STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 2375

By: Kannady of the House

and

Thompson (Roger) of the Senate

COMMITTEE SUBSTITUTE

[ workers’ compensation - compensable injury - accidents - exclusive nature of remedy - liability for intentional acts - permanent partial disability - compensation for loss of certain scheduled members - computation of certain benefit amounts - beneficiary payments - travel reimbursement process - claims - permanent disability - Oklahoma Workers’ Compensation Commission - independent medical examiner - Judges of Workers’ Compensation Court of Existing Claims - effective date -

emergency ]

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

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

Section 2. As used in the Administrative Workers’ Compensation Act:
1. “Actually dependent” means a surviving spouse, a child or any other person who receives one-half (1/2) or more of his or her support from the employee;

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

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

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

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

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

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

7. “Claimant” means a person who claims benefits for an injury
or occupational disease pursuant to the provisions of the
Administrative Workers’ Compensation Act;

8. “Commission” means the Oklahoma Workers’ Compensation
Commission;

9. a. “Compensable injury” means damage or harm to the
physical structure of the body, or damage or harm to
prosthetic appliances, including eyeglasses, contact
lenses, or hearing aids, of which the major cause is
either an accident, cumulative trauma or occupational
disease arising out of the course and scope of
employment. An “accident” means an event involving
factors external to the employee that:

(1) was unintended, unanticipated, unforeseen,
    unplanned and unexpected,
(2) occurred at a specifically identifiable time and place,

(3) occurred by chance or from unknown causes,

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

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

b. “Compensable injury” does not include:

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

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

(3) injury which was inflicted on the employee at a time when employment services were not being performed or before the employee was hired or after the employment relationship was terminated,
(4) injury if the accident was caused by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician’s orders. If a biological specimen is collected within twenty-four (24) hours of the employee being injured or reporting an injury, or if at any time after the injury a biological specimen is collected by the Oklahoma Office of the Chief Medical Examiner if the injured employee does not survive for at least twenty-four (24) hours after the injury and the employee tests positive for intoxication, an illegal controlled substance, or a legal controlled substance used in contravention to a treating physician’s orders, or refuses to undergo the drug and alcohol testing, there shall be a rebuttable presumption that the injury was caused by the use of alcohol, illegal drugs, or prescription drugs used in contravention of physician’s orders. This presumption may only be overcome if the employee proves by clear and convincing evidence that his or her state of intoxication had no causal relationship to the injury,
(5) any strain, degeneration, damage or harm to, or
disease or condition of, the eye or
musculoskeletal structure or other body part
resulting from the natural results of aging,
osteoarthritis, arthritis, or degenerative
process including, but not limited to,
degenerative joint disease, degenerative disc
disease, degenerative
spondylosis/spondylolisthesis and spinal
stenosis, or

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

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

(8) any injury resulting from an intentional act.

c. Where compensation is payable for an injury resulting
from cumulative trauma, the last employer in whose
employment the employee was last injuriously exposed to
the trauma during a period of at least ninety (90) days
or more, and the insurance carrier, if any, on the risk
when the employee was last so exposed under such
employer, shall alone be liable therefor, without
right to contribution from any prior employer or insurance carrier. If there is no employer in whose employment the employee was injuriously exposed to the trauma for a period of at least ninety (90) days, then the last employer in whose employment the employee was last injuriously exposed to the trauma and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer, shall be liable therefor, with right to contribution from any prior employer or insurance carrier.

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

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

f. Benefits shall not be payable for a condition which results from a non-work-related independent intervening cause following a compensable injury which causes or prolongs disability, aggravation, or requires treatment. A non-work-related independent intervening cause does not require negligence or recklessness on the part of a claimant.
f. An employee who suffers a compensable injury shall be entitled to receive compensation as prescribed in this Act the Administrative Workers’ Compensation Act.

Notwithstanding other provisions of law, if it is determined that a compensable injury did not occur, the employee shall not be entitled to compensation under this Act the Administrative Workers’ Compensation Act;

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

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

12. “Continuing medical maintenance” means medical treatment that is reasonable and necessary to maintain claimant’s condition resulting from the compensable injury or illness after reaching maximum medical improvement. Continuing medical maintenance shall not include diagnostic tests, surgery, injections, counseling, physical therapy, or pain management devices or equipment;
13. “Course and scope of employment” means an activity of any kind or character for which the employee was hired and that relates to and derives from the work, business, trade or profession of an employer, and is performed by an employee in the furtherance of the affairs or business of an employer. The term includes activities conducted on the premises of an employer or at other locations designated by an employer and travel by an employee in furtherance of the affairs of an employer that is specifically directed by the employer. This term does not include:

a. an employee’s transportation to and from his or her place of employment,

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

c. any injury occurring in a parking lot or other common area adjacent to an employer’s place of business before the employee clocks in or otherwise begins work for the employer or after the employee clocks out or otherwise stops work for the employer unless the employer owns or maintains exclusive control over the area, or

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

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

15. “Death” means only death resulting from compensable injury as defined in paragraph 9 of this section;

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

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

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

b. The term “employee” shall not include:

