

1 STATE OF OKLAHOMA

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

3 SENATE BILL 737

By: Sykes

4  
5  
6 AS INTRODUCED

7 An Act relating to workers' compensation; amending  
8 Section 2, Chapter 208, O.S.L. 2013 (85A O.S. Supp.  
9 2016, Section 2), which relates to definitions;  
10 modifying definitions; and providing an effective  
11 date.

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

13 SECTION 1. AMENDATORY Section 2, Chapter 208, O.S.L.  
14 2013 (85A O.S. Supp. 2016, Section 2), is amended to read as  
15 follows:

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

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

21 2. "Carrier" means any stock company, mutual company, or  
22 reciprocal or interinsurance exchange authorized to write or carry  
23 on the business of workers' compensation insurance in this state.  
24

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

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

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

- 20 a. Certified Disability Management Specialist (CDMS),
- 21 b. Certified Case Manager (CCM),
- 22 c. Certified Rehabilitation Registered Nurse (CRRN),
- 23 d. Case Manager - Certified (CMC),
- 24 e. Certified Occupational Health Nurse (COHN), or

1 f. Certified Occupational Health Nurse Specialist (COHN-  
2 S);

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

13 6. "Child" means a natural or adopted son or daughter of the  
14 employee under eighteen (18) years of age; or a natural or adopted  
15 son or daughter of an employee eighteen (18) years of age or over  
16 who is physically or mentally incapable of self-support; or any  
17 natural or adopted son or daughter of an employee eighteen (18)  
18 years of age or over who is actually dependent; or any natural or  
19 adopted son or daughter of an employee between eighteen (18) and  
20 twenty-three (23) years of age who is enrolled as a full-time  
21 student in any accredited educational institution. The term "child"  
22 includes a posthumous child, a child legally adopted or one for whom  
23 adoption proceedings are pending at the time of death, an actually  
24

1 dependent stepchild or an actually dependent acknowledged child born  
2 out of wedlock;

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

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

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

15 (1) was unintended, unanticipated, unforeseen,  
16 unplanned and unexpected,

17 (2) occurred at a specifically identifiable time and  
18 place,

19 (3) occurred by chance or from unknown causes, and

20 (4) was independent of sickness, mental incapacity,  
21 bodily infirmity or any other cause.

22 b. "Compensable injury" does not include:

23 (1) injury to any active participant in assaults or  
24 combats which, although they may occur in the

1 workplace, are the result of non-employment-  
2 related hostility or animus of one, both, or all  
3 of the combatants and which assault or combat  
4 amounts to a deviation from customary duties;  
5 provided, however, injuries caused by horseplay  
6 shall not be considered to be compensable  
7 injuries, except for innocent victims,

8 (2) injury incurred while engaging in or performing  
9 or as the result of engaging in or performing any  
10 recreational or social activities for the  
11 employee's personal pleasure,

12 (3) injury which was inflicted on the employee at a  
13 time when employment services were not being  
14 performed or before the employee was hired or  
15 after the employment relationship was terminated,

16 (4) injury where the accident was caused by the use  
17 of alcohol, illegal drugs, or prescription drugs  
18 used in contravention of physician's orders. If,  
19 within twenty-four (24) hours of being injured or  
20 reporting an injury, an employee tests positive  
21 for intoxication, an illegal controlled  
22 substance, or a legal controlled substance used  
23 in contravention to a treating physician's  
24 orders, or refuses to undergo the drug and

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

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

20 (6) any preexisting condition except when the  
21 treating physician clearly confirms an  
22 identifiable and significant aggravation incurred  
23 in the course and scope of employment.  
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- 1           c. The definition of "compensable injury" shall not be  
2           construed to limit or abrogate the right to recover  
3           for mental injuries as described in Section 13 of this  
4           ~~act~~ title, heart or lung injury or illness as  
5           described in Section 14 of this ~~act~~ title, or  
6           occupational diseases as described in Section 65 of  
7           this ~~act~~ title.
- 8           d. A compensable injury shall be established by medical  
9           evidence supported by objective findings as defined in  
10          paragraph ~~30~~ 31 of this section.
- 11          e. The injured employee shall prove by a preponderance of  
12          the evidence that he or she has suffered a compensable  
13          injury.
- 14          f. Benefits shall not be payable for a condition which  
15          results from a non-work-related independent  
16          intervening cause following a compensable injury which  
17          causes or prolongs disability, aggravation, or  
18          requires treatment. A non-work-related independent  
19          intervening cause does not require negligence or  
20          recklessness on the part of a claimant.
- 21          g. An employee who suffers a compensable injury shall be  
22          entitled to receive compensation as prescribed in this  
23          act. Notwithstanding other provisions of law, if it  
24          is determined that a compensable injury did not occur,

