

OKLAHOMA STATUTES
TITLE 85A. WORKERS' COMPENSATION

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§85A-1. Short title - Administrative Workers' Compensation Act.

Sections 1 through 106 and 150 through 168 of this act shall be known and may be cited as the "Administrative Workers' Compensation Act". The provisions of the Administrative Workers' Compensation Act shall be strictly construed.

Added by Laws 2013, c. 208, § 1.

§85A-2. Definitions.

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 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, or
 - (4) was independent of sickness, mental incapacity, bodily infirmity or any other cause.
- 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.
- c. A compensable injury shall be established by medical evidence supported by objective findings as defined in paragraph 31 of this section.
 - d. The injured employee shall prove by a preponderance of the evidence that he or she has suffered a compensable injury.
 - e. 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. 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;

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,
 - (4) any person who is providing services in a medical care or social services program, or who is a participant in a work or training program, administered by the Department of Human Services, unless the Department is required by federal law or regulations to provide workers' compensation for such person. This division shall not be construed to include nursing homes,
 - (5) 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,
 - (6) any person employed by an employer which is a youth sports league which qualifies for exemption from federal income taxation pursuant to federal law,
 - (7) 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,
 - (8) 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,

- (9) 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,
- (10) 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
- (11) 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 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. "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. "Incapacity" means inadequate strength or ability to perform a work-related task;

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

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

27. "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 and shall not create a separate cause of action outside this act;

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

29. "Medical services" means those services specified in Section 50 of this title;

30. "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;

31. a. (1) "Objective findings" are those findings which cannot come under the voluntary control of the patient.
- (2) (a) When determining permanent disability, a physician, any other medical provider, an administrative law judge, the Commission or the courts shall not consider complaints of pain.
- (b) For the purpose of making permanent disability ratings to the spine, physicians shall use criteria established by the 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. "Official Disability Guidelines" or "ODG" means the current edition of the Official Disability Guidelines and the ODG Treatment in Workers' Comp as published by the Work Loss Data Institute;

33. "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 impairment, if the impairment is contained therein;

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

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

39. "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;

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

45. "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 Workers' Compensation Commission;

46. "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. "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. "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.

Added by Laws 2013, c. 208, § 2. Amended by Laws 2018, c. 150, § 1, eff. Nov. 1, 2018; Laws 2019, c. 476, § 1, emerg. eff. May 28, 2019.

§85A-3. Applicability of act.

A. Every employer and every employee, unless otherwise specifically provided in this 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 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 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 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. Added by Laws 2013, c. 208, § 3, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 2, emerg. eff. May 28, 2019.

§85A-4. Severability.

A. If any part of this act be decided by the courts to be unconstitutional or invalid, the same shall not affect the validity of this act as a whole, or any part thereof other than the part so decided to be unconstitutional or invalid.

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

Added by Laws 2013, c. 208, § 4, eff. Feb. 1, 2014.

§85A-5. Exclusive liability - Immunity.

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, and the remedies and rights provided by this 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. 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 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 committed by the employer. An intentional tort 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. 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.

D. If an employer has failed to secure the payment of compensation for his or her injured employee as provided for in this 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 shall be construed to relieve the employer from any other penalty provided for in this act for failure to secure the payment of compensation under this 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 or in the case of an intentional tort, 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.

Added by Laws 2013, c. 208, § 5, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 3, emerg. eff. May 28, 2019.

§85A-6. Fraud.

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

- (1) obtaining any benefit or payment,
- (2) increasing any claim for benefit or payment, or
- (3) obtaining workers' compensation coverage under this act,

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

b. A material false statement or representation includes, but is not limited to, attempting to obtain treatment or compensation for body parts that were not injured in the course and scope of employment.

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

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

B. Except for forms submitted through the Electronic Data Interchange system employed by the Commission pursuant to Section 101 of this title, a copy of division (1) of subparagraph a of paragraph 1 of subsection A of this section shall be included on all forms prescribed by the Commission for the use of injured employees claiming benefits and for the use of employers in responding to employees' claims under this act.

C. If the Workers' Compensation Commission or the Attorney General finds that a violation of division (1) of subparagraph a of paragraph 1 of subsection A of this section has been committed, or that any other criminal violations in furtherance of this act were committed, the chair of the Commission or the Attorney General shall refer the matter for appropriate action to the prosecuting attorney having criminal jurisdiction over the matter.

D. 1. a. There shall be established within the Office of the Attorney General a Workers' Compensation Fraud Investigation Unit, funded by the Commission. The Attorney General shall appoint a Director of the

Workers' Compensation Fraud Investigation Unit, who may also serve as the director of any other designated insurance fraud investigation division within the Attorney General's office.