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

(2) any person who is employed in agriculture, ranching or horticulture by an employer who had a gross annual payroll in the preceding calendar year of less than One Hundred Thousand Dollars ($100,000.00) wages for agricultural, ranching or horticultural workers, or any person who is employed in agriculture, ranching or horticulture who is not engaged in operation of motorized machines. This exemption applies to any period of time for which such employment exists, irrespective of whether or not the person is employed in other activities for which the exemption does not apply. If the person is employed for part of a year in exempt activities and for part of a year in nonexempt activities, the employer shall be responsible for providing workers’ compensation only for the period of time for which the person is employed in nonexempt activities,

(3) any person who is a licensed real estate sales associate or broker, paid on a commission basis,
any person employed by an employer with five or fewer total employees, all of whom are related within the second degree by blood or marriage to the employer, all of whom are dependents living in the household of the employer, or all of whom are a combination of such relatives and dependents. If the employer is not a natural person such relative shall be related within the second degree by blood or marriage to a person who owns fifty percent (50%) or more of the employer, or such dependent shall be in the household of a person who owns fifty percent (50%) or more of the employer,

any person employed by an employer which is a youth sports league which qualifies for exemption from federal income taxation pursuant to federal law,

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

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

(8) a person, commonly referred to as an owner-
operator, who owns or leases a truck-tractor or
truck for hire, if the owner-operator actually
operates the truck-tractor or truck and if the
person contracting with the owner-operator is not
the lessor of the truck-tractor or truck.
Provided, however, an owner-operator shall not be
precluded from workers’ compensation coverage
under the Administrative Workers’ Compensation
Act if the owner-operator elects to participate
as a sole proprietor,
(9) a person referred to as a drive-away owner-operator who privately owns and utilizes a tow vehicle in drive-away operations and operates independently for hire, if the drive-away owner-operator actually utilizes the tow vehicle and if the person contracting with the drive-away owner-operator is not the lessor of the tow vehicle. Provided, however, a drive-away owner-operator shall not be precluded from workers' compensation coverage under the Administrative Workers' Compensation Act if the drive-away owner-operator elects to participate as a sole proprietor, and

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

19. “Employer” means a natural person, partnership, association, limited liability company, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association, corporation, or limited liability company, departments, instrumentalities and institutions of this state and divisions thereof, counties and divisions thereof,
public trusts, boards of education and incorporated cities or towns
and divisions thereof, employing a person included within the term
“employee” as defined in this section. Employer may also mean the
employer’s workers’ compensation insurance carrier, if applicable.
Except as provided otherwise, this act the Administrative Workers’
Compensation Act applies to all public and private entities and
institutions;

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

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

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

23. “Idiopathic” means an injury or condition, where neither the
case, nor the resulting injury bears any special relation to the
work or to the conditions under which the act was being performed and
though it occurs in the course of the employment, does not arise out
of the employment;
24. “Impaired self-insurer” means a private self-insurer or group self-insurance association that fails to pay its workers’ compensation obligations, or is financially unable to do so and is the subject of any proceeding under the Federal Bankruptcy Reform Act of 1978, and any subsequent amendments or is the subject of any proceeding in which a receiver, custodian, liquidator, rehabilitator, trustee or similar officer has been appointed by a court of competent jurisdiction to act in lieu of or on behalf of the self-insurer;

24. 25. “Incapacity” means inadequate strength or ability to perform a work-related task;


26. 27. “Insurance Department” means the Insurance Department of the State of Oklahoma;

27. 28. “Intentional act” means an injury occurring only when the employee is injured as a result of a willful, deliberate, and specific intent to cause such injury and only when the act that was the proximate cause of the injury was not normally within the employer-employee relationship and was not an employment risk related to the business of the employer. Knowledge that the injury was substantially certain to result from the conduct shall not constitute an intentional act;
29. “Major cause” means more than fifty percent (50%) of the resulting injury, disease or illness. A finding of major cause shall be established by a preponderance of the evidence. A finding that the workplace was not a major cause of the injury, disease or illness shall not adversely affect the exclusive remedy provisions of this act the Administrative Workers’ Compensation Act and shall not create a separate cause of action outside this act the Administrative Workers’ Compensation Act;

30. “Maximum medical improvement” means that no further material improvement would reasonably be expected from medical treatment or the passage of time;

31. “Medical services” means those services specified in Section 50 of this title;

32. “Misconduct” shall include the following:
   a. unexplained absenteeism or tardiness,
   b. willful or wanton indifference to or neglect of the duties required,
   c. willful or wanton breach of any duty required by the employer,
   d. the mismanagement of a position of employment by action or inaction,
   e. actions or omissions that place in jeopardy the health, life, or property of self or others,
   f. dishonesty,
g. wrongdoing,

h. violation of a law, or

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

33. a. (1) “Objective findings” are those findings which cannot come under the voluntary control of the patient.

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

(b) For the purpose of making permanent disability ratings to the spine, physicians shall use criteria established by the Sixth Edition of the American Medical Association “Guides to the Evaluation of Permanent Impairment”.