1           the employee shall not be entitled to compensation  
2           under this act;

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

7           11. "Consequential injury" means injury or harm to a part of  
8 the body that is a direct result of the injury or medical treatment  
9 to the part of the body originally injured in the claim. The  
10 Commission shall not make a finding of a consequential injury unless  
11 it is established by objective medical evidence that medical  
12 treatment for such part of the body is required;

13           12. "Continuing medical maintenance" means medical treatment  
14 that is reasonable and necessary to maintain claimant's condition  
15 resulting from the compensable injury or illness after reaching  
16 maximum medical improvement. Continuing medical maintenance shall  
17 not include diagnostic tests, surgery, injections, counseling,  
18 physical therapy, or pain management devices or equipment;

19           13. "Course and scope of employment" means an activity of any  
20 kind or character for which the employee was hired and that relates  
21 to and derives from the work, business, trade or profession of an  
22 employer, and is performed by an employee in the furtherance of the  
23 affairs or business of an employer. The term includes activities  
24 conducted on the premises of an employer or at other locations



1 designated by an employer and travel by an employee in furtherance  
2 of the affairs of an employer that is specifically directed by the  
3 employer. This term does not include:

- 4 a. an employee's transportation to and from his or her  
5 place of employment,
- 6 b. travel by an employee in furtherance of the affairs of  
7 an employer if the travel is also in furtherance of  
8 personal or private affairs of the employee,
- 9 c. any injury occurring in a parking lot or other common  
10 area adjacent to an employer's place of business  
11 before the employee clocks in or otherwise begins work  
12 for the employer or after the employee clocks out or  
13 otherwise stops work for the employer, or
- 14 d. any injury occurring while an employee is on a work  
15 break, unless the injury occurs while the employee is  
16 on a work break inside the employer's facility and the  
17 work break is authorized by the employee's supervisor;

18 14. "Cumulative trauma" means an injury to an employee that is  
19 caused by the combined effect of repetitive physical activities  
20 extending over a period of time in the course and scope of  
21 employment. Cumulative trauma shall not mean fatigue, soreness or  
22 general aches and pain that may have been caused, aggravated,  
23 exacerbated or accelerated by the employee's course and scope of  
24 employment. Cumulative trauma shall have resulted directly and

1 independently of all other causes and the employee shall have  
2 completed at least one hundred eighty (180) days of continuous  
3 active employment with the employer;

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

6 16. "Disability" means incapacity because of compensable injury  
7 to earn, in the same or any other employment, substantially the same  
8 amount of wages the employee was receiving at the time of the  
9 compensable injury;

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

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

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

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

- 11 (1) any person for whom an employer is liable under  
12 any Act of Congress for providing compensation to  
13 employees for injuries, disease or death arising  
14 out of and in the course of employment including,  
15 but not limited to, the Federal Employees'  
16 Compensation Act, the Federal Employers'  
17 Liability Act, the Longshore and Harbor Workers'  
18 Compensation Act and the Jones Act, to the extent  
19 his or her employees are subject to such acts,
- 20 (2) any person who is employed in agriculture or  
21 horticulture by an employer who had a gross  
22 annual payroll in the preceding calendar year of  
23 less than One Hundred Thousand Dollars  
24 (\$100,000.00) wages for agricultural or

1 horticultural workers, or any person who is  
2 employed in agriculture or horticulture who is  
3 not engaged in operation of motorized machines,