- b. (1) The Unit shall investigate workers' compensation fraud, any additional criminal violations that may be related to workers' compensation fraud, and any other insurance fraud matters as may be assigned at the discretion of the Attorney General.
- (2) The Attorney General shall designate the personnel assigned to the Unit, who, on meeting the qualifications established by the Oklahoma Council on Law Enforcement Education and Training, shall have the powers of specialized law enforcement officers of the State of Oklahoma for the purpose of conducting investigations under this subparagraph. Personnel hired as specialized law enforcement officers shall have a minimum of three (3) years of certified law enforcement experience or its equivalent in national or military law enforcement experience as approved by the Oklahoma Council on Law Enforcement Education and Training.

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

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

- 4. a. In the course of any investigation being conducted by the Unit, the Attorney General and his or her deputies and assistants and the Director and his or her deputies and assistants shall have the power of subpoena and may:
 - (1) subpoena witnesses,
 - (2) administer oaths or affirmations and examine any individual under oath, and
 - (3) require and compel the production of records, books, papers, contracts, and other documents.
- b. The issuance of subpoenas for witnesses shall be served in the same manner as if issued by a district court.

- c. (1) Upon application by the commissioner or the Director of the Unit, the district court located in the county where a subpoena was served may issue an order compelling an individual to comply with the subpoena to testify.
- (2) Any failure to obey the order of the court may be punished as contempt.
- d. If any person has refused in connection with an investigation by the Director to be examined under oath concerning his or her affairs, then the Director is authorized to conduct and enforce by all appropriate and available means any examination under oath in any state or territory of the United States in which any officer, director, or manager may then presently be to the full extent permitted by the laws of the state or territory.
- e. In addition to the punishments described in paragraph 1 of subsection A of this section, any person providing false testimony under oath or affirmation in this state as to any matter material to any investigation or hearing conducted under this subparagraph, or any workers' compensation hearing, shall upon conviction be guilty of perjury.

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

- 6. a. Every carrier or employer who has reason to suspect that a violation of division (1) of subparagraph a of paragraph 1 of subsection A of this section has occurred shall be required to report all pertinent matters to the Unit.
- b. No carrier or employer who makes a report for a suspected violation of division (1) of subparagraph a of paragraph 1 of subsection A of this section by an employee shall be liable to the employee unless the carrier or employer knowingly and intentionally included false information in the report.
- c. (1) Any carrier or employer who willfully and knowingly fails to report a violation under division (1) of subparagraph a of paragraph 1 of subsection A of this section shall be guilty of a misdemeanor and on conviction shall be punished by a fine not to exceed One Thousand Dollars (\$1,000.00).
- (2) Fifty percent (50%) of any criminal fine imposed and collected under this subparagraph shall be paid and allocated in accordance with applicable law to the fund administered by the Commission.

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

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

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

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

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

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

I. Except for forms submitted through the Electronic Data Interchange system employed by the Commission pursuant to Section 101 of this title, the Commission shall include a statement on all forms for notices and instructions to employees, employers, carriers and third-party administrators that any person who commits workers' compensation fraud, upon conviction, shall be guilty of a felony punishable by imprisonment, a fine or both.

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

K. If the Attorney General's Office is in compliance with the discovery provisions of Section 258 of Title 22 of the Oklahoma Statutes, medical records created for the purpose of treatment and

medical opinions obtained during the investigation shall be admissible at the preliminary hearing without the appearance of the medical professional creating such records or opinions. However, when material evidence dispositive to the issues of whether there was probable cause the crime was committed and whether the defendant committed the crime, was not included in a report or opinion admitted at preliminary hearing, but might be presented at a pretrial hearing by a medical professional who created such report or opinion, the judge may, upon the motion of either party, order the appearance of the medical professional creating such report or opinion. Questions of fact regarding the conduct of the defendant that conflict with the findings of the medical professional evaluating the defendant shall not constitute material evidence. In the event of such motion, notice shall be given to the Attorney General's Workers' Compensation Fraud and Investigation and Prosecution Unit. A hearing shall be held and, if the motion is granted, the evidence shall not be presented fewer than five (5) days later.

L. Any person or entity who, in good faith and exercising due care, reports suspected workers' compensation fraud or insurance fraud, or who allows access to medical records or other information pertaining to suspected workers' compensation or insurance fraud, by persons authorized to investigate a report concerning the workers' compensation and insurance fraud, shall have immunity from any civil or criminal liability for such report or access. Any such person or entity shall have the same immunity with respect to participation in any judicial proceeding resulting from such reports. For purposes of any civil or criminal proceeding, there shall be a presumption of good faith of any person making a report, providing medical records or providing information pertaining to a workers' compensation or insurance fraud investigation by the Attorney General, and participating in a judicial proceeding resulting from a subpoena or a report.