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

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

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

32-34. “Official Disability Guidelines” or “ODG” means the current edition of the Official Disability Guidelines and the ODG Treatment in Workers’ Comp Compensation as published by the Work Loss Data Institute;

33-35. “Permanent disability” means the extent, expressed as a percentage, of the loss of a portion of the total physiological capabilities of the human body as established by competent medical evidence and based on the Sixth Edition of the American Medical Association “Guides to the Evaluation of Permanent Impairment”, if the impairment is contained therein;
34. 36. “Permanent partial disability” means a permanent disability or loss of use after maximum medical improvement has been reached which prevents the injured employee, who has been released to return to work by the treating physician, from returning to his or her pre-injury or equivalent job. All evaluations of permanent partial disability must be supported by objective findings;

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

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

37. 39. “Pre-injury or equivalent job” means the job that the claimant was working for the employer at the time the injury occurred or any other employment offered by the claimant’s employer that pays at least one hundred percent (100%) of the employee’s average weekly wage;
38. **40.** “Private self-insurer” means a private employer that
has been authorized to self-insure its workers’ compensation
obligations pursuant to this act the Administrative Workers’
Compensation Act, but does not include group self-insurance
associations authorized by this act the Administrative Workers’
Compensation Act, or any public employer that self-insures pursuant
to this act the Administrative Workers’ Compensation Act;
39. **41.** “Prosthetic” means an artificial device used to replace
a part or joint of the body that is lost or injured in an accident
or illness covered by this act the Administrative Workers’
Compensation Act;
40. **42.** “Scheduled member” or “member” means hands, fingers,
arms, legs, feet, toes, and eyes. In addition, for purposes of the
Multiple Injury Trust Fund only, “scheduled member” means hearing
impairment;
41. **43.** “Scientifically based” involves the application of
rigorous, systematic, and objective procedures to obtain reliable
and valid knowledge relevant to medical testing, diagnoses and
treatment; is adequate to justify the general conclusions drawn; and
has been accepted by a peer-review journal or approved by a panel of
independent experts through a comparably rigorous, objective, and
scientific review;
42. **44.** “State average weekly wage” means the state average
weekly wage determined by the Oklahoma Employment Security
Commission in the preceding calendar year. If such determination is not available, the Commission shall determine the wage annually after reasonable investigation;

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

44. 46. “Surgery” does not include an injection, or the forcing of fluids beneath the skin, for treatment or diagnosis;

45. 47. “Surviving spouse” means the employee’s spouse by reason of a legal marriage recognized by the State of Oklahoma or under the requirements of a common law marriage in this state, as determined by the Oklahoma Workers’ Compensation Commission;

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

47. 49. “Time of accident” or “date of accident” means the time or date of the occurrence of the accidental incident from which compensable injury, disability, or death results; and

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

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

Section 3. A. Every employer and every employee, unless
otherwise specifically provided in this act the Administrative
Workers’ Compensation Act, shall be subject and bound to the
provisions of the Administrative Workers’ Compensation Act and every
employer shall pay or provide benefits according to the provisions
of this act for the accidental compensable injury or death of an
employee arising out of and in the course of his or her employment,
without regard to fault for such injury, if the employee’s contract
of employment was made or if the injury occurred within this state.
If an employee makes a claim for an injury in another jurisdiction,
the employee is precluded from his or her right of action under the
Administrative Workers’ Compensation Act unless the Oklahoma
Workers’ Compensation Commission determines that there is a change
in circumstances that creates a good cause to bring the claim under
the Administrative Workers’ Compensation Act; provided, however,
that the employee may not receive duplicate benefits to those
received in the foreign jurisdiction and the employee’s right to
bring a claim under this act shall be subject to the limitations
period for bringing a claim pursuant to paragraph 1 of subsection A
of Section 69 of this title. Nothing in this act the Administrative
Workers’ Compensation Act shall be construed to conflict with any valid Act of Congress governing the liability of employers for injuries received by their employees.

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

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

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

SECTION 3. AMENDATORY 85A O.S. 2021, Section 5, is amended to read as follows:
Section 5. A. The rights and remedies granted to an employee subject to the provisions of the Administrative Workers’ Compensation Act shall be exclusive of all other rights and remedies of the employee, his legal representative, dependents, next of kin, or anyone else claiming rights to recovery on behalf of the employee against the employer, or any principal, officer, director, employee, stockholder, partner, or prime contractor of the employer on account of injury, illness, or death. Negligent acts of a co-employee may not be imputed to the employer. No role, capacity, or persona of any employer, principal, officer, director, employee, or stockholder other than that existing in the role of employer of the employee shall be relevant for consideration for purposes of this act. The Administrative Workers’ Compensation Act, and the remedies and rights provided by this act the Administrative Workers’ Compensation Act shall be exclusive regardless of the multiple roles, capacities, or Personas the employer may be deemed to have.

B. Exclusive remedy shall not apply if:

1. An employer fails to secure the payment of compensation due to the employee as required by this act the Administrative Workers’ Compensation Act. An injured employee, or his or her legal representative in case death results from the injury, may, at his or her option, elect to claim compensation under this act the Administrative Workers’ Compensation Act or to maintain a legal action in court for damages on account of the injury or death; or
2. The injury was caused by an intentional tort act committed by the employer. An intentional tort act shall exist only when the employee is injured as a result of willful, deliberate, specific intent of the employer to cause such injury. Allegations or proof that the employer had knowledge that the injury was substantially certain to result from the employer’s conduct shall not constitute an intentional tort. The employee shall plead facts that show it is at least as likely as it is not that the employer acted with the purpose of injuring the employee an employer who owns at least ten percent (10%) of the business engages in or specifically directs the act that is the proximate cause of the injury to the employee. An employee or owner of less than ten percent (10%) of the business shall not be released from liability pursuant to this section if he or she engaged in an intentional act that was the proximate cause of the injury or death. The issue of whether an act is an intentional tort shall be a question of law.

