related.~~ Such is not a compensable injury; provided,
17 however, the presumption must may be overcome by a preponderance of
18 the evidence.

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

1 SECTION 53. AMENDATORY Section 69, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 69), is amended to read as
3 follows:

4 Section 69. A. Time for Filing.

5 1. A claim for benefits under ~~this act, other than an~~
6 ~~occupational disease,~~ the Administrative Workers' Compensation Act
7 shall be ~~barred unless it is~~ filed with the Workers' Compensation
8 Commission within:

9 a. one (1) year from the date of the injury,

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

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

21 2. ~~a.~~ ~~A claim for compensation for disability on account of~~
22 ~~injury which is either an occupational disease or~~
23 ~~occupational infection shall be barred unless filed~~
24 ~~with the Commission within two (2) years from the date~~

1 ~~of the last injurious exposure to the hazards of the~~
2 ~~disease or infection.~~

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

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

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

19 ~~4. If within six (6) months after the filing of a claim for~~
20 ~~compensation no bona fide request for a hearing has been made with~~
21 ~~respect to the claim, the claim may, on motion and after hearing, be~~
22 ~~dismissed with prejudice~~ For the purposes of this section, the date
23 of injury for an occupational disease or cumulative trauma shall be
24

1 the date that the employee knew or should have known that the injury
2 may be related to the employment.

3 B. Time for Filing Additional Compensation.

4 ~~1. In cases in which any compensation, including disability or~~
5 ~~medical, has been paid on account of injury, a claim for additional~~
6 ~~compensation shall be barred unless filed with the Commission within~~
7 ~~one (1) year from the date of the last payment of disability~~
8 ~~compensation or two (2) years from the date of the injury, whichever~~
9 ~~is greater~~ If a claim for benefits under this title has been timely
10 filed with the Commission, any claim for additional benefits must be
11 filed within three (3) months after the date that the last benefit
12 was received, except as otherwise prescribed by the treating
13 physician at the time of the last appointment the employee has with
14 the treating physician.

15 2. The ~~statute of~~ limitations provided in this subsection shall
16 not apply to claims for the replacement of medicine, crutches,
17 ambulatory devices, artificial limbs, eyeglasses, contact lenses,
18 hearing aids, and other apparatus permanently or indefinitely
19 required as the result of a compensable injury, when the employer or
20 carrier previously furnished such medical supplies, but replacement
21 of such items shall not constitute payment of compensation so as to
22 toll the statute of limitations.

23 C. ~~A claim for additional compensation shall specifically state~~
24 ~~that it is a claim for additional compensation. Documents which do~~

1 ~~not specifically request additional benefits shall not be considered~~
2 ~~a claim for additional compensation.~~

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

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

14 ~~F. Persons under Disability.~~

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

20 ~~2. Subsections A and B of this section shall not apply to a~~
21 ~~mental mentally incompetent person or a minor so long as the person~~
22 ~~has no guardian or similar legal representative. The limitations~~
23 ~~prescribed in subsections A and B of this section shall apply to the~~
24 ~~mental mentally incompetent person or minor from the date of the~~

1 appointment of a guardian or similar legal representative for that
2 person, and when no guardian or similar representative has been
3 appointed, to a minor on reaching the age of majority.

4 ~~C. A latent injury or condition shall not delay or toll the~~
5 ~~limitation periods specified in this section. This subsection shall~~
6 ~~not apply to the limitation period for occupational diseases~~
7 ~~specified in paragraph 2 of subsection A of this section.~~

8 SECTION 54. AMENDATORY Section 70, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2016, Section 70), is amended to read as
10 follows:

11 Section 70. The Workers' Compensation Commission is authorized
12 and directed to promulgate rules to establish and implement a
13 preliminary conference procedure designed to accomplish the
14 following objectives:

15 1. To provide the ~~claimant~~ employee an opportunity to confer
16 with a legal advisor on the staff of the Commission to be advised of
17 his or her rights under this ~~act~~ title and to ensure that the rights
18 are protected. The conference shall be held in the county where the
19 accident occurred, if the accident occurred in this state, unless
20 otherwise agreed to by the parties, or otherwise directed by the
21 Commission;

22 2. To provide an opportunity for, but not compel, a binding
23 settlement of some or all the issues present at the time;

24

1 3. To facilitate the resolution of issues without the expense
2 of litigation or attorney fees for either party; and

3 4. To authorize the legal advisor to approve compromise
4 settlements entered into while attending or as a result of the
5 preliminary conference and those joint petition settlements entered
6 into under Section 87 of this ~~act~~ title. Provided, however, the
7 same legal advisors shall not both advise the ~~claimant~~ employee and
8 approve the joint petition.

9 SECTION 55. AMENDATORY Section 71, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2016, Section 71), is amended to read as
11 follows:

12 Section 71. A. ~~Notice.~~ Within ten (10) days after ~~a~~ an
13 Employee's Notice of Claim for Compensation or other claim for
14 compensation benefits has been filed, the Workers' Compensation
15 Commission shall notify the employer and any other interested person
16 of the filing of the claim.

17 B. ~~Investigation — Hearing.~~

18 ~~1.~~ The Commission shall assign the claim to an administrative
19 law judge who shall hold a ~~hearing on application of any interested~~
20 ~~party, or on its own motion~~ prehearing conference within seven (7)
21 days after the filing of the Employee's Notice of Claim for
22 Compensation or other claim for benefits. At the prehearing
23 conference, the issue or issues shall be set for trial at a date no
24 later than sixty (60) days after the prehearing conference.

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

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

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

11 ~~5. The award, together with the statement of the findings of~~
12 ~~fact and other matters pertinent to the issues, shall be filed with~~
13 ~~the record of the proceedings, and a copy of the award shall~~
14 ~~immediately be sent to the parties in or to counsels of record, if~~
15 ~~any.~~

16 C. Hearings and trials shall not be continued, absent
17 extraordinary circumstances as determined by the Commission.

18 D. Evidence and Construction.

19 1. a. At the hearing the ~~claimant~~ employee and the employer
20 may each present evidence relating to the claim.

21 Evidence may be presented by any person authorized in
22 writing for such purpose. The evidence may include
23 verified medical reports which shall be accorded such
24

1 weight as may be warranted when considering all
2 evidence in the case.

3 b. Any determination of the existence or extent of
4 physical ~~impairment~~ disability shall be supported by
5 objective ~~and measurable physical or mental~~ findings.

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

10 3. Administrative law judges, the Commission, and any reviewing
11 courts shall strictly construe the provisions of this ~~act~~ title.

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

16 ~~D. Judgment.~~ E. The judgment denying the claim or making the
17 award shall be filed in the office of the Commission, and a copy
18 shall be sent by registered mail, facsimile, electronic mail or by
19 other electronic means with confirmation of receipt to the ~~claimant~~
20 employee and to the employer or to their attorneys.

21 ~~E.~~ F. No compensation for disability of an injured employee
22 shall be payable for any period beyond his or her death; provided,
23 however, an award of compensation for disability may be made after
24

1 the death of the injured employee for the period of disability
2 preceding death.

