

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 HOUSE BILL 1723

By: Moore

4
5
6 AS INTRODUCED

7 An Act relating to workers' compensation; amending
8 Sections 2, 45, as amended by Section 2, Chapter 390,
9 O.S.L. 2015, 47, 68 and 153, Chapter 208, O.S.L. 2013
10 (85A O.S. Supp. 2016, Sections 2, 45, 47, 68 and
11 110), which relate to the Administrative Workers'
12 Compensation Act; adding definition; modifying
13 definitions; reducing compensation if employee fails
14 to obey certain laws; modifying status of physician's
15 opinion for determination of permanent partial
16 disability; prohibiting compensation in certain
17 circumstances; limiting duration of weekly income
18 benefits for surviving spouses; establishing maximum
19 allowable rate or fee for mediators; providing for
20 codification; and providing an effective date.

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

22 SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L.
23 2013 (85A O.S. Supp. 2016, Section 2), is amended to read as
24 follows:

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

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

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

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

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

1 regularly obtains continuing education hours to maintain
2 certification:

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

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

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

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

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

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

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

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

23 (2) occurred at a specifically identifiable time and
24 place,

- 1 (3) occurred by chance or from unknown causes, and
2 (4) was independent of sickness, mental incapacity,
3 bodily infirmity or any other cause.

4 b. "Compensable injury" does not include:

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

1 within twenty-four (24) hours of being injured or
2 reporting an injury, an employee tests positive
3 for intoxication, an illegal controlled
4 substance, or a legal controlled substance used
5 in contravention to a treating physician's
6 orders, or refuses to undergo the drug and
7 alcohol testing, there shall be a rebuttable
8 presumption that the injury was caused by the use
9 of alcohol, illegal drugs, or prescription drugs
10 used in contravention of physician's orders.

11 This presumption may only be overcome if the
12 employee proves by clear and convincing evidence
13 that his or her state of intoxication had no
14 causal relationship to the injury,

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

1 (6) any preexisting condition except when the
2 treating physician clearly confirms an
3 identifiable and significant aggravation incurred
4 in the course and scope of employment, or
5 (7) an injury resulting directly from the voluntary
6 failure of the injured employee to use a safety
7 device or other protection against accident
8 furnished for use pursuant to any statute, by
9 order of the Commissioner of Labor, or by an
10 employer's written safety rules or procedure.

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

18 d. A compensable injury shall be established by medical
19 evidence supported by objective findings as defined in
20 paragraph ~~30~~ 31 of this section.

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

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

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

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

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

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

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

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

1 for the employer or after the employee clocks out or
2 otherwise stops work for the employer, or

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

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

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

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

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

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

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

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

- 1 (1) any person for whom an employer is liable under
2 any Act of Congress for providing compensation to
3 employees for injuries, disease or death arising
4 out of and in the course of employment including,
5 but not limited to, the Federal Employees'
6 Compensation Act, the Federal Employers'
7 Liability Act, the Longshore and Harbor Workers'
8 Compensation Act and the Jones Act, to the extent
9 his or her employees are subject to such acts,
- 10 (2) any person who is employed in agriculture or
11 horticulture by an employer who had a gross
12 annual payroll in the preceding calendar year of
13 less than One Hundred Thousand Dollars
14 (\$100,000.00) wages for agricultural or
15 horticultural workers, or any person who is
16 employed in agriculture or horticulture who is
17 not engaged in operation of motorized machines,
- 18 (3) any person who is a licensed real estate sales
19 associate or broker, paid on a commission basis,
- 20 (4) any person who is providing services in a medical
21 care or social services program, or who is a
22 participant in a work or training program,
23 administered by the Department of Human Services,
24 unless the Department is required by federal law

1 or regulations to provide workers' compensation
2 for such person. This division shall not be
3 construed to include nursing homes,

4 (5) any person employed by an employer with five or
5 fewer total employees, all of whom are related by
6 blood or marriage to the employer, if the
7 employer is a natural person or a general or
8 limited partnership, or an incorporator of a
9 corporation if the corporation is the employer,