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

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

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

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

G. This section shall not be construed to abrogate the loaned servant doctrine in any respect other than that described in subsection F of this section. Nothing in this act the Administrative Workers’ Compensation Act shall be construed to relieve the employer from any other penalty provided for in this act the Administrative Workers’ Compensation Act for failure to secure
the payment of compensation under this act the Administrative
Workers’ Compensation Act.

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

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

SECTION 4. AMENDATORY 85A O.S. 2021, Section 13, is amended to read as follows:

Section 13. A. 1. A mental injury or illness is not a compensable injury unless caused by a physical injury to the employee, and shall not be considered an injury arising out of and in the course and scope of employment or compensable unless demonstrated by a preponderance of the evidence; provided, however, that this physical injury limitation shall not apply to any victim of a crime of violence.
2. No mental injury or illness under this section shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5).

B. 1. Notwithstanding any other provision of this act the Administrative Workers’ Compensation Act, where a claim is for mental injury or illness, the employee shall be limited to twenty-six (26) weeks of disability benefits unless it is shown by clear and convincing evidence that benefits should continue for a set period of time, not to exceed a total of fifty-two (52) weeks.

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

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

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

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

1. The loss of the sight of one eye;

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

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

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

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

Section 32. A. If an employee who is a “physically impaired person” receives an accidental personal injury compensable under the Administrative Workers’ Compensation Act which results in additional permanent disability so that the degree of disability caused by the combination of both disabilities results in disability materially greater than that which would have resulted from the subsequent injury alone, the employee may proceed against the Multiple Injury Trust Fund for permanent total disability. Only disability due to an injury to the body as a whole at a subsequent employer shall be
combinable with a prior body disability, except that disability to a member may be combined with disability to the body as a whole. If such combined disabilities constitute permanent total disability, as defined in Section 2 of this title, the employee shall receive full compensation as provided by law for the disability resulting directly and specifically from the subsequent injury. In addition, the employee shall receive compensation for permanent total disability if the combination of injuries renders the employee permanently and totally disabled. The employer shall be liable only for the degree of percent of disability which would have resulted from the subsequent injury if there had been no preexisting impairment. The compensation rate for permanent total disability awards from the Multiple Injury Trust Fund shall be the compensation rate for permanent partial disability paid by the employer in the last combinable compensable injury.

B. Permanent total disability awards from the Multiple Injury Trust Fund shall be payable in periodic installments for a period of eight (8) years or until the employee reaches sixty-five (65) years of age, whichever period is longer.

C. Permanent total disability awards from the Multiple Injury Trust Fund shall accrue from the file date of the order of the Oklahoma Workers’ Compensation Commission finding the claimant to be permanently and totally disabled.
D. Before a physically impaired person can proceed against the Multiple Injury Trust Fund, the previously adjudicated compensable permanent partial disability adjudged and determined by the Workers’ Compensation Court, the Workers’ Compensation Court of Existing Claims or the Oklahoma Workers’ Compensation Commission and the permanent partial disability from the last injury must exceed fifty percent (50%) to the body as a whole. However, amputations and loss of use of a scheduled member qualifying as previous impairment under paragraph 2 of subsection A of Section 30 of this title shall be considered in lieu of previously adjudicated compensable permanent partial disability.

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

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

G. The Multiple Injury Trust Fund shall have authority to compromise a claim for less than the indicated amount of permanent total disability. Orders shall be paid in periodic installments beginning on the date of the award, unless commuted to a lump-sum payment or payments, by agreement of the claimant and the Multiple Injury Trust Fund. All offers made by the Multiple Injury Trust Fund pursuant to this section shall be conveyed by the claimant’s
attorney to the claimant within five (5) days of receipt of the offer.

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

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

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

Section 35. A. 1. Every employer shall secure compensation as provided under this act the Administrative Workers’ Compensation Act to its employees for compensable injuries without regard to fault.
2. There shall be no liability for compensation under this Act the Administrative Workers’ Compensation Act where the injury or death was substantially occasioned by the willful intention as a result of an intentional act of the injured employee to bring about such compensable injury or death.

B. The primary obligation to pay compensation is on the employer, and the procurement of a policy of insurance by an employer to cover the obligation in respect to this Act the Administrative Workers’ Compensation Act shall not relieve the employer of the obligation.

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

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

2. This subsection shall not affect any other liability of the employer under the Administrative Workers’ Compensation Act.

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

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

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

c. If a written request for hearing is not filed with the
Commission within the time specified in subparagraph a
of this paragraph, the proposed judgment, the proposed
penalty or both, shall be a final judgment of the
Commission and shall not be subject to further review
by any court, except if the employer shows good cause
why it did not timely contest the judgment or penalty
and terms of the proposed judgment shall be reflected
in an order signed by an administrative law judge of
the Commission.

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

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

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

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

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

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

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

7. Upon any penalty becoming final under this section, the
Commission may institute collection proceedings against any assets
of the employer independently or in district court including, but
not limited to, an asset hearing, garnishment of income and wages,
judgment lien or an intercept of an income tax refund consistent
with Section 205.2 of Title 68 of the Oklahoma Statutes. The
collection proceedings shall be filed in the county in which the
principal office of the employer is located. The clerk of the
Commission shall have the authority to certify a final order in
which a penalty has been assessed. Such certification shall be
necessary to invoke the jurisdiction of the district court.
8. Information subject to subsection A or B of Section 4-508 of Title 40 of the Oklahoma Statutes may be disclosed to the employees of the Commission for purposes of investigation and enforcement of workers’ compensation coverage requirements pursuant to this title, and such information shall be admissible in any hearing before an administrative law judge of the Commission.