3 G. Conduct of Hearing or Inquiry.

4 1. In making an investigation or inquiry or conducting a
5 hearing, the administrative law judges and the Commission shall not
6 be bound by technical or statutory rules of evidence or by technical
7 or formal rules of procedure, except as provided by this title. The
8 administrative law judges and the Commission may make such
9 investigation or inquiry, or conduct the hearing, in a manner as
10 shall best ascertain the rights of the parties.

11 2. Declarations of a deceased employee concerning the injury
12 may be received in evidence and may, if corroborated by other
13 evidence, be sufficient to establish the injury.

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

18 4. Administrative law judges are required to make specific, on-
19 the-record findings of ultimate facts responsive to the issues
20 shaped by the evidence as well as conclusions of law on which
21 judgment is to be rested.

22 H. Hearings to be Public - Records.

23 1. a. Hearings before the Commission shall be open to the
24 public and shall be stenographically reported. The

1 Commission is authorized to contract for the reporting
2 of the hearings.

3 b. The Commission shall, by rule, provide for the
4 preparation of a record of all hearings and other
5 proceedings before it.

6 2. The Commission shall not be required to stenographically
7 report or prepare a record of joint petition hearings. The
8 administrative law judge or legal advisor shall record the hearing
9 at no cost to the parties.

10 I. Introduction of Evidence.

11 1. All oral evidence or documentary evidence shall be presented
12 to the designated representative of the Commission at the initial
13 hearing on a controverted claim. The oral evidence shall be
14 stenographically reported. Each party shall present all evidence at
15 the initial hearing. Further hearings for the purpose of
16 introducing additional evidence shall be granted only at the
17 discretion of the hearing officer or Commission. A request for a
18 hearing for the introduction of additional evidence shall show the
19 substance of the evidence desired to be presented.

20 2. a. Any party proposing to introduce medical reports or
21 testimony of physicians at the hearing of a
22 controverted claim shall, as a condition precedent to
23 the right to do so, furnish to the opposing party and
24 to the Commission copies of the written reports of the

1 physicians of their findings and opinions at least
2 seven (7) days before the date of the hearing. If no
3 written reports are available to a party, the party
4 shall notify in writing the opposing party and the
5 Commission of the name and address of the physicians
6 proposed to be used as witnesses and the substance of
7 their testimony at least seven (7) days before the
8 hearing.

9 b. If the opposing party desires to cross-examine the
10 physician, he or she should notify the party who
11 submits a medical report to him or her as soon as
12 practicable, in order that he or she may make every
13 effort to have the physician present for the hearing.

14 3. A party failing to observe the requirements of this
15 subsection may not be allowed to introduce medical reports or
16 testimony of physicians at a hearing, except in the discretion of
17 the hearing officer or the Commission.

18 4. The time periods may be waived by the consent of the
19 parties.

20 J. Expert testimony shall not be allowed unless it satisfies
21 the requirements of Federal Rule of Evidence 702 with annotations
22 and amendments.

1 SECTION 56. AMENDATORY Section 77, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 77), is amended to read as
3 follows:

4 Section 77. If the Workers' Compensation Commission is a party
5 to or is otherwise interested in a court proceeding under this ~~act~~
6 title, it may employ attorneys to appear on its behalf. If
7 requested by the Commission, it shall be the duty of the Attorney
8 General or the ~~prosecuting~~ district attorneys of the different
9 districts to represent the Commission without extra compensation.

10 SECTION 57. AMENDATORY Section 78, Chapter 208, O.S.L.
11 2013 (85A O.S. Supp. 2016, Section 78), is amended to read as
12 follows:

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

23 B. The chair of the Commission shall have the authority to
24 appoint an administrative law judge to the en banc panel when any

1 Commissioner of the Commission is disqualified for any reason, to
2 fill a vacancy, or in the absence of a Commissioner; provided, the
3 appointed administrative law judge shall not have presided over any
4 of the previous hearings on the claim.

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

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

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

- 1 6. Arbitrary or capricious;
- 2 7. Procured by fraud; or
- 3 8. Missing findings of fact on issues essential to the
- 4 decision.

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

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

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

3 SECTION 58. AMENDATORY Section 82, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2016, Section 82), is amended to read as
5 follows:

6 Section 82.

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

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

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

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

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

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

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

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

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

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

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

21 B. An attorney representing an employee under this ~~act~~ title
22 may not recover fees for services except as expressly provided in
23 this section.

24

1 SECTION 59. AMENDATORY Section 85, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 85), is amended to read as
3 follows:

4 Section 85. Clean claims for services rendered under this ~~act~~
5 title are payable within thirty (30) days after receipt by the
6 employer unless disputed as to compensability or amount. "Clean
7 claim" means a claim that has no defect or impropriety, including a
8 lack of any required substantiating documentation, or particular
9 circumstance requiring special treatment that impedes prompt
10 payment.

11 SECTION 60. AMENDATORY Section 86, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2016, Section 86), is amended to read as
13 follows:

14 Section 86. A. 1. Each employer desiring to controvert an
15 employee's right to compensation shall file with the Workers'
16 Compensation Commission on or before the fifteenth day following
17 notice of the alleged injury or death a statement on a form
18 prescribed by the Commission that the right to compensation is
19 controverted and the grounds for the controversion, the names of the
20 ~~claimant~~ employee, employer, and carrier, if any, and the date and
21 place of the alleged injury or death.

22 2. Failure to file the statement of controversion shall not
23 preclude the employer's ability to controvert the claim or cause it
24

1 to waive any defenses. The employer can make additional defenses
2 not included in the initial notice at any time.

3 B. If an employer is unable to obtain sufficient medical
4 information as to the alleged injury or death within fifteen (15)
5 days following receipt of notice, although the employer has acted in
6 good faith and with all due diligence, the employer may apply in
7 writing for an extension of time for making payment of the first
8 installment or controverting the claim. This written application is
9 to be postmarked within the fifteen-day period. The Commission may,
10 in its discretion, grant the extension and fix the additional time
11 to be allowed. Filing of application for an extension shall not be
12 deemed to be a controversion of the claim.

13 C. The provisions in subsection B of this section shall not
14 apply in cases where the physician is an employee of, on retainer
15 with, or has a written contract to provide medical services for the
16 employer.

17 SECTION 61. AMENDATORY Section 87, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2016, Section 87), is amended to read as
19 follows:

20 Section 87. A. If the employer or carrier and the injured
21 employee desire to settle the claim, they shall file a joint
22 petition for settlement with the Workers' Compensation Commission.
23 After the joint petition has been filed, the Commission shall order
24

1 that all claims between the parties have been settled. No appeal
2 shall lie from a judgment or award denying a joint petition.

3 B. The Commission shall not approve a joint petition or other
4 settlement that provides for the payment of benefits in a lump sum
5 except as otherwise provided in this title.

6 SECTION 62. AMENDATORY Section 89, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2016, Section 89), is amended to read as
8 follows:

9 Section 89. If the employer has made advance payments for
10 compensation, the employer shall be entitled to be reimbursed out of
11 any unpaid installment or installments of compensation due. If the
12 injured employee receives full wages during disability, he or she
13 shall not be entitled to compensation during the period. Any wages
14 paid by the employer, over the statutory temporary disability
15 maximum, shall be deducted from the permanent partial disability
16 award. Such deduction shall be made after any such applicable
17 attorney fee and any such assessment made pursuant to Sections 45
18 and 46 of this ~~act~~ title have been paid.