10 (6) any person employed by an employer which is a
11 youth sports league which qualifies for exemption
12 from federal income taxation pursuant to federal
13 law,

14 (7) sole proprietors, members of a partnership,
15 individuals who are party to a franchise
16 agreement as set out by the Federal Trade
17 Commission franchise disclosure rule, 16 CFR
18 436.1 through 436.11, members of a limited
19 liability company who own at least ten percent
20 (10%) of the capital of the limited liability
21 company or any stockholder-employees of a
22 corporation who own ten percent (10%) or more
23 stock in the corporation, unless they elect to be
24 covered by a policy of insurance covering

1 benefits under the Administrative Workers'
2 Compensation Act,

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

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

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

21 (10) a person referred to as a drive-away owner-
22 operator who privately owns and utilizes a tow
23 vehicle in drive-away operations and operates
24 independently for hire, if the drive-away owner-

1 operator actually utilizes the tow vehicle and if
2 the person contracting with the drive-away owner-
3 operator is not the lessor of the tow vehicle.
4 Provided, however, a drive-away owner-operator
5 shall not be precluded from workers' compensation
6 coverage under the Administrative Workers'
7 Compensation Act if the drive-away owner-operator
8 elects to participate as a sole proprietor, and

9 (11) any person who is employed as a domestic servant
10 or as a casual worker in and about a private home
11 or household, which private home or household had
12 a gross annual payroll in the preceding calendar
13 year of less than Fifty Thousand Dollars
14 (\$50,000.00) for such workers;

15 19. "Employer" means a person, partnership, association,
16 limited liability company, corporation, and the legal
17 representatives of a deceased employer, or the receiver or trustee
18 of a person, partnership, association, corporation, or limited
19 liability company, departments, instrumentalities and institutions
20 of this state and divisions thereof, counties and divisions thereof,
21 public trusts, boards of education and incorporated cities or towns
22 and divisions thereof, employing a person included within the term
23 "employee" as defined in this section. Employer may also mean the
24 employer's workers' compensation insurance carrier, if applicable.

1 Except as provided otherwise, this act applies to all public and
2 private entities and institutions. Employer shall not include a
3 qualified employer with an employee benefit plan as provided under
4 the Oklahoma Employee Injury Benefit Act in Sections ~~107~~ 200 through
5 ~~120~~ 213 of this ~~act~~ title;

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

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

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

17 23. "Impaired self-insurer" means a private self-insurer or
18 group self-insurance association that fails to pay its workers'
19 compensation obligations, or is financially unable to do so and is
20 the subject of any proceeding under the Federal Bankruptcy Reform
21 Act of 1978, and any subsequent amendments or is the subject of any
22 proceeding in which a receiver, custodian, liquidator,
23 rehabilitator, trustee or similar officer has been appointed by a
24

1 court of competent jurisdiction to act in lieu of or on behalf of
2 the self-insurer;

3 24. "Incapacity" means inadequate strength or ability to
4 perform a work-related task;

5 25. "Insurance Commissioner" means the Insurance Commissioner
6 of the State of Oklahoma;

7 26. "Insurance Department" means the Insurance Department of
8 the State of Oklahoma;

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

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

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

21 30. "Misconduct" shall include the following:

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

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

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

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

(b) For the purpose of making permanent disability ratings to the spine, physicians shall use criteria established by the most current edition of the American Medical

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

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

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

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

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

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

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

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

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

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

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

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

14 40. "Remarriage" means the existence of a legally recognized
15 marriage under the laws of this state, or any other state or nation,
16 and specifically including common law marriage. "Remarriage", as
17 used in this title, also includes cohabitation. "Cohabitation"
18 means the dwelling together of a man and a woman of uncommon
19 ancestry who are in a habitual, but not necessarily continuous or
20 conjugal, relationship not solemnized as a marriage according to
21 law, or not necessarily meeting the standards of a common law
22 marriage;

23 41. "Scheduled member" or "member" means hands, fingers, arms,
24 legs, feet, toes, and eyes. In addition, for purposes of the