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

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

Section 45. A. Temporary Total Disability.

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

2. When the injured employee is released from active medical
treatment by the treating physician for all body parts found by the
Commission to be injured, or in the event that the employee, without
a valid excuse, misses three consecutive medical treatment
appointments, fails to comply with medical orders of the treating
physician, or otherwise abandons medical care, the employer shall be
entitled to terminate temporary total disability by notifying the
employee, or if represented, his or her counsel. If, however, an
objection to the termination is filed by the employee within ten
(10) days of termination, the Commission shall set the matter within
twenty (20) days for a determination if temporary total disability
compensation shall be reinstated. The temporary total disability
shall remain terminated until such time as the employee complies
with medical orders of the treating physician. Notwithstanding the
provisions of this paragraph, benefits under this subsection shall
be permanently terminated by order of the Commission if the employee
is noncompliant or abandons treatment for sixty (60) days, or if
benefits under this subsection have been suspended under this
paragraph at least two times. The administrative law judge may
appoint an independent medical examiner to determine if further medical treatment is reasonable and necessary. The independent medical examiner shall not provide treatment to the injured worker, unless agreed upon by the parties.

B. Temporary Partial Disability.

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

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

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

C. Permanent Partial Disability.

1. A permanent partial disability award or combination of awards granted an injured worker may not exceed a permanent partial disability rating of one hundred percent (100%) to any body part or
to the body as a whole. The determination of permanent partial
disability shall be the responsibility of the Commission through its
administrative law judges. Any claim by an employee for
compensation for permanent partial disability must be supported by
competent medical testimony of a medical doctor, osteopathic
physician, or chiropractor, and shall be supported by objective
medical findings, as defined in this act the Administrative Workers’
Compensation Act. The opinion of the physician shall include
employee’s percentage of permanent partial disability and whether or
not the disability is job-related and caused by the accidental
injury or occupational disease. A physician’s opinion of the nature
and extent of permanent partial disability to parts of the body
other than scheduled members must be based solely on criteria
established by the Sixth Edition of the American Medical
Association’s “Guides to the Evaluation of Permanent Impairment”. A
copy of any written evaluation shall be sent to both parties within
seven (7) days of issuance. Medical opinions addressing
compensability and permanent disability must be stated within a
reasonable degree of medical certainty. Any party may submit the
report of an evaluating physician.

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

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

4. In cases of permanent partial disability, the compensation shall be seventy percent (70%) of the employee’s average weekly wage, not to exceed Three Hundred Fifty Dollars ($350.00) per week which shall increase to Three Hundred Sixty Dollars ($360.00) per week on July 1, 2021. Beginning on or after January 1, 2024, compensation for permanent partial disability shall be seventy percent (70%) of the employee’s average weekly wage, not to exceed an amount equal to forty percent (40%) of the state’s average weekly wage, rounded to the nearest dollar. Rates are to be subsequently adjusted January 1, annually for injuries occurring on or after the date of the adjustment. Rates shall be established for each claim based upon the date of injury for a term not to exceed a total of three hundred sixty (360) weeks for the body as a whole.

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

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

7. No payments on any permanent partial disability order shall begin until payments on any preexisting permanent partial disability orders have been completed.
8. The whole body shall represent a maximum of three hundred sixty (360) weeks.

9. The permanent partial disability rate of compensation for amputation or permanent total loss of use of a scheduled member specified in Section 46 of this title shall be seventy percent (70%) of the employee’s average weekly wage, not to exceed Three Hundred Fifty Dollars ($350.00), with an increase to Three Hundred Sixty Dollars ($360.00) on July 1, 2021. Beginning on or after January 1, 2024, compensation for permanent partial disability shall be seventy percent (70%) of the employee’s average weekly wage, not to exceed an amount equal to forty percent (40%) of the state’s average weekly wage, rounded to the nearest dollar. Rates are to be subsequently adjusted January 1, annually for injuries occurring on or after the date of the adjustment. Rates shall be established for each claim based upon the date of injury and multiplied by the number of weeks set forth for the member in Section 46 of this title, regardless of whether the injured employee is able to return to his or her pre-injury or equivalent job.

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

D. Permanent Total Disability.

1. In case of total disability adjudged to be permanent,
seventy percent (70%) of the employee’s average weekly wages, but
not in excess of the state’s average weekly wage, shall be paid to
the employee during the continuance of the disability until such
time as the employee reaches the age of maximum Social Security
retirement benefits or for a period of fifteen (15) years, whichever
is longer. In the event the claimant dies of causes unrelated to
the injury or illness, benefits shall cease on the date of death.
Provided, however, any person entitled to revive the action shall
receive a one-time lump-sum payment equal to twenty-six (26) weeks
of weekly benefits for permanent total disability awarded the
claimant. If more than one person is entitled to revive the claim,
the lump-sum payment shall be evenly divided between or among such
persons. In the event the Commission awards both permanent partial
disability and permanent total disability benefits, the permanent
total disability award shall not be due until the permanent partial
disability award is paid in full. If otherwise qualified according
to the provisions of this act the Administrative Workers’
Compensation Act, permanent total disability benefits may be awarded
to an employee who has exhausted the maximum period of temporary
total disability even though the employee has not reached maximum medical improvement.