19 SECTION 63. AMENDATORY Section 91, Chapter 208, O.S.L.
20 2013 (85A O.S. Supp. 2016, Section 91), is amended to read as
21 follows:

22 Section 91. Compensation shall bear interest pursuant to
23 Section 727.1 of Title 12 of the Oklahoma Statutes from the day an
24 award is made by either an administrative law judge or the ~~full~~

1 Workers' Compensation Commission on all accrued and unpaid
2 compensation.

3 SECTION 64. AMENDATORY Section 94, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2016, Section 94), is amended to read as
5 follows:

6 Section 94. An employee who is incarcerated shall not be
7 eligible to receive medical or disability benefits under this ~~aet~~
8 title.

9 SECTION 65. AMENDATORY Section 95, Chapter 208, O.S.L.
10 2013 (85A O.S. Supp. 2016, Section 95), is amended to read as
11 follows:

12 Section 95. A. On approval by the Insurance Commissioner, and
13 following the adoption of such rules as the Insurance Commissioner
14 deems necessary, each insurer issuing a policy under this ~~aet~~ title
15 shall offer, as a part of the policy or as an optional endorsement
16 to the policy, deductibles optional to the policyholder for benefits
17 payable under this ~~aet~~ title. Deductible amounts offered shall be
18 fully disclosed to the prospective policyholder in writing. The
19 policyholder exercising the deductible option shall choose only one
20 deductible amount.

21 B. Optional deductibles shall be offered in each policy
22 insuring liability for workers' compensation that is issued,
23 delivered, issued for delivery, or renewed under this ~~aet~~ title on
24 or after approval by the Insurance Commissioner, unless an insured

1 employer and insurer agree to renegotiate a workers' compensation
2 policy in effect on that date so as to include a provision allowing
3 for a deductible.

4 C. If the policyholder exercises the option and chooses a
5 deductible, the insured employer shall be liable for the amount of
6 the deductible for benefits paid for each compensable claim of work
7 injury suffered by an employee. The insurer shall pay all or part
8 of the deductible amount, whichever is applicable to a compensable
9 claim, to the person or medical provider entitled to the benefits
10 conferred by this ~~act~~ title and seek reimbursement from the insured
11 employer for the applicable deductible amount. The payment or
12 nonpayment of deductible amounts by the insured employer to the
13 insurer shall be treated under the policy insuring the liability for
14 workers' compensation in the same manner as payment or nonpayment of
15 premiums.

16 D. If the Insurance Commissioner determines it to be feasible,
17 and under such rules as he or she may adopt, premium reduction for
18 deductibles may be determined before the application of any
19 experience modification, premium surcharge, or premium discounts,
20 and, to the extent that an employer's experience rating or safety
21 record is based on benefits paid, money paid by the insured employer
22 under a deductible as provided in this section may not be included
23 as benefits paid so as to harm the experience rating of the
24 employer.

1 E. This section shall not apply to employers who are approved
2 to self-insure against liability for workers' compensation or group
3 self-insurance funds for workers' compensation.

4 SECTION 66. AMENDATORY Section 98, Chapter 208, O.S.L.
5 2013, as amended by Section 4, Chapter 169, O.S.L. 2014 (85A O.S.
6 Supp. 2016, Section 98), is amended to read as follows:

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

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

13 2. ~~Until~~ In the event that the Self-insurance Guaranty Fund
14 contains ~~Two Million Dollars (\$2,000,000.00) or in the event the~~
15 ~~amount in the fund falls below One Million Dollars (\$1,000,000.00)~~
16 Eight Hundred Thousand Dollars (\$800,000.00) or less, an assessment
17 levied by the Workers' Compensation Commission against each private
18 self-insurer and group self-insurance association based on an
19 assessment rate to be determined by the commissioners, not exceeding
20 ~~one percent (1%)~~ two percent (2%) of actual paid losses of the self-
21 insurer during the preceding calendar year, payable to the Tax
22 Commission for deposit to the fund. The assessment against private
23 self-insurers shall be determined using a rate equal to the
24 proportion that the deficiency in the fund attributable to private

1 self-insurers bears to the actual paid losses of all private self-
2 insurers for the year period of January 1 through December 31
3 preceding the assessment. The assessment against group self-
4 insurance associations shall be determined using a rate equal to the
5 proportion that the deficiency in excess of the surplus of the Group
6 Self-Insurance Association Guaranty Fund at the date of the transfer
7 attributable to group self-insurance associations bears to the
8 actual paid losses of all group self-insurance associations
9 cumulatively for any calendar year preceding the assessment. Each
10 self-insurer shall provide the Workers' Compensation Commission with
11 such information as the Commission may determine is necessary to
12 effectuate the purposes of this paragraph. For purposes of this
13 paragraph, "actual paid losses" means all medical and indemnity
14 payments, including temporary disability, permanent disability, and
15 death benefits, and excluding loss adjustment expenses and reserves.

- 16 a. The assessment shall be paid within thirty (30)
17 calendar days after the date the commissioners notify
18 the self-insurer of the assessment.
- 19 b. A private employer or group self-insurance association
20 which ceases to be a self-insurer shall remain liable
21 for any and all assessments of the self-insurer as
22 provided in this paragraph based on actual paid losses
23 for the calendar year period preceding the assessment.

24

1 c. Failure of a self-insurer to pay, or timely pay, an
2 assessment required by this paragraph, or to report
3 payment of the same to the Commission within ten (10)
4 days of payment, shall be grounds for revocation by
5 the Commission of the self-insurer's permit to self-
6 insure in this state, after notice and hearing. A
7 former self-insurer failing to make payments required
8 by this paragraph promptly and correctly, or failing
9 to report payment of the same to the Commission within
10 ten (10) days of payment, shall be subject to
11 administrative penalties as allowed by law, including
12 but not limited to, a fine in the amount of Five
13 Hundred Dollars (\$500.00) or an amount equal to one
14 percent (1%) of the unpaid amount, whichever is
15 greater, to be paid and deposited to the credit of the
16 Workers' Compensation Fund created in Section 28 of
17 this title. It shall be the duty of the Tax
18 Commission to collect the assessment provided for in
19 this paragraph. The Tax Commission is authorized to
20 bring an action for recovery of any delinquent or
21 unpaid assessments, and may enforce payment of the
22 assessment by proceeding in accordance with Section 79
23 of this title.
24

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

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

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

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

15 SECTION 67. AMENDATORY Section 99, Chapter 208, O.S.L.
16 2013, as amended by Section 5, Chapter 169, O.S.L. 2014 (85A O.S.
17 Supp. 2016, Section 99), is amended to read as follows:

18 Section 99. On determination by the Workers' Compensation
19 Commission that a self-insurer has become an impaired self-insurer,
20 the Commission shall secure release of the security required by
21 Section 38 of this title ~~and~~, advise the Self-insurance Guaranty
22 Fund Board of the impairment and transfer the proceeds of the
23 security to the Self-insurance Guaranty Fund Board to be maintained
24 in a segregated interest-bearing division special agency account for

1 administering workers' compensation obligations of the impaired
2 self-insurer. The Self-insurance Guaranty Fund Board shall be the
3 fiduciary of the account. ~~Claims administration, including~~
4 ~~processing, investigating and paying valid claims against an~~
5 ~~impaired self-insurer under the Administrative Workers' Compensation~~
6 ~~Act, may include payment by the surety that issued the surety bond~~
7 ~~or be under a contract between the Commission and an insurance~~
8 ~~carrier, appropriate state governmental entity or an approved~~
9 ~~service organization, as approved by the Commission.~~

10 B. Proceeds from the released security, including interest
11 thereon, shall be used by the Board to administer the workers'
12 compensation obligations of the impaired self-insurer. Claims
13 administration includes, but is not limited to, processing,
14 investigating and paying claims, actuarial studies, attorney fees
15 incurred for filing a proof of claim in the bankruptcy of the
16 impaired self-insurer, and a pro rata portion of the staff expenses
17 of the Self-insurance Guaranty Fund Board.