1 Multiple Injury Trust Fund only, "scheduled member" means hearing
2 impairment;

3 ~~41.~~ 42. "Scientifically based" involves the application of
4 rigorous, systematic, and objective procedures to obtain reliable
5 and valid knowledge relevant to medical testing, diagnoses and
6 treatment; is adequate to justify the general conclusions drawn; and
7 has been accepted by a peer-review journal or approved by a panel of
8 independent experts through a comparably rigorous, objective, and
9 scientific review;

10 ~~42.~~ 43. "State average weekly wage" means the state average
11 weekly wage determined by the Oklahoma Employment Security
12 Commission in the preceding calendar year. If such determination is
13 not available, the Commission shall determine the wage annually
14 after reasonable investigation;

15 ~~43.~~ 44. "Subcontractor" means a person, firm, corporation or
16 other legal entity hired by the general or prime contractor to
17 perform a specific task for the completion of a work-related
18 activity;

19 ~~44.~~ 45. "Surgery" does not include an injection, or the forcing
20 of fluids beneath the skin, for treatment or diagnosis;

21 ~~45.~~ 46. "Surviving spouse" means the employee's spouse by
22 reason of a legal marriage recognized by the State of Oklahoma or
23 under the requirements of a common law marriage in this state, as
24 determined by the Workers' Compensation Commission;

1 ~~46.~~ 47. "Temporary partial disability" means an injured
2 employee who is temporarily unable to perform his or her job, but
3 may perform alternative work offered by the employer;

4 ~~47.~~ 48. "Time of accident" or "date of accident" means the time
5 or date of the occurrence of the accidental incident from which
6 compensable injury, disability, or death results; and

7 ~~48.~~ 49. "Wages" means money compensation received for
8 employment at the time of the accident, including the reasonable
9 value of board, rent, housing, lodging, or similar advantage
10 received from the employer and includes the amount of tips required
11 to be reported by the employer under Section 6053 of the Internal
12 Revenue Code and the regulations promulgated pursuant thereto or the
13 amount of actual tips reported, whichever amount is greater.

14 SECTION 2. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 35.1 of Title 85A, unless there
16 is created a duplication in numbering, reads as follows:

17 A. The compensation payable under the Administrative Workers'
18 Compensation Act shall be reduced, but by no more than fifty percent
19 (50%), if the employee's injury is otherwise compensable, is not an
20 injury enumerated and described as not compensable under Section 2
21 of Title 85A of the Oklahoma Statutes, and the employee's injury or
22 death was caused, in whole or in part, by the employee's failure to
23 obey any state or federal law enacted for the protection of
24 employees or the public.

1 B. The reduction in compensation provided for in subsection A
2 of this section shall be based upon the percentage of causation
3 attributed to the conduct of the employee compared to all other
4 causes of the accident resulting in the injury or death. The
5 Workers' Compensation Commission shall specifically identify all
6 causes and allocate, by percentage, degrees of causation among them.

7 C. If an injury is not compensable pursuant to Section 2 of
8 Title 85A of the Oklahoma Statutes, this section shall not be
9 construed so as to render the injury partially compensable.

10 SECTION 3. AMENDATORY Section 45, Chapter 208, O.S.L.
11 2013, as amended by Section 2, Chapter 390, O.S.L. 2015 (85A O.S.
12 Supp. 2016, Section 45), is amended to read as follows:

13 Section 45. A. Temporary Total Disability.

14 1. If the injured employee is temporarily unable to perform his
15 or her job or any alternative work offered by the employer, he or
16 she shall be entitled to receive compensation equal to seventy
17 percent (70%) of the injured employee's average weekly wage, but not
18 to exceed seventy percent (70%) of the state average weekly wage,
19 for one hundred four (104) weeks. Provided, there shall be no
20 payment for the first three (3) days of the initial period of
21 temporary total disability. If an administrative law judge finds
22 that a consequential injury has occurred and that additional time is
23 needed to reach maximum medical improvement, temporary total
24 disability may continue for a period of not more than an additional

1 fifty-two (52) weeks. Such finding shall be based upon a showing of
2 medical necessity by clear and convincing evidence.