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

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

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

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

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

5. Vocational rehabilitation services or training shall not extend for a period of more than fifty-two (52) weeks. A request for vocational rehabilitation services or training shall be filed with the Commission by an interested party not later than sixty (60) days from the date of receiving permanent disability that prevents the injured employee from returning to his or her pre-injury or equivalent position.
6. If rehabilitation requires residence at or near the facility or institution which is away from the employee’s customary residence, reasonable cost of the employee’s board, lodging, travel, tuition, books and necessary equipment in training shall be paid for by the insurer in addition to weekly compensation benefits to which the employee is otherwise entitled under the Administrative Workers’ Compensation Act.

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

F. Disfigurement.

1. If an injured employee incurs serious and permanent disfigurement to any part of the body, the Commission may award compensation to the injured employee in an amount not to exceed Fifty Thousand Dollars ($50,000.00).
2. No award for disfigurement shall be entered until twelve (12) months after the injury unless the treating physician deems the wound or incision to be fully healed.

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

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

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

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

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

2. Arm amputated between the elbow and wrist, two hundred twenty (220) weeks;
3. Leg amputated at the knee, or between the knee and the hip, two hundred seventy-five (275) weeks;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Other cases: In cases in which the Oklahoma Workers’ Compensation Commission finds an injury to a part of the body not specifically covered by the foregoing provisions of this section, the employee may be entitled to compensation for permanent partial disability. The compensation ordered paid shall be seventy percent (70%) of the employee’s average weekly wage, not to exceed Three Hundred Fifty Dollars ($350.00) with an increase to Three Hundred Sixty Dollars ($360.00) on July 1, 2021. Beginning January 1, 2024, an amount equal to forty percent (40%) of the state’s average weekly wage, rounded to the nearest whole dollar. Rates are to be subsequently adjusted January 1, annually, for injuries occurring on or after the date of the adjustment for the number of weeks which
the partial disability of the employee bears to three hundred fifty (350) three hundred sixty (360) weeks.

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

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

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

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

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

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

H. The sum of all permanent partial disability awards, excluding awards against the Multiple Injury Trust Fund, shall not exceed three hundred fifty (350) three hundred sixty (360) weeks.
SECTION 11. AMENDATORY 85A O.S. 2021, Section 47, is amended to read as follows:

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

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

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

1. If there is a surviving spouse, a lump-sum payment of One Hundred Thousand Dollars ($100,000.00) and seventy percent (70%) of the lesser of the deceased employee’s average weekly wage and the state average weekly wage. In addition to the benefits theretofore paid or due, two (2) years’ indemnity benefit in one lump sum shall be payable to a surviving spouse upon remarriage;
2. If there is a surviving spouse and a child or children, a lump-sum payment of Twenty-five Thousand Dollars ($25,000.00) and fifteen percent (15%) of the lesser of the deceased employee’s average weekly wage and the state average weekly wage to each child. If there are more than two children, each child shall receive a pro rata share of Fifty Thousand Dollars ($50,000.00) and thirty percent (30%) of the deceased employee’s average weekly wage;

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

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

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

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

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

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

1. Enrolled as a full-time student in high school or is being
schooled by other means pursuant to the Oklahoma Constitution;
2. Enrolled as a full-time student in any accredited institution of higher education or vocational or technology education; or

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

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

F. To receive benefits under this section, a beneficiary or his or her guardian, if applicable, shall file a proof of loss form with the Commission. All questions of dependency shall be determined as of the time of the injury. The employer shall initiate payment of benefits within fifteen (15) days of the Commission’s determination of the proper beneficiaries. The Commission shall appoint a guardian ad litem to represent known and unknown minor children and the guardian ad litem shall be paid a reasonable fee for his or her services.
SECTION 12. AMENDATORY 85A O.S. 2021, Section 50, is amended to read as follows:

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

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

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

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

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

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

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

H. Fee Schedule.

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

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

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

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

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

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

d. The Commission shall develop a reasonable stop-loss provision of the Fee Schedule to provide for adequate reimbursement for treatment for major burns, severe head and neurological injuries, multiple system injuries, and other catastrophic injuries requiring extended periods of intensive care. An employer or insurance carrier shall have the right to audit the charges and question the reasonableness and necessity of medical treatment contained in a bill for treatment covered by the stop-loss provision.

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

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

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

7. The Commission’s review of medical and treatment charges
pursuant to this section shall be conducted pursuant to the Fee
Schedule in existence at the time the medical care or treatment was
provided. The judgment approving the medical and treatment charges
pursuant to this section shall be enforceable by the Commission in
the same manner as provided in the Administrative Workers’
Compensation Act for the enforcement of other compensation payments.

8. Charges for prescription drugs dispensed by a pharmacy shall
be limited to ninety percent (90%) of the average wholesale price of
the prescription, plus a dispensing fee of Five Dollars ($5.00) per
prescription. “Average wholesale price” means the amount determined
from the latest publication designated by the Commission.
Physicians shall prescribe and pharmacies shall dispense generic
equivalent drugs when available. If the National Drug Code, or
“NDC”, for the drug product dispensed is for a repackaged drug, then
the maximum reimbursement shall be the lesser of the original
labeler’s NDC and the lowest-cost therapeutic equivalent drug
product. Compounded medications shall be billed by the compounding
pharmacy at the ingredient level, with each ingredient identified using the applicable NDC of the drug product, and the corresponding quantity. Ingredients with no NDC area are not separately reimbursable. Payment shall be based on a sum of the allowable fee for each ingredient plus a dispensing fee of Five Dollars ($5.00) per prescription.