18 C. Any unexpended funds, including interest thereon, held by
19 the State Treasurer in an interest-bearing account on the effective
20 date of this act from which an impaired self-insurer's workers'
21 compensation obligations are paid, shall be transferred to the
22 Board. Such funds shall be expended by the Board only for the
23 purpose of administering the workers' compensation obligations of
24

1 the impaired self-insurer and as otherwise authorized in subsection
2 D of this section.

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

10 SECTION 68. AMENDATORY Section 101, Chapter 208, O.S.L.
11 2013 (85A O.S. Supp. 2016, Section 101), is amended to read as
12 follows:

13 Section 101. A. On or before the first day of July each year,
14 the Workers' Compensation Commission shall prepare, make public and
15 submit a report for the prior calendar year to the Governor, the
16 President Pro Tempore of the Senate, the Speaker of the House of
17 Representatives, and each member of the Legislature, containing a
18 statement of the number of awards made and the causes of the
19 accidents leading to the injuries for which the awards were made,
20 total work load data of the administrative law judges, including a
21 detailed report of the work load and judgments written by each
22 judge, a detailed statement of the expenses of the Commission,
23 together with any other matter which the Commission deems proper to
24 report.

1 B. After public hearing and consultation with representatives
2 of employers, insurance carriers, and employees, the Commission
3 shall implement, with the assistance of the Insurance Commissioner,
4 by July 1, 2014, an electronic data interchange (EDI) system that
5 provides relevant data concerning the Oklahoma workers' compensation
6 system and the delivery of benefits to injured ~~workers~~ employees.

7 C. To assist the Commission in developing and implementing the
8 EDI system, there is hereby created the Oklahoma Workers'
9 Compensation Electronic Data Interchange Advisory Committee. Within
10 thirty (30) days ~~of the effective date of this act~~ after February 1,
11 2014, the Governor shall appoint five persons to serve as members of
12 the advisory committee, one of whom shall be selected by the
13 Governor as chair. The chair shall provide adequate notice of
14 meetings of the advisory committee and public hearings as required
15 by law.

16 SECTION 69. AMENDATORY Section 102, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2016, Section 102), is amended to read as
18 follows:

19 Section 102. A. The Workers' Compensation Commission shall
20 adopt rules permitting two or more employers, not otherwise subject
21 to the provisions of Section ~~150~~ 107 of this ~~act~~ title, to pool
22 together liabilities under this ~~act~~ title for the purpose of
23 qualifying as a group self-insurer and each such employer shall be
24 classified as a self-insurer.

1 B. The Commission shall approve the distribution of all
2 undistributed policyholders' surplus of a Workers' Compensation
3 Self-Insurance Program if the Program complies with the following
4 criteria:

5 1. Has been in business for at least five (5) years;

6 2. Has its financial statements audited by a public accounting
7 firm which audits at least one corporate client which has assets in
8 excess of One Billion Dollars (\$1,000,000,000.00) and on which the
9 accounting firm has issued an unqualified opinion as to the fair
10 presentation of the financial position of the Program showing
11 adequate solvency and reserves; and

12 3. Is in compliance with the provisions of this ~~act~~ title and
13 all other regulations as required by the Commission.

14 C. A group self-insurer created pursuant to this section either
15 prior to or after ~~the effective date of this act~~ February 1, 2014,
16 shall not be subject to the provisions of the Oklahoma Securities
17 Act.

18 SECTION 70. AMENDATORY Section 103, Chapter 208, O.S.L.
19 2013 (85A O.S. Supp. 2016, Section 103), is amended to read as
20 follows:

21 Section 103. The Workers' Compensation Commission shall adopt
22 rules permitting two or more group self-insurance associations to
23 pool their liabilities under this ~~act~~ title for the purpose of
24

1 providing such group self-insurance associations specific and
2 aggregate excess insurance.

3 SECTION 71. AMENDATORY Section 104, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2016, Section 104), is amended to read as
5 follows:

6 Section 104. No member or personnel of the Workers'
7 Compensation Commission, the Self-insurance Guaranty Fund Board, or
8 administrative law judge shall be liable in a civil proceeding for
9 any act performed in good faith in the performance of that person's
10 powers or duties under this ~~act~~ title.

11 SECTION 72. AMENDATORY Section 105, Chapter 208, O.S.L.
12 2013 (85A O.S. Supp. 2016, Section 105), is amended to read as
13 follows:

14 Section 105. A. No employee of the Workers' Compensation
15 Commission shall be competent to testify on any matter concerning
16 any information the employee has received through the performance of
17 the employee's duties under the provisions of this ~~act~~ title.

18 B. The commissioners and employees of the Commission shall not
19 solicit employment for any attorney or physician nor shall they
20 recommend or refer any ~~claimant~~ employee or employer to an attorney
21 or physician. If any employee of the Commission makes such a
22 solicitation, recommendation or reference, that person, upon
23 conviction, shall be guilty of a misdemeanor punishable, for each
24 offense, by a fine of not more than One Thousand Dollars (\$1,000.00)

1 or by imprisonment in the county jail not to exceed one (1) year, or
2 by both such fine and imprisonment. The Commission shall
3 immediately terminate the employment of any employee who is guilty
4 of such solicitation, recommendation or reference. A commissioner
5 guilty of such solicitation, recommendation or reference shall be
6 subject to removal from office.

7 C. No administrative law judge shall engage in any ex parte
8 communication with any party to an action pending before the
9 Commission or with any witness or medical provider regarding the
10 merits of a specific matter pending before the judge for resolution.
11 Any violation of this provision shall subject the judge to
12 disqualification from the action or matter upon presentation of an
13 application for disqualification.

14 SECTION 73. AMENDATORY Section 150, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2016, Section 107), is amended to read as
16 follows:

17 Section 107. A. 1. All public entities of this state, their
18 agencies and instrumentalities, authorities, and public trusts of
19 which they are beneficiaries shall provide workers' compensation to
20 their employees and elected officials engaged in either governmental
21 or proprietary functions in accordance with this section.
22 Compensation or indemnification for compensation shall be paid out
23 of the funds of the public entities.