Added by Laws 2013, c. 208, § 6, eff. Feb. 1, 2014. Amended by Laws 2015, c. 390, § 1, eff. Nov. 1, 2015; Laws 2019, c. 476, § 4, emerg. eff. May 28, 2019.

§85A-7. Discrimination or retaliation.

A. An employer may not retaliate against an employee when the employee has in good faith:

1. Filed a claim under this act;
2. Retained a lawyer for representation regarding a claim under this act;
3. Instituted or caused to be instituted any proceeding under the provisions of this act; or
4. Testified or is about to testify in any proceeding under the provisions of this act.

B. The district courts shall have exclusive jurisdiction to hear and decide claims based on this section.

C. An employer which violates any provision of this section shall be liable in a district court action for reasonable damages, actual and punitive if applicable, suffered by an employee as a result of the violation. Exemplary or punitive damage awards made pursuant to this section shall not exceed One Hundred Thousand Dollars (\$100,000.00). The employee shall have the burden of proof by a preponderance of the evidence.

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

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

F. Notwithstanding any other provision of this section, an employer shall not be required to rehire or retain an employee who, after temporary total disability has been exhausted, is determined by a physician to be physically unable to perform his or her assigned duties, or whose position is no longer available.

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

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

Added by Laws 2013, c. 208, § 7, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 5, emerg. eff. May 28, 2019.

§85A-8. Agreement to waive compensation.

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

B. Any officer of a corporation, sole proprietor, partner of a partnership, member of a limited liability company, member of a professional association, or self-employed employer who is not a subcontractor and who owns and operates his or her own business may, by agreement or contract, exclude himself or herself from coverage or waive his or her right to coverage or compensation under this act. Added by Laws 2013, c. 208, § 8, eff. Feb. 1, 2014.

§85A-9. Agreements for employee to pay premium of employer.

No agreement by an employee to pay any portion of the premium paid by his or her employer to a carrier or a benefit fund or department maintained by the employer for the purpose of providing compensation or medical services and supplies as required by this act

shall be valid. Any employer who makes a deduction for such purposes from the pay of any employee entitled to the benefits of this act shall be guilty of a misdemeanor.

Added by Laws 2013, c. 208, § 9, eff. Feb. 1, 2014.

§85A-10. Release or commutation - Liens against workers' compensation benefits.

A. The right to any claim, benefit or compensation shall not be released or commuted except as provided by the Administrative Workers' Compensation Act and, except for child support liens, is not assignable and is not subject to garnishment, attachment, levy, execution, or any other legal process. Monetary compensation to dependents of a deceased employee shall not constitute assets of the estate of the deceased employee and shall be payable to and for the benefit of the dependents alone. Any amount withheld under the provisions of this section shall be treated as if it were paid to the employee as workers' compensation and paid by the employee to the person or agency to whom the obligation is payable.

B. A lien against workers' compensation benefits is authorized for the purpose of enforcing a judgment for child support. Child support liens filed in accordance with Section 135 of Title 43 of the Oklahoma Statutes are specifically authorized and shall be paid in accordance with such statute without any order of the Commission.

C. Additionally, all income assignments or wage assignments for child support issued pursuant to Section 1170 of Title 12 of the Oklahoma Statutes or Section 237.7 of Title 56 of the Oklahoma Statutes are specifically authorized and shall be paid in accordance with such statutes without any order of the Commission.

D. In the event a child support lien is filed in a case before the Commission, an administrative law judge of the Commission shall recognize such lien in any award of monetary benefits and the employer or insurance carrier shall include the name of the person or government agency asserting the lien on any check for temporary total disability, permanent partial disability or permanent and total disability.

Added by Laws 2013, c. 208, § 10, eff. Feb. 1, 2014.

§85A-11. Compensation of alien nonresidents.

Compensation to alien nonresidents of the United States or Canada shall be the same in amount as provided for residents, except that alien nonresident dependents in any foreign country shall be limited to the surviving spouse or children or, if there is no surviving spouse or children, to the surviving father or mother whom the employee has supported, either wholly or in part, for the period of one (1) year before the date of the injury.

Added by Laws 2013, c. 208, § 11, eff. Feb. 1, 2014.

§85A-12. Preference.

Compensation due an injured employee or his or her dependents shall have the same preference as is allowed by law to an employee for unpaid wages.