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

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

11. Payment for medical care as required by the Administrative Workers’ Compensation Act shall be due within forty-five (45) days of the receipt by the employer or insurance carrier of a complete and accurate invoice, unless the employer or insurance carrier has a good-faith reason to request additional information about such invoice. Thereafter, the Commission may assess a penalty up to twenty-five percent (25%) for any amount due under the Fee Schedule that remains unpaid on the finding by the Commission that no good-faith reason existed for the delay in payment. If the Commission finds a pattern of an employer or insurance carrier willfully and knowingly delaying payments for medical care, the Commission may assess a civil penalty of not more than Five Thousand Dollars ($5,000.00) per occurrence.
12. If an employee fails to appear for a scheduled appointment with a physician or chiropractor, the employer or insurance company shall pay to the physician or chiropractor a reasonable charge, to be determined by the Commission, for the missed appointment. In the absence of a good-faith reason for missing the appointment, the Commission shall order the employee to reimburse the employer or insurance company for the charge.

13. Physicians or chiropractors providing treatment under the Administrative Workers’ Compensation Act shall disclose under penalty of perjury to the Commission, on a form prescribed by the Commission, any ownership or interest in any health care facility, business, or diagnostic center that is not the physician’s or chiropractor’s primary place of business. The disclosure shall include any employee leasing arrangement between the physician or chiropractor and any health care facility that is not the physician’s or chiropractor’s primary place of business. A physician’s or chiropractor’s failure to disclose as required by this section shall be grounds for the Commission to disqualify the physician or chiropractor from providing treatment under the Administrative Workers’ Compensation Act.

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

b. The Commission shall contract with an external consultant with knowledge of workers’ compensation fee schedules to review regional and nationwide comparisons of Oklahoma’s Fee Schedule rates and date and market for medical services. The consultant shall receive written and oral comment from employers, workers’ compensation medical service and insurance providers, self-insureds, group self-insurance associations of this state and the public. The consultant shall submit a report of its findings and a proposed amended Fee Schedule to the Commission.

c. The Commission shall adopt the proposed amended Fee Schedule in whole or in part and make any additional updates or adjustments. The Commission shall submit a proposed updated and adjusted Fee Schedule to the President Pro Tempore of the Senate, the Speaker of the House of Representatives and the Governor. The proposed Fee Schedule shall become effective on July 1 following the legislative session, if approved by Joint Resolution of the Legislature during the session in which a proposed Fee Schedule is submitted.
d. Beginning on May 28, 2019, an external evaluation shall be conducted and a proposed amended Fee Schedule shall be submitted to the Legislature for approval during the 2020 legislative session. Thereafter, an external evaluation shall be conducted and a proposed amended Fee Schedule shall be submitted to the Legislature for approval every two (2) years.

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

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

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

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

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

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

Section 69. A. Time for Filing. 1. A claim for benefits under this act the Administrative Workers’ Compensation Act, other than an occupational disease, shall be barred unless it is filed with the Oklahoma Workers’ Compensation Commission within one (1) year from the date of the injury or, if the employee has received benefits under this title for the injury, six (6) months from the date of the last issuance of such benefits payment of indemnity benefits or date of service for medical treatment, whichever is later. For purposes of this section, the date of the injury shall be defined as means the date an injury is caused by an accident as set forth in paragraph 9 of Section 2 of this title, and date of issuance of medical benefits means the date of service of the medical benefit.

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

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

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

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

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

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

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

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

C. Persons under Disability.

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

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

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

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

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

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

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

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

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

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

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

Section 112. A. The Oklahoma Workers’ Compensation Commission shall create, maintain and review a list of licensed physicians who shall serve as independent medical examiners from a list of licensed physicians who have completed such course study as the Commission may require. An independent medical examiner must agree to examine an employee within forty-five (45) days of appointment. The Commission shall, to the best of its ability, include the most experienced and competent physicians in the specific fields of expertise utilized most often in the treatment of injured employees. The period of qualification shall be two (2) years. Physicians may be qualified for successive two-year periods. Physicians serving as independent medical examiners on the effective date of this act February 1, 2014, shall serve the remainder of their respective two-year qualification periods and may reapply for successive qualification periods. The Commission may remove an independent medical examiner from the list for cause.

B. An administrative law judge may appoint an independent medical examiner to assist in determining any issue before the Commission. In the event surgery is recommended by a treating physician, upon request of the employer or employee, an independent
medical examiner shall be appointed to determine the reasonableness and necessity of the recommended surgery. The request of the employer or employee for an independent medical examiner, and a request for a deposition of the treating physician, shall be filed within fifteen (15) days of the receipt of the recommendation for surgery, or the recommended surgery shall be approved by the Commission. The Commission shall set a request for an independent medical examiner that is timely filed on an accelerated prehearing docket within ten (10) days of the filing of the request. The appointment with the independent medical examiner regarding the reasonableness and necessity of a recommended surgery shall occur within thirty (30) days of the appointment. Such independent medical examiner shall be qualified to perform the type of surgery recommended. In the event the independent medical examiner agrees with the treating physician’s recommendation for surgery, the employer shall pay to the employee the sum of One Thousand Dollars ($1,000.00) for the delay in medical treatment in addition to other benefits provided for in this act. If the employer fails to schedule a requested deposition of either the treating physician or the independent medical examiner within twenty (20) days of filing a request for deposition, the employer shall pay to the employee the sum of One Thousand Dollars ($1,000.00) for the delay in medical treatment in addition to other benefits provided for in this act.
C. An independent medical examiner shall be selected from the list of independent medical examiners within ten (10) days when the employer or the employee petitions the Commission for the selection of an independent medical examiner. The independent medical examiner shall be certified by a recognized specialty board in the area or areas appropriate to the condition under review.