24

1 2. Except as otherwise provided, the state and all its
2 institutions of higher education, departments, instrumentalities,
3 institutions, and public trusts of which it or they are
4 beneficiaries shall insure against liability for workers'
5 compensation with CompSource Oklahoma and shall not be permitted to
6 insure with any other insurance carrier unless:

7 a. CompSource Oklahoma refuses to accept the risk when
8 the application for insurance is made,

9 b. specifically authorized by law,

10 c. the state entity can obtain workers' compensation
11 insurance coverage at the same cost or at a lower cost
12 from another insurance carrier licensed in this state,
13 or

14 d. CompSource Oklahoma begins operating as a mutual
15 insurance company.

16 3. a. The state, all state institutions of higher education
17 except comprehensive universities, and all state
18 departments, instrumentalities, institutions, and
19 public trusts of which the state is a beneficiary, may
20 self-insure. Self-insurance administration may only
21 be obtained through CompSource Oklahoma, unless
22 CompSource Oklahoma begins operating as a mutual
23 insurance company.

24

1 b. If CompSource Oklahoma begins operating as a mutual
2 insurance company:

3 (1) the state, all state institutions of higher
4 education except comprehensive universities, and
5 all state departments, instrumentalities,
6 institutions, and public trusts so electing to
7 self-insure shall pay premiums set by CompSource
8 Oklahoma which shall collect premiums, pay claims
9 and provide for excess insurance, and

10 (2) all dividends or profits accumulating from a
11 self-insurance program shall be refunded to the
12 participants on a formula devised by CompSource
13 Oklahoma.

14 B. All counties, cities and towns, their instrumentalities and
15 public trusts of which they are beneficiaries shall insure against
16 their liability for workers' compensation with CompSource Oklahoma
17 or, through any combination of the following, may:

18 1. Insure with an insurance carrier licensed in this state;

19 2. Self-insure and make any appropriation of funds to cover
20 their risk;

21 3. Secure reinsurance or excess insurance over and above a
22 self-insurance retention in any manner authorized by subsections B
23 and C of Section 167 of Title 51 of the Oklahoma Statutes; or
24

1 4. Secure compensation for their employees in the manner
2 provided in The Governmental Tort Claims Act, subsection C of
3 Section 167 of Title 51 of the Oklahoma Statutes.

4 C. Boards of education, their instrumentalities and public
5 trusts of which they are beneficiaries shall insure against their
6 liability for workers' compensation through any combination of the
7 following:

8 1. Insure with an insurance carrier licensed in Oklahoma;

9 2. Self-insure and make any appropriation of funds to cover
10 their risk; or

11 3. Secure reinsurance or excess insurance over and above a
12 self-insurance retention in any manner authorized by subsection B of
13 Section 168 of Title 51 of the Oklahoma Statutes.

14 D. Comprehensive universities shall insure against their
15 liability for workers' compensation with CompSource Oklahoma or, if
16 it can be demonstrated to the Board of Regents of the comprehensive
17 university prior to the inception date of a workers' compensation
18 policy that the policy will result in a lower cost than one with
19 CompSource Oklahoma or if CompSource Oklahoma begins operating as a
20 mutual insurance company, through any combination of the following:

21 1. Insure with an insurance carrier licensed in Oklahoma; or

22 2. Self-insurance, making any appropriation of funds to cover
23 their risk.

24

1 E. In addition to any other provision of this section, city,
2 county, city-county, and public trust hospitals may insure with
3 other insurance carriers licensed in this state if it can be
4 demonstrated to the governing body of the hospital prior to the
5 inception date of a workers' compensation policy each year that the
6 policy will result in a lower cost than one with CompSource Oklahoma
7 or if CompSource Oklahoma begins operating as a mutual insurance
8 company.

9 F. For purposes of this ~~act~~ title, all contracts of employment
10 for state, county, municipal, and state-funded educational entities
11 and public trusts will be considered to have been entered into in
12 this state regardless of where the work is performed.

13 G. When a person is employed by the state, a municipality, a
14 county, or by any political subdivision thereof, and, while off-duty
15 from the employment, is employed by a private employer, the private
16 employer alone shall be liable for compensation under this ~~act~~ title
17 for any injury or death of the person arising out of and in the
18 course of employment which occurs during the hours of actual
19 employment by the private employer. The provisions of this
20 subsection shall not relieve the state, a municipality or a county,
21 or any political subdivision thereof, from providing disability
22 benefits to which a person may be entitled pursuant to a pension or
23 retirement plan. The provisions of this subsection shall not
24 preclude an employee or group of employees so employed from

1 providing separate compensation coverage for off-duty employment by
2 a private employer.

3 SECTION 74. AMENDATORY Section 151, Chapter 208, O.S.L.
4 2013 (85A O.S. Supp. 2016, Section 108), is amended to read as
5 follows:

6 Section 108. Any ~~claimant~~ employee may, upon the payment of the
7 Workers' Compensation Commission's filing fee, dismiss any claim
8 brought by the ~~claimant~~ employee at any time before final submission
9 of the case to the Commission for decision. Such dismissal shall be
10 without prejudice unless the words "with prejudice" are included in
11 the order. If any claim that is filed within the statutory time
12 permitted by Section 18 of this ~~act~~ title is dismissed without
13 prejudice, a new claim may be filed within one (1) year after the
14 entry of the order dismissing the first claim even if the statutory
15 time for filing has expired.

16 SECTION 75. AMENDATORY Section 152, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2016, Section 109), is amended to read as
18 follows:

19 Section 109. A. The Workers' Compensation Commission shall
20 establish a workers' compensation counselor or ombudsman program to
21 assist injured ~~workers~~ employees, employers and persons claiming
22 death benefits in obtaining benefits under this ~~act~~ title. A
23 special effort shall be made to equip counselors or ombudsmen with
24

1 sufficient resources to assist injured ~~workers~~ employees through the
2 system without the necessity of retaining legal representation.

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

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

19 D. The Commission shall develop a program that provides for
20 annual training for own-risk employers and claims representatives
21 handling workers' compensation claims in Oklahoma. The training
22 shall include information about the alternative dispute resolution
23 program, including counselor and ombudsman programs, mediation, and
24 other services provided by the Commission.

1 SECTION 76. AMENDATORY Section 153, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 110), is amended to read as
3 follows:

4 Section 110. A. The Workers' Compensation Commission shall
5 develop an alternative dispute resolution program which affords an
6 injured employee the opportunity to obtain benefits by request or
7 informal procedure. The program shall include an increased emphasis
8 on making mediation and other alternative dispute resolution
9 programs affordable and convenient to an injured employee not
10 represented by counsel.

11 B. Participation in an alternative dispute resolution program
12 is not a prerequisite to the commencement of a claim for benefits
13 under this ~~act~~ title. A request for alternative dispute resolution
14 or a consent to participate in such program does not invoke the
15 jurisdiction of the Commission.

16 C. Mediation shall be voluntary, informal, and nonbinding in
17 any claim arising pursuant to the provisions of this ~~act~~ title,
18 except for claims against the Multiple Injury Trust Fund and medical
19 treatment issues subject to a certified workplace medical plan.
20 Provided, however, the parties may waive mediation and proceed
21 directly to an administrative hearing.