Added by Laws 2013, c. 208, § 12, eff. Feb. 1, 2014.

§85A-13. Mental injury or illness.

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.

B. 1. Notwithstanding any other provision of this 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.

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.

Added by Laws 2013, c. 208, § 13, eff. Feb. 1, 2014.

§85A-14. Cardiovascular, coronary, pulmonary, respiratory, or cerebrovascular accidents and myocardial infarctions.

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

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

Added by Laws 2013, c. 208, § 14, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 6, emerg. eff. May 28, 2019.

§85A-15. Repealed by Laws 2019, c. 476, § 65, emerg. eff. May 28, 2019.

§85A-16. Official Disability Guidelines - Treatment in Workers Compensation.

A. The Official Disability Guidelines - Treatment in Workers Compensation (ODG), published by the Work Loss Data Institute, is to be recognized as the primary standard of reference, at the time of treatment, in determining the frequency and extent of services presumed to be medically necessary and appropriate for compensable injuries under this act, or in resolving such matters in the event a dispute arises. The medical treatment guidelines are not requirements, nor are they mandates or standards; they provide advice by identifying the care most likely to benefit injured workers. The guidelines shall be evidence-based, scientifically valid, outcome-focused, and designed to reduce excessive or inappropriate medical care while safeguarding necessary medical care.

B. Physicians providing care to an employee shall prescribe for the employee any necessary prescription drugs and over-the-counter alternatives to prescription medicine as clinically appropriate and as recommended under the Official Disability Guidelines. Prescriptions and nonprescription drugs that are not preferred, exceed or are not addressed by ODG require preauthorization and the preauthorization request shall include the prescribing doctor's drug regimen plan of care and the anticipated dosage or range of dosages. Added by Laws 2013, c. 208, § 16, eff. Feb. 1, 2014.

§85A-17. Physician Advisory Committee.

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

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

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

3. The Speaker of the House of Representatives shall appoint three members, one of whom shall be licensed in this state as an osteopathic physician, one of whom shall be licensed in this state

either as a doctor of medicine or a doctor of osteopathy and shall be engaged in the practice of occupational medicine, and one of whom shall be licensed in this state as a chiropractic physician.

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

B. The Committee shall:

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

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

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

4. After public hearing, adopt Physician Advisory Committee Guidelines (PACG) and protocols for only medical treatment not addressed by the latest edition of the Official Disability Guidelines;

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

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

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

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

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

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

C. The Commission shall recognize the latest edition of the Official Disability Guidelines as the primary standard of reference, at the time of treatment, in determining the frequency and extent of services presumed to be medically necessary and appropriate for compensable injuries under this act, or in resolving such matters in the event a dispute arises.

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

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

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

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

H. Any health care provider acting in good faith and within the scope of the provider's duties as a member of the Physician Advisory Committee shall be immune from civil liability for making any report or other information available to the judges of the Commission or to the Commission or for assisting in the origination, investigation, or preparation of the report or other information so provided.

Added by Laws 2013, c. 208, § 17, eff. Feb. 1, 2014.

§85A-18. Notice to health care providers - Collection of fees.

A. No hospital, physician, or other health care provider shall bill or attempt to collect any fee or any portion of a fee for services rendered to an employee due to a work-related injury or report to any credit-reporting agency any failure of the employee to make the payment, when a claim for compensation has been filed under this act and the hospital, physician, or health care provider has received actual notice given in writing by the employee or the employee's representative. Actual notice shall be deemed received by

the hospital, physician, or health care provider five (5) days after mailing by certified mail or sending by facsimile, electronic mail or other electronic means with receipt of confirmation by the employee or his or her representative to the hospital, physician, or health care provider.

B. The notice shall include:

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

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

D. This section shall not void, modify, or amend any other section or subsection of this act.

E. An order by the Workers' Compensation Commission under this section shall stay all proceedings for collection.

Added by Laws 2013, c. 208, § 18, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 7, emerg. eff. May 28, 2019.

§85A-19. Oklahoma Workers' Compensation Commission.

A. There is hereby created the Oklahoma Workers' Compensation Commission, an executive agency of the State of Oklahoma, which shall have the exclusive responsibility and duty to carry out the provisions of the Administrative Workers' Compensation Act, except as otherwise provided.