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

22 B. Temporary Partial Disability.

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

1 employer, he or she shall be entitled to receive compensation equal
2 to the greater of seventy percent (70%) of the difference between
3 the injured employee's average weekly wage before the injury and his
4 or her weekly wage for performing alternative work after the injury,
5 but only if his or her weekly wage for performing the alternative
6 work is less than the temporary 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 employer, he or she shall not be entitled to benefits
11 under subsection A of this section or under this section.

12 C. Permanent Partial Disability.

13 1. A permanent partial disability award or combination of
14 awards granted an injured worker may not exceed a permanent partial
15 disability rating of one hundred percent (100%) to any body part or
16 to the body as a whole. The determination of permanent partial
17 disability shall be the responsibility of the Commission through its
18 administrative law judges. Any claim by an employee for
19 compensation for permanent partial disability must be supported by
20 competent medical testimony of a medical doctor, osteopathic
21 physician, or chiropractor, and shall be supported by objective
22 medical findings, as defined in Section 2 of this act title. The
23 opinion of the physician shall include employee's percentage of
24 permanent partial disability and whether or not the disability is

1 job-related and caused by the accidental injury or occupational
2 disease. A physician's opinion of the nature and extent of
3 permanent partial disability to parts of the body other than
4 scheduled members must be based solely on criteria established by
5 the current edition of the American Medical Association's "Guides to
6 the Evaluation of Permanent Impairment". A copy of any written
7 evaluation shall be sent to both parties within seven (7) days of
8 issuance. Medical opinions addressing compensability and permanent
9 disability must be stated within a reasonable degree of medical
10 certainty. Any party may submit the report of an evaluating
11 physician. The opinion of the treating physician shall have
12 presumptive weight, and the Commission shall base its determination
13 of permanent partial disability on the opinion unless the
14 preponderance of other medical evidence is to the contrary. Nothing
15 in this paragraph shall be construed to restrict either the evidence
16 to be considered by the Commission or the fact-finding prerogative
17 of the Commission.

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

1 discretion shall not be allowed if the injury from which an employee
2 is entitled to receive temporary total disability compensation is a
3 nonsurgical soft tissue injury and the employee returns to work in
4 the same capacity or job title for any employer.

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

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

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

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

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

9 c. 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~~ 205 and
20 ~~165~~ 122 of this ~~act~~ title shall be calculated based
21 upon the amount of the permanent partial disability
22 award and shall be paid at the time of the deferral.

23 6. Previous Disability: The fact that an employee has suffered
24 previous disability or received compensation therefor shall not

1 preclude the employee from compensation for a later accidental
2 personal injury or occupational disease. In the event there exists
3 a previous permanent partial disability, including a previous non-
4 work-related injury or condition which produced permanent partial
5 disability and the same is aggravated or accelerated by an
6 accidental personal injury or occupational disease, compensation for
7 permanent partial disability shall be only for such amount as was
8 caused by such accidental personal injury or occupational disease
9 and no additional compensation shall be allowed for the preexisting
10 disability or impairment. Any such reduction shall not apply to
11 temporary total disability, nor shall it apply to compensation for
12 medical treatment.

13 a. If workers' compensation benefits have previously been
14 awarded through settlement or judicial or
15 administrative determination in Oklahoma, the
16 percentage basis of the prior settlement or award
17 shall conclusively establish the amount of permanent
18 partial disability determined to be preexisting. If
19 workers' compensation benefits have not previously
20 been awarded through settlement or judicial or
21 administrative determination in Oklahoma, the amount
22 of preexisting permanent partial disability shall be
23 established by competent evidence.