22 D. A Commission mediator, appointed by the Commission, shall
23 conduct an informal mediation between the parties in regard to
24 claims for a closed period of lost time where the employee has

1 returned to work, for medical benefits only, for reimbursement of
2 travel expenses and medical treatment, in cases in which the
3 employee is not represented by an attorney, or there is no record of
4 insurance coverage. Such mediation shall be conducted by the
5 Commission mediator within thirty (30) days of the filing of a
6 request for any such benefit.

7 E. Upon the filing of a request for an administrative hearing
8 on issues not specifically listed in subsection D of this section,
9 the Commission shall set the case for prehearing before the assigned
10 judge within fifteen (15) days. At the prehearing, the
11 administrative law judge shall accept a waiver of mediation by the
12 parties or appoint a mediator and issue an order reflecting such
13 appointment. The mediator shall contact the parties and schedule a
14 mediation session within thirty (30) days of such order, unless
15 otherwise agreed to by the parties.

16 F. Mediation is confidential and no part of the proceeding
17 shall be considered a matter of public record. Recommendations of
18 the mediator are not binding unless the parties enter into a
19 settlement agreement. If an agreement is not reached, the results
20 and statements made during the mediation are not admissible in any
21 following proceeding.

22 G. The Commission shall be responsible for certifying those
23 persons who are eligible and qualified to serve as mediators. An
24 individual may be certified as a mediator if the applicant meets the

1 qualifications as required by the Commission. A certified mediator
2 may be an attorney or nonattorney who has worked in the area of
3 Oklahoma workers' compensation benefits for at least five (5) years.
4 Mediators serving as Commission-certified mediators on the effective
5 date of this section shall serve the remainder of their respective
6 five-year certification periods and may reapply for successive
7 certification periods.

8 H. Each certified mediator shall remain on the list for five
9 (5) years, unless removed. Mediators shall be required to complete
10 at least six (6) hours of continuing education per two-year period
11 in the areas of mediation and workers' compensation. Proof of
12 compliance with this requirement shall be submitted to the
13 Commission. This continuing education requirement shall be in
14 addition to any other such general requirement which may be required
15 by the Oklahoma State Bar Association. Cost of continuing education
16 is to be borne by the applicant.

17 I. Mediators shall be compensated at the rate or fee as
18 determined by the mediator; provided, however, the rate or fee shall
19 not exceed a maximum rate to be established by the Commission by
20 rule. The cost of mediation shall be paid by the respondent or its
21 insurance carrier. A mediator must schedule mediations for a
22 minimum two-hour block of time, and may not schedule more than one
23 mediation to take place at a time.

24

1 J. At the time of a mediation, the ~~claimant~~ employee shall be
2 in attendance unless all parties agree, and all parties shall be
3 represented during the entire mediation session by a person with
4 full settlement authority to settle any issue of the claim. If a
5 party does not have full settlement authority, or does not
6 participate in good faith in the mediation process, the mediator
7 shall report to the assigned administrative law judge of the
8 Commission who may for good cause shown assess costs, attorney fees,
9 and sanctions.

10 K. To encourage early resolution of claims, an injured employee
11 may participate in mediation without counsel. Upon compromise
12 settlement of the claim, the parties may submit the settlement
13 agreement to any administrative law judge for final approval.

14 SECTION 77. AMENDATORY Section 154, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2016, Section 111), is amended to read as
16 follows:

17 Section 111. A. ~~Any claim for any benefit under this act shall~~
18 ~~be commenced with the~~ If any employee is denied any rights under
19 this title, he or she may challenge the denial by filing of an
20 Employee's First Notice of Claim for Compensation by the employee
21 with the Workers' Compensation Commission. The claim shall contain
22 a The Employee's First Notice of Claim for Compensation shall be on
23 a form prescribed by the Commission and shall require the following
24 information:

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

3 2. A description of the employee's claim for benefits,
4 including the rights alleged to have been denied by the employer;

5 3. The section of this title which is the basis for the
6 employee's claim; and

7 4. A statement that all matters stated therein are true and
8 accurate and shall be signed by the ~~claimant~~ employee and the
9 ~~claimant's~~ employee's agent, if any. Any person who signs this
10 statement or causes another to sign this statement knowing the
11 statement to be false shall be guilty of perjury. An individual who
12 signs on behalf of a ~~claimant~~ employee may be presumed to have
13 the authorization of the ~~claimant~~ employee and to be acting at the
14 ~~claimant's~~ employee's direction.

15 If the Employee's First Notice of Claim for Compensation does not
16 contain the required information, it shall be rejected by the
17 Commission.

18 B. If an employer controverts any issue related to the
19 Employee's First Notice of Claim for Compensation, the employer
20 shall file a Notice of Contested Issues on a form prescribed by the
21 Commission. All answers and defenses to claims or other documents
22 filed on behalf of a respondent or the respondent's insurer in a
23 workers' compensation case shall contain a statement that all
24 matters stated therein are true and accurate and shall be signed by

1 the respondent, the insurer, or their respective agents, if any.
2 Any person who signs such a statement or causes another to sign such
3 a statement, knowing the statement to be false, shall be guilty of
4 perjury. An individual who signs on behalf of a respondent, its
5 insurer, or its agent may be presumed to have the authorization of
6 the respondent, its insurer or agent and to be acting at their
7 direction.

8 ~~C. Any party shall have the right to request a prehearing~~
9 ~~conference or administrative hearing before the Commission on any~~
10 ~~issue. The Commission shall, within seven (7) days of the receipt~~
11 ~~of such notification, set the matter for prehearing conference or~~
12 ~~administrative hearing at the earliest available time. In the event~~
13 ~~the compensability of a claim is contested, the respondent shall~~
14 ~~complete discovery and secure a medical evaluation of the claimant~~
15 ~~within sixty (60) days of the filing of a request for benefits.~~

16 SECTION 78. AMENDATORY Section 155, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2016, Section 112), is amended to read as
18 follows:

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

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

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

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

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

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

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

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

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

21 I. If the Commission does not follow the opinion of the
22 independent medical examiner on any issue, the administrative law
23 judge or member of the Board of Review shall set out its reasons for
24 deviating from the opinion of the independent medical examiner. The

1 opinion of the independent medical examiner shall be followed unless
2 there is clear and convincing evidence to the contrary.

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

10 SECTION 79. AMENDATORY Section 156, Chapter 208, O.S.L.
11 2013 (85A O.S. Supp. 2016, Section 113), is amended to read as
12 follows:

13 Section 113. For cases not covered by a certified workplace
14 medical plan, and where the employer, insurance company, or own-risk
15 employer do not provide case management, case management may be
16 granted by the Workers' Compensation Commission on the request of
17 any party, or when the Commission determines that case management is
18 appropriate. The administrative law judge shall appoint a case
19 manager from a list of qualified case managers developed, maintained
20 and periodically reviewed by the Commission. The period of
21 qualification shall be two (2) years. Case managers may be
22 qualified for successive two-year periods. Case managers serving as
23 qualified case managers on ~~the effective date of this act~~ February
24 1, 2014, shall serve the remainder of their respective two-year

1 qualification periods and may reapply for successive qualification
2 periods. The reasonable and customary charges of a medical case
3 manager appointed by the Commission shall be borne by the employer
4 or insurance carrier. One change of case manager per party shall be
5 made upon application of any party.