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

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

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

G. Any independent medical examiner selected pursuant to the provisions of this section shall be reimbursed for the medical examination, reports and fees in a reasonable and customary amount set by the Commission, and these costs shall be borne by the employer.
H. The Commission shall create a review process to oversee on a continuing basis the quality of performance and the timeliness of the submission of medical findings by independent medical examiners.

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

J. Upon receipt of an independent medical examiner’s report, any party shall have the right to object to the introduction of the report into evidence. The objection and any request for a deposition of the independent medical examiner must be made by giving written notification to all parties and to the Commission within ten (10) days after receipt of the report, subject to the limitations set forth in subsection B of this section. The employer shall be responsible for the reasonable charges of the physician for such testimony, preparation time, and the expense of the deposition.

SECTION 17. AMENDATORY 85A O.S. 2021, Section 400, is amended to read as follows:

Section 400. A. The Workers’ Compensation Court shall be renamed the Workers’ Compensation Court of Existing Claims for the purpose of hearing disputes relating to claims that arose before February 1, 2014. The Court shall consist of the existing
judges for the remainder of his or her term. Each judge of the
Court shall continue to serve as the appointment to a designated
position on the Court. The terms of the judges by position number
shall expire on the following dates:

- Position 4 shall expire 7-1-20.
- Position 5 shall expire 7-1-20.
- Position 8 shall expire 7-1-20.
- Position 9 shall expire 7-1-20.

B. Effective July 1, 2020, the Workers' Compensation Court of
Existing Claims shall consist of one judge to be appointed by the
Governor, with confirmation by the Senate. The term of the judge
shall be appointed for a term to expire serving on July 1, 2022, is
hereby extended to July 1, 2027. The Governor shall select the
judge from a list of three applicants submitted to the Governor by
the Judicial Nominating Commission. If the list is not acceptable
to the Governor, the Governor may request from the Judicial
Nominating Commission a list of names of three additional
applicants. Any present judge of the Court of Existing Claims may
apply to the Judicial Nominating Commission for appointment to fill
any position authorized by this section.

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

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

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

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

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

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

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

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

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

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

L. Judges of the Workers’ Compensation Court of Existing Claims may punish for direct contempt pursuant to Sections 565, 565.1 and 566 of Title 21 of the Oklahoma Statutes.
M. The Court shall be vested with jurisdiction over all claims filed pursuant to the Workers’ Compensation Code or previous statute in effect on the date of an injury that occurred before February 1, 2014. All claims so filed shall be heard by the judge sitting without a jury. The Court shall have full power and authority to determine all questions in relation to payment of claims for compensation under the provisions of the Workers’ Compensation Code or previous statute in effect on the date of an injury that occurred before February 1, 2014. The Court, upon application of either party, shall order a hearing. Upon a hearing, either party may present evidence and be represented by counsel. The decision of the Court shall be final as to all questions of fact and law; provided, the decision of the Court may be appealed to the Court en banc or the Supreme Court as provided by the Workers’ Compensation Code or previous statute in effect on the date of an injury that occurred before February 1, 2014. In the event that an insufficient number of active judges are available to comprise the three-judge en banc panel, retired or former judges of the district court, Workers’ Compensation Court or Workers’ Compensation Court of Existing Claims may be designated by the Presiding Judge of the Court of Existing Claims as eligible to serve on such panel. The Governor shall provide to the Court of Existing Claims a list of designated judges eligible for service on the Court en banc. The decision of the Court shall be issued within thirty (30) days following the
submission of the case by the parties. The power and jurisdiction of the Court over each case shall be continuing and it may, from time to time, make such modifications or changes with respect to former findings or orders relating thereto if, in its opinion, it may be justified.

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

O. All accrued rights and penalties incurred pursuant to a final order of the Workers’ Compensation Court shall be preserved. No accrued right, penalty incurred, or proceeding begun by virtue of a statute repealed by the Administrative Workers’ Compensation Act shall be abrogated by the terms of the Administrative Workers’ Compensation Act.

P. Annually, on or before the first day of July, commencing with July 2019, the Administrator shall prepare and submit a report for the prior calendar year to the Governor, the Chief Justice of the Supreme Court, the President Pro Tempore of the Senate and the Speaker of the House of Representatives, and the chairs of the Senate and House judiciary committees, which shall include a statement of the number of awards made and the causes of the accidents leading to the injuries for which the awards were made, total work load data of the Court, a detailed report of the work
load of the judges of the Court, a detailed statement of the
expenses of the office of the Administrator of Workers’ Compensation
Court of Existing Claims, the number of disposition dockets held,
the number of remaining claims, together with any other matter which
the Administrator deems proper to report to the Governor including
any recommendations he or she may desire to make.

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

SECTION 18. Sections 1 through 12 of this act shall become
effective November 1, 2023.

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