24

1 b. In all cases, the applicable reduction shall be
2 calculated as follows:

3 (1) if the preexisting impairment is the result of
4 injury sustained while working for the employer
5 against whom workers' compensation benefits are
6 currently being sought, any award of compensation
7 shall be reduced by the current dollar value
8 attributable under the Administrative Workers'
9 Compensation Act to the percentage of permanent
10 partial disability determined to be preexisting.
11 The current dollar value shall be calculated by
12 multiplying the percentage of preexisting
13 permanent partial disability by the compensation
14 rate in effect on the date of the accident or
15 injury against which the reduction will be
16 applied, and

17 (2) in all other cases, the employer against whom
18 benefits are currently being sought shall be
19 entitled to a credit for the percentage of
20 preexisting permanent partial disability.

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

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

3 9. The permanent partial disability rate of compensation for
4 amputation or permanent total loss of use of a scheduled member
5 specified in Section 46 of this ~~act~~ title shall be seventy percent
6 (70%) of the employee's average weekly wage, not to exceed Three
7 Hundred Twenty-three Dollars (\$323.00), multiplied by the number of
8 weeks set forth for the member in Section 46 of this ~~act~~ title,
9 regardless of whether the injured employee is able to return to his
10 or her pre-injury or equivalent job.

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

20 D. Permanent Total Disability.

21 1. In case of total disability adjudged to be permanent,
22 seventy percent (70%) of the employee's average weekly wages, but
23 not in excess of the state's average weekly wage, shall be paid to
24 the employee during the continuance of the disability until such

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

18 2. The Commission shall annually review the status of any
19 employee receiving benefits for permanent total disability against
20 the last employer. The Commission shall require the employee to
21 annually file an affidavit under penalty of perjury stating that he
22 or she is not and has not been gainfully employed and is not capable
23 of gainful employment. Failure to file such affidavit shall result
24

1 in suspension of benefits; provided, however, reinstatement of
2 benefits may occur after proper hearing before the Commission.

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

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

22 3. There shall be a presumption in favor of ordering vocational
23 rehabilitation services or training for an eligible injured employee
24 under the following circumstances:

- a. if the employee's occupation is truck driver or laborer and the medical condition is traumatic brain injury, stroke or uncontrolled vertigo,
- b. if the employee's occupation is truck driver or laborer performing high-risk tasks and the medical condition is seizures,
- c. if the employee's occupation is manual laborer and the medical condition is bilateral wrist fusions,
- d. if the employee's occupation is assembly-line worker and the medical condition is radial head fracture with surgical excision,
- e. if the employee's occupation is heavy laborer and the medical condition is myocardial infarction with congestive heart failure,
- f. if the employee's occupation is heavy manual laborer and the medical condition is multilevel neck or back fusions greater than two levels,
- g. if the employee's occupation is laborer performing overhead work and the medical condition is massive rotator cuff tears, with or without surgery,
- h. if the employee's occupation is heavy laborer and the medical condition is recurrent inguinal hernia following unsuccessful surgical repair,

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

1 4. Upon the request of either party, or by order of an
2 administrative law judge, the Vocational Rehabilitation Director
3 shall assist the Workers' Compensation Commission in determining if
4 it is appropriate for a claimant to receive vocational
5 rehabilitation training or services. If appropriate, the
6 administrative law judge shall refer the employee to a qualified
7 expert for evaluation of the practicability of, need for and kind of
8 rehabilitation services or training necessary and appropriate in
9 order to restore the employee to gainful employment. The cost of
10 the evaluation shall be paid by the employer. Following the
11 evaluation, if the employee refuses the services or training ordered
12 by the administrative law judge, or fails to complete in good faith
13 the vocational rehabilitation training ordered by the administrative
14 law judge, then the cost of the evaluation and services or training
15 rendered may, in the discretion of the administrative law judge, be
16 deducted from any award of benefits to the employee which remains
17 unpaid by the employer. Upon receipt of such report, and after
18 affording all parties an opportunity to be heard, the administrative
19 law judge shall order that any rehabilitation services or training,
20 recommended in the report, or such other rehabilitation services or
21 training as the administrative law judge may deem necessary,
22 provided the employee elects to receive such services, shall be
23 provided at the expense of the employer. Except as otherwise
24 provided in this subsection, refusal to accept rehabilitation

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

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

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

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

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

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

15 F. Disfigurement.

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

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

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

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

8 SECTION 4. AMENDATORY Section 47, Chapter 208, O.S.L.
9 2013 (85A O.S. Supp. 2016, Section 47), is amended to read as
10 follows:

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

16 B. Common law spouse. A common law spouse shall not be
17 entitled to benefits under this section unless he or she obtains an
18 order from a court with competent jurisdiction ruling that a common
19 law marriage existed between the decedent and the surviving spouse.