6 SECTION 80. AMENDATORY Section 157, Chapter 208, O.S.L.
7 2013 (85A O.S. Supp. 2016, Section 114), is amended to read as
8 follows:

9 Section 114. When a compensable injury results in the loss of
10 one or more eyes, teeth, or members of the body, or the replacement
11 of a joint, the employer shall furnish such prosthetic devices as
12 may be necessary as determined by the Workers' Compensation
13 Commission in the treatment and rehabilitation of the injured ~~worker~~
14 employee for the lifetime of the ~~worker~~ employee. When a ~~worker~~ an
15 employee sustains a compensable injury, arising out of and in the
16 course of his or her employment, which results in damage to a
17 prosthetic device with which such worker is equipped, the employer
18 shall repair or replace such device. Provided, that a subsequent
19 injury to the part of the body for which a prosthetic device is
20 provided shall terminate the obligation of the employer to provide
21 such prosthetic device.

22 SECTION 81. AMENDATORY Section 158, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2016, Section 115), is amended to read as
24 follows:

1 Section 115. A. If the employee and employer shall reach an
2 agreement for the full, final and complete settlement of any issue
3 of a claim pursuant to ~~this act~~ the Administrative Workers'
4 Compensation Act, a form designated as "Joint Petition" shall be
5 signed by both the employer and employee, or representatives
6 thereof, and shall be approved by the Workers' Compensation
7 Commission or an administrative law judge, and filed with the
8 Commission. In cases in which the employee is not represented by
9 legal counsel, the Commission or an administrative law judge shall
10 have jurisdiction to approve a full, final and complete settlement
11 of any issue upon the filing of an Employer's First Notice of ~~Injury~~
12 Claim for Compensation. There shall be no requirement for the
13 filing of an Employee's First Notice of Claim for Compensation to
14 effect such settlement in cases in which the employee is not
15 represented by legal counsel.

16 B. In the event all issues of a claim are not fully, finally
17 and completely settled by a Joint Petition, the issues not settled
18 by the parties and subject to the Commission's continuing
19 jurisdiction must be noted by appendix to the Joint Petition or on a
20 form created for such purpose by the Commission. The appendix must
21 be signed by the parties and approved by the Commission as set forth
22 herein.

23 C. In the absence of fraud, a Joint Petition shall be deemed
24 binding upon the parties thereto and a final adjudication of all

1 rights pursuant to this ~~act~~ title or the workers' compensation law
2 in effect at the time of the injury or final order of the Workers'
3 Compensation Court. An official record shall be made by an official
4 Commission reporter of the testimony taken to effect the Joint
5 Petition.

6 D. A good-faith effort shall be made on the part of any
7 insurance carrier, CompSource Oklahoma, or group self-insured plan
8 to notify an insured employer of the possibility of and terms of any
9 settlement of a workers' compensation case pursuant to this section.
10 Written comments or objections to settlements shall be filed with
11 the Commission and periodically shared with the management of the
12 applicable insurer. A written notice shall be made to all
13 policyholders of their right to a good-faith effort by their insurer
14 to notify them of any proposed settlement, if the policyholder so
15 chooses.

16 SECTION 82. AMENDATORY Section 161, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2016, Section 118), is amended to read as
18 follows:

19 Section 118. A. A fee of One Hundred Forty Dollars (\$140.00)
20 per case, including any Joint Petition authorized by this ~~act~~ title,
21 shall be collected by the Workers' Compensation Commission and
22 assessed as costs to be paid by the party against whom any award
23 becomes final, to be deposited as follows:

24

1 1. One Hundred Five Dollars (\$105.00) to the credit of the
2 Workers' Compensation Commission Revolving Fund created by Section
3 28.1 of this ~~act~~ title;

4 2. Ten Dollars (\$10.00) to the credit of the Attorney General's
5 Workers' Compensation Fraud Unit Revolving Fund created by Section
6 19.2 of Title 74 of the Oklahoma Statutes; and

7 3. Twenty-five Dollars (\$25.00) to the credit of the Workers'
8 Compensation Commission Revolving Fund for purposes of implementing
9 the provisions of this ~~act~~ title, including strengthening and
10 providing additional funding for the Attorney General's Workers'
11 Compensation Fraud Unit, providing counseling services pursuant to
12 the workers' compensation counselor or ombudsman program and safety
13 in the workplace.

14 B. A fee of One Hundred Thirty Dollars (\$130.00) per action to
15 reopen any case pursuant to Section 32 of this ~~act~~ title shall be
16 collected by the Commission and assessed as costs to be paid by the
17 party that reopens the case. The fee collected pursuant to this
18 subsection shall be deposited to the credit of the Workers'
19 Compensation Commission Revolving Fund for purposes of implementing
20 the provisions of this ~~act~~ title, including strengthening and
21 providing additional funding for the Attorney General's Workers'
22 Compensation Fraud Unit, providing counseling services pursuant to
23 the workers' compensation counselor or ombudsman program and safety
24 in the workplace.

1 SECTION 83. AMENDATORY Section 164, Chapter 208, O.S.L.
2 2013 (85A O.S. Supp. 2016, Section 121), is amended to read as
3 follows:

4 Section 121. A. There is hereby created an Advisory Council on
5 Workers' Compensation.

6 B. The voting membership of the Advisory Council shall consist
7 of nine (9) members. Any member serving on ~~the effective date of~~
8 ~~this section~~ February 1, 2014, shall serve the remainder of his or
9 her term. The chair of the Workers' Compensation Commission shall
10 be an ex officio nonvoting member.

11 1. The Governor shall appoint three members representing
12 employers in this state, one of whom shall be from a list of
13 nominees provided by the predominant statewide broad-based business
14 organization.

15 2. The Speaker of the House of Representatives shall appoint
16 three members representing employees in this state, one of whom
17 shall be from a list of nominees provided by the most representative
18 labor organization in the state.

19 3. The President Pro Tempore of the Senate shall appoint three
20 members, two who are attorneys representing the legal profession in
21 this state, one of whom shall be an attorney who practices primarily
22 in the area of defense of workers' compensation claims, and one of
23 whom shall be an attorney who primarily represents ~~claimants~~
24

1 employees, and a medical doctor or doctor of osteopathy actively
2 engaged in the treatment of injured ~~workers~~ employees.

3 C. The term of office for appointees shall be as follows:

4 1. The term of office for three positions, one each appointed
5 by the Governor, the President Pro Tempore of the Senate and the
6 Speaker of the House of Representatives shall expire on January 1,
7 2015;

8 2. The term of office for three positions, one each appointed
9 by the Governor, the President Pro Tempore of the Senate and the
10 Speaker of the House of Representatives shall expire on January 1,
11 2016; and

12 3. The term of office for three positions, one each appointed
13 by the Governor, the President Pro Tempore of the Senate and the
14 Speaker of the House of Representatives shall expire on January 1,
15 2017.

16 D. Thereafter, successors in office shall be appointed for a
17 three-year term. Members shall be eligible to succeed themselves in
18 office.

19 E. Any person appointed to fill a vacancy shall be appointed
20 for the unexpired portion of the term.

21 F. The chair and the vice-chair of the Advisory Council shall
22 be appointed by the Governor.

23

24

1 G. Members shall receive their traveling and other necessary
2 expenses incurred in the performance of their duties as provided in
3 the State Travel Reimbursement Act.