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

6 (4) any person who is providing services in a medical  
7 care or social services program, or who is a  
8 participant in a work or training program,  
9 administered by the Department of Human Services,  
10 unless the Department is required by federal law  
11 or regulations to provide workers' compensation  
12 for such person. This division shall not be  
13 construed to include nursing homes,

14 (5) any person employed by an employer with five or  
15 fewer total employees, all of whom are related by  
16 blood or marriage to the employer, if the  
17 employer is a natural person or a general or  
18 limited partnership, or an incorporator of a  
19 corporation if the corporation is the employer,

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

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

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

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

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

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

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

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

3       19. "Employer" means a person, partnership, association,  
4 limited liability company, corporation, and the legal  
5 representatives of a deceased employer, or the receiver or trustee  
6 of a person, partnership, association, corporation, or limited  
7 liability company, departments, instrumentalities and institutions  
8 of this state and divisions thereof, counties and divisions thereof,  
9 public trusts, boards of education and incorporated cities or towns  
10 and divisions thereof, employing a person included within the term  
11 "employee" as defined in this section. Employer may also mean the  
12 employer's workers' compensation insurance carrier, if applicable.  
13 Except as provided otherwise, this act applies to all public and  
14 private entities and institutions. Employer shall not include a  
15 qualified employer with an employee benefit plan as provided under  
16 the Oklahoma Employee Injury Benefit Act in Sections ~~107~~ 200 through  
17 ~~120~~ 213 of this ~~act~~ title;

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

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

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

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

17 25. "Insurance Commissioner" means the Insurance Commissioner  
18 of the State of Oklahoma;

19 26. "Insurance Department" means the Insurance Department of  
20 the State of Oklahoma;

21 27. "Major cause" means more than fifty percent (50%) of the  
22 resulting injury, disease or illness. A finding of major cause  
23 shall be established by a preponderance of the evidence. A finding  
24 that the workplace was not a major cause of the injury, disease or



1 illness shall not adversely affect the exclusive remedy provisions  
2 of this act and shall not create a separate cause of action outside  
3 this act;

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

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

9 30. "Misconduct" shall include the following:

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

24

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

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

9 (b) For the purpose of making permanent  
10 disability ratings to the spine, physicians  
11 shall use criteria established by the most  
12 current edition of the American Medical  
13 Association "Guides to the Evaluation of  
14 Permanent Impairment".

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

23 (b) Any difference in the baseline hearing  
24 levels shall be confirmed by subsequent

1 testing; provided, however, such test shall  
2 be given within four (4) weeks of the  
3 initial baseline hearing level test but not  
4 before five (5) days after being adjusted  
5 for presbycusis.

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

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

12 33. "Permanent disability" means the extent, expressed as a  
13 percentage, of the loss of a portion of the total physiological  
14 capabilities of the human body as established by competent medical  
15 evidence and based on the current edition of the American Medical  
16 Association guides to the evaluation of impairment, if the  
17 impairment is contained therein;

18 34. "Permanent partial disability" means a permanent disability  
19 ~~or loss of use~~ after maximum medical improvement has been reached  
20 ~~which prevents the injured employee, who has been released to return~~  
21 ~~to work by the treating physician, from returning to his or her pre-~~  
22 ~~injury or equivalent job.~~ All evaluations of permanent partial  
23 disability must be supported by objective findings;  
24

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

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

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

17       38. "Private self-insurer" means a private employer that has  
18 been authorized to self-insure its workers' compensation obligations  
19 pursuant to this act, but does not include group self-insurance  
20 associations authorized by this act, or any public employer that  
21 self-insures pursuant to this act;

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

1       40. "Scheduled member" or "member" means hands, fingers, arms,  
2 legs, feet, toes, and eyes. In addition, for purposes of the  
3 Multiple Injury Trust Fund only, "scheduled member" means hearing  
4 impairment;

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

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

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

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

22       45. "Surviving spouse" means the employee's spouse by reason of  
23 a legal marriage recognized by the State of Oklahoma or under the  
24

1 requirements of a common law marriage in this state, as determined  
2 by the Workers' Compensation Commission;

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

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

9 48. "Total loss of use" means a one hundred percent (100%)  
10 permanent partial disability rating to the specific body part; and

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

18 SECTION 2. This act shall become effective November 1, 2017.

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