20 C. Beneficiaries - Amounts. If an injury or occupational
21 illness causes death, weekly income benefits shall be payable as
22 follows:

23 1. If there is a surviving spouse, a lump-sum payment of One
24 Hundred Thousand Dollars (\$100,000.00) and seventy percent (70%) of

1 the lesser of the deceased employee's average weekly wage and the
2 state average weekly wage. In addition to the benefits theretofore
3 paid or due, two (2) years' indemnity benefit in one lump sum shall
4 be payable to a surviving spouse upon remarriage;

5 2. If there is a surviving spouse and a child or children, a
6 lump-sum payment of Twenty-five Thousand Dollars (\$25,000.00) and
7 fifteen percent (15%) of the lesser of the deceased employee's
8 average weekly wage and the state average weekly wage to each child.
9 If there are more than two children, each child shall receive a pro
10 rata share of Fifty Thousand Dollars (\$50,000.00) and thirty percent
11 (30%) of the deceased employee's average weekly wage;

12 3. If there is a child or children and no surviving spouse, a
13 lump-sum payment of Twenty-five Thousand Dollars (\$25,000.00) and
14 fifty percent (50%) of the lesser of the deceased employee's average
15 weekly wage and the state average weekly wage to each child. If
16 there are more than two children, each child shall receive a pro
17 rata share of one hundred percent (100%) of the lesser of the
18 deceased employee's average weekly wage and the state average weekly
19 wage. With respect to the lump-sum payment, if there are more than
20 six children, each child shall receive a pro rata share of One
21 Hundred Fifty Thousand Dollars (\$150,000.00);

22 4. If there is no surviving spouse or children, each legal
23 guardian, if financially dependent on the employee at the time of
24 death, shall receive twenty-five percent (25%) of the lesser of the

1 deceased employee's average weekly wage and the state average weekly
2 wage until the earlier of death, becoming eligible for social
3 security, obtaining full-time employment, or five (5) years from the
4 date benefits under this section begin; and

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

7 D. The weekly income benefits payable to the surviving spouse
8 under this section shall continue while the surviving spouse remains
9 unmarried, but for no longer than five hundred twenty (520) weeks.

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

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

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

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

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

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

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

17 SECTION 5. AMENDATORY Section 68, Chapter 208, O.S.L.
18 2013 (85A O.S. Supp. 2016, Section 68), is amended to read as
19 follows:

20 Section 68. A. Unless an employee gives oral or written notice
21 to the employer within thirty (30) days of the date an injury
22 occurs, the rebuttable presumption shall be that the injury was not
23 work-related. Such presumption must be overcome by a preponderance
24 of the evidence.

1 B. Unless an employee gives oral or written notice to the
2 employer within thirty (30) days of the employee's ~~separation from~~
3 last day of employment, there shall be a rebuttable presumption that
4 an occupational disease or cumulative trauma injury did not arise
5 out of and in the course of employment. Such presumption must be
6 overcome by a preponderance of the evidence.

7 SECTION 6. AMENDATORY Section 153, Chapter 208, O.S.L.
8 2013 (85A O.S. Supp. 2016, Section 110), is amended to read as
9 follows:

10 Section 110. A. The Workers' Compensation Commission shall
11 develop an alternative dispute resolution program which affords an
12 injured employee the opportunity to obtain benefits by request or
13 informal procedure. The program shall include an increased emphasis
14 on making mediation and other alternative dispute resolution
15 programs affordable and convenient to an injured employee not
16 represented by counsel.