4 H. Meetings of the Advisory Council shall be quarterly or as
5 called by the chair or upon petition by a majority of the voting
6 members. The presence of five voting members constitutes a quorum.
7 No action shall be taken by the Advisory Council without the
8 affirmative vote of at least five members.

9 I. The Commission shall provide office supplies and personnel
10 of the Commission to carry out any of the duties that have been
11 entrusted to the Advisory Council.

12 J. The Advisory Council shall analyze and review the workers'
13 compensation system, the reports of the Commission, and trends in
14 the field of workers' compensation. The Advisory Council may
15 recommend improvements and proper responses to developing trends.
16 The Advisory Council shall report its findings annually to the
17 Governor, the Chief Justice of the Supreme Court, the President Pro
18 Tempore of the Senate, and the Speaker of the House of
19 Representatives.

20 K. In addition to other duties required by this section, the
21 Advisory Council shall consult with the Court regarding oversight of
22 independent medical examiners as provided in Section 45 of this ~~act~~
23 title.

24

1 L. The Advisory Council shall review the Oklahoma Treatment
2 Guidelines as provided in the Administrative Workers' Compensation
3 ~~Code Act~~, and report the findings of such review to the Commission
4 as provided in this ~~act~~ section.

5 SECTION 84. AMENDATORY Section 165, Chapter 208, O.S.L.
6 2013, as amended by Section 4, Chapter 344, O.S.L. 2015 (85A O.S.
7 Supp. 2016, Section 122), is amended to read as follows:

8 Section 122. A. The Workers' Compensation Commission Revolving
9 Fund established by Section ~~2~~ 28.1 of this ~~act~~ title shall be used
10 for the costs of administering this ~~act~~ title and for other purposes
11 as authorized by law.

12 B. For the purpose of providing funds for the Workers'
13 Compensation Commission Revolving Fund, for the Workers'
14 Compensation Administrative Fund created in Section ~~5~~ 401.1 of this
15 ~~act~~ title, for the Multiple Injury Trust Fund created in Section 28
16 of this title, and to fund other provisions within this title, the
17 following tax rates shall apply:

18 1. Each mutual or interinsurance association, stock company,
19 CompSource Oklahoma or other insurance carrier writing workers'
20 compensation insurance in this state shall pay to the Oklahoma Tax
21 Commission an assessment at a rate of one percent (1%) of all gross
22 direct premiums written during each quarter of the calendar year for
23 workers' compensation insurance on risks located in this state after
24 deducting from such gross direct premiums, return premiums,

1 unabsorbed portions of any deposit premiums, policy dividends,
2 safety refunds, savings and other similar returns paid or credited
3 to policyholders. Such payments to the Tax Commission shall be made
4 not later than the fifteenth day of the month following the close of
5 each quarter of the calendar year in which such gross direct premium
6 is collected or collectible. Contributions made by insurance
7 carriers and CompSource Oklahoma, under the provisions of this
8 section, shall be considered for the purpose of computing workers'
9 compensation rates; and

10 2. When an employer is authorized to become a self-insurer, the
11 Workers' Compensation Commission shall so notify the Tax Commission,
12 giving the effective date of such authorization. The Tax Commission
13 shall then assess and collect from the employers carrying their own
14 risk an assessment at the rate of two percent (2%) of the total
15 compensation for permanent total disability awards, permanent
16 partial disability awards and death benefits paid out during each
17 quarter of the calendar year by the employers. Such assessment
18 shall be payable by the employers and collected by the Tax
19 Commission according to the provisions of this section regarding
20 payment and collection of the assessment created in paragraph 1 of
21 this subsection.

22 C. It shall be the duty of the Tax Commission to collect the
23 payments provided for in this title. The Tax Commission is hereby
24 authorized to bring an action for the recovery of any delinquent or

1 unpaid payments required in this section. The Tax Commission may
2 also enforce payments by proceeding in accordance with the
3 provisions of Section 98 of this title.

4 D. The Tax Commission shall pay monthly to the State Treasurer
5 to the credit of the Multiple Injury Trust Fund all monies collected
6 under the provisions of this section less the annual amounts which
7 shall be apportioned by the Oklahoma Tax Commission as follows:

8 1. Five Million Dollars (\$5,000,000.00) shall be payable in
9 equal monthly installments to the credit of the Workers'
10 Compensation Commission Revolving Fund established in Section ~~2~~ 28.1
11 of this ~~act~~ title for the fiscal year ending June 30, 2016, and
12 Three Million Dollars (\$3,000,000.00) for the fiscal year ending
13 June 30, 2017, and for all subsequent years to be used to implement
14 the provisions of this title; and

15 2. Four Million Dollars (\$4,000,000.00) shall be payable in
16 equal monthly installments to the credit of the Workers'
17 Compensation Administrative Fund established in Section ~~5~~ 401.1 of
18 this ~~act~~ title for the fiscal year ending June 30, 2016, Three
19 Million Five Hundred Thousand Dollars (\$3,500,000.00) for the fiscal
20 year ending June 30, 2017, Three Million Five Hundred Thousand
21 Dollars (\$3,500,000.00) for the fiscal year ending June 30, 2018,
22 Three Million Dollars (\$3,000,000.00) for the fiscal year ending
23 June 30, 2019, and Two Million Five Hundred Thousand Dollars
24 (\$2,500,000.00) for the fiscal year ending June 30, 2020. Monies

1 deposited in the Workers' Compensation Administrative Fund shall be
2 used by the Workers' Compensation Court of Existing Claims to
3 implement provisions provided for in this title.

4 E. The refund provisions of Sections 227 through 229 of Title
5 68 of the Oklahoma Statutes shall be applicable to any payments made
6 pursuant to this section.

7 SECTION 85. AMENDATORY Section 166, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2016, Section 123), is amended to read as
9 follows:

10 Section 123. Any form, claim, answer or report to be filed by
11 any person with the Workers' Compensation Commission pursuant to
12 this ~~act~~ title shall contain or be verified by a written declaration
13 that such form, claim, answer or report is true and made under the
14 penalty of perjury.

15 SECTION 86. AMENDATORY Section 168, Chapter 208, O.S.L.
16 2013 (85A O.S. Supp. 2016, Section 125), is amended to read as
17 follows:

18 Section 125. The time within which an act is to be done, as
19 provided for in this ~~act~~ title, shall be computed by excluding the
20 first day and including the last day. If the last day is a legal
21 holiday as defined by Section 82.1 of Title 25 of the Oklahoma
22 Statutes, it shall be excluded.

23 SECTION 87. REPEALER Sections 36, 60, 61, 63, 67, 72,
24 80, 159 and 160, Chapter 208, O.S.L. 2013 (85A O.S. Supp. 2016,

1 Sections 36, 60, 61, 63, 67, 72, 80, 116 and 117), are hereby
2 repealed.

3 SECTION 88. This act shall become effective in accordance with
4 the provisions of Section 58 of Article V of the Oklahoma
5 Constitution.

6 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
7 April 11, 2017 - DO PASS AS AMENDED
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