17 B. Participation in an alternative dispute resolution program
18 is not a prerequisite to the commencement of a claim for benefits
19 under this act. A request for alternative dispute resolution or a
20 consent to participate in such program does not invoke the
21 jurisdiction of the Commission.

22 C. Mediation shall be voluntary, informal, and nonbinding in
23 any claim arising pursuant to the provisions of this act, except for
24 claims against the Multiple Injury Trust Fund and medical treatment

1 issues subject to a certified workplace medical plan. Provided,
2 however, the parties may waive mediation and proceed directly to an
3 administrative hearing.

4 D. A Commission mediator, appointed by the Commission, shall
5 conduct an informal mediation between the parties in regard to
6 claims for a closed period of lost time where the employee has
7 returned to work, for medical benefits only, for reimbursement of
8 travel expenses and medical treatment, in cases in which the
9 employee is not represented by an attorney, or there is no record of
10 insurance coverage. Such mediation shall be conducted by the
11 Commission mediator within thirty (30) days of the filing of a
12 request for any such benefit.

13 E. Upon the filing of a request for an administrative hearing
14 on issues not specifically listed in subsection D of this section,
15 the Commission shall set the case for prehearing before the assigned
16 judge within fifteen (15) days. At the prehearing, the
17 administrative law judge shall accept a waiver of mediation by the
18 parties or appoint a mediator and issue an order reflecting such
19 appointment. The mediator shall contact the parties and schedule a
20 mediation session within thirty (30) days of such order, unless
21 otherwise agreed to by the parties.

22 F. Mediation is confidential and no part of the proceeding
23 shall be considered a matter of public record. Recommendations of
24 the mediator are not binding unless the parties enter into a

1 settlement agreement. If an agreement is not reached, the results
2 and statements made during the mediation are not admissible in any
3 following proceeding.

4 G. The Commission shall be responsible for certifying those
5 persons who are eligible and qualified to serve as mediators. An
6 individual may be certified as a mediator if the applicant meets the
7 qualifications as required by the Commission. A certified mediator
8 may be an attorney or nonattorney who has worked in the area of
9 Oklahoma workers' compensation benefits for at least five (5) years.
10 Mediators serving as Commission-certified mediators on the effective
11 date of this section shall serve the remainder of their respective
12 five-year certification periods and may reapply for successive
13 certification periods.

14 H. Each certified mediator shall remain on the list for five
15 (5) years, unless removed. Mediators shall be required to complete
16 at least six (6) hours of continuing education per two-year period
17 in the areas of mediation and workers' compensation. Proof of
18 compliance with this requirement shall be submitted to the
19 Commission. This continuing education requirement shall be in
20 addition to any other such general requirement which may be required
21 by the Oklahoma State Bar Association. Cost of continuing education
22 is to be borne by the applicant.

23 I. Mediators shall be compensated at the rate or fee as
24 determined by the mediator; provided, however, the rate or fee shall

1 not exceed a ~~maximum rate to be established by the Commission by~~
2 ~~rule~~ Five Hundred Dollars (\$500.00). The cost of mediation shall be
3 paid by the respondent or its insurance carrier. A mediator must
4 schedule mediations for a minimum two-hour block of time, and may
5 not schedule more than one mediation to take place at a time.

6 J. At the time of a mediation, the claimant shall be in
7 attendance unless all parties agree, and all parties shall be
8 represented during the entire mediation session by a person with
9 full settlement authority to settle any issue of the claim. If a
10 party does not have full settlement authority, or does not
11 participate in good faith in the mediation process, the mediator
12 shall report to the assigned administrative law judge of the
13 Commission who may for good cause shown assess costs, attorney fees,
14 and sanctions.

15 K. To encourage early resolution of claims, an injured employee
16 may participate in mediation without counsel. Upon compromise
17 settlement of the claim, the parties may submit the settlement
18 agreement to any administrative law judge for final approval.

19 SECTION 7. This act shall become effective November 1, 2017.
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