B. The Commission shall consist of three (3) full-time commissioners, each of whom must have been involved in the workers' compensation field for at least three (3) years, appointed by the Governor: one of whom is chosen from a slate of three selected by the Speaker of the House of Representatives, with all three confirmed by the Senate. The term of each appointee shall be six (6) years to administer the provisions of this act. The Governor may request a subsequent slate of nominees from the Speaker of the House of Representatives if a suitable nominee is not found. Any or all of the commissioners may be reappointed for additional six-year terms upon reconfirmation by the Senate. However, the initial commissioners shall serve staggered terms of two (2), four (4), and

six (6) years, respectively, as determined by the Governor. If the Legislature is not in session at the time of appointment, the appointment shall be subject to confirmation by the Senate upon convening of the next regular session of the Legislature. Membership on the Commission shall be a full-time position and no commissioner shall have any other employment, unless authorized or excused by law. Each commissioner shall receive a salary equal to that paid to a district judge of this state.

C. The Commission shall have the authority to adopt reasonable rules within its respective areas of responsibility including the rules of procedure for administrative hearings, after notice and public hearing, for effecting the purposes of the Administrative Workers' Compensation Act, in accordance with the Oklahoma Administrative Procedures Act. All rules, upon adoption, shall be published and be made available to the public and, if not inconsistent with the law, shall be binding in the administration of the Administrative Workers' Compensation Act.

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

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

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

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

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

F. All appeals or disputes arising from actions of the Commission shall be governed by provisions of the Administrative Workers' Compensation Act and the Commission shall not be subject to the provisions of the Oklahoma Administrative Procedures Act, except as provided in the Administrative Workers' Compensation Act.

G. When any commissioner of the Commission is disqualified for any reason to hear and participate in the determination of any matter pending before the Commission, the Governor shall appoint a qualified person to hear and participate in the decision on the particular matter. The special commissioner so appointed shall have all authority and responsibility with respect to the particular matter before the Commission as if the person were a regular commissioner of

the Commission but shall have no authority or responsibility with respect to any other matter before the Commission. A person appointed as a special commissioner of the Commission under the provisions of this subsection shall be entitled to receive a per diem equal to the annual salary of the commissioners prorated for the number of days he or she serves in the capacity of a special commissioner of the Commission. Furthermore, when a vacancy on the Commission occurs or is certain to occur, the position shall be filled pursuant to the provisions of this section.

Added by Laws 2013, c. 208, § 19. Amended by Laws 2014, H.J.R. No. 1096, § 4, eff. July 1, 2014; Laws 2019, c. 476, § 8, emerg. eff. May 28, 2019.

§85A-20. Power and authority of Commission.

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

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

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

3. To assess penalties;

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

5. To make available all records in connection with all cases of personal injury to the Oklahoma Department of Labor. The Commissioner of Labor may propose rules for the prevention of injuries and transmit the rules to the Commission. The Commission may recommend proposed rules for prevention of injuries to the Commissioner of Labor; and

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

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

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

3. Funds derived from administrative fees shall be deposited into the Workers' Compensation Commission Revolving Fund to be used

to defray expenses incurred in preparation and distribution of materials.

Added by Laws 2013, c. 208, § 20. Amended by Laws 2019, c. 476, § 9, emerg. eff. May 28, 2019.

§85A-21. Officers - Quorum.

A. Commissioners shall be considered officers and shall take the oath prescribed by the Oklahoma Constitution and the laws of this state.

B. 1. A majority of the Workers' Compensation Commission shall constitute a quorum for the transaction of business, and vacancies shall not impair the right of the remaining commissioners to exercise all the powers of the full Commission, so long as a majority remains.

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

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

D. Except with respect to the Commission's authority to hear appeals of decisions from administrative law judges, any reference in this title to the Commission's ability to hear and decide the rights of interested parties under this title shall not prevent it from delegating that responsibility to an administrative law judge.

Added by Laws 2013, c. 208, § 21. Amended by Laws 2019, c. 476, § 10, emerg. eff. May 28, 2019.

§85A-22. Administration of act - Additional powers and duties.

A. 1. For the purpose of administering the provisions of this title, the Workers' Compensation Commission is authorized:

- a. to make rules necessary for the administration and operation of the Commission,
- b. to appoint and fix the compensation of temporary technical assistants, medical and legal advisers, clerical assistants and other officers and employees, and
- c. to make such expenditures, including those for personal service, rent, books, periodicals, office equipment, and supplies, and for printing and binding as may be necessary.

2.
 - a. The Commission shall vote on any substantive change to any form and the effective date of such substantive change.
 - b. The Commission shall comply with the provisions of the Administrative Procedures Act applicable to the filing and publication requirements for rules before the

adoption, prescription, amendment, modification, or repeal of any rule.

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

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

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

1. To hear and approve compromise settlements;

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

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

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

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

6. To hear and determine claims concerning disputed medical bills;

7. To promulgate necessary rules for administering this title and develop uniform forms and procedures for use by administrative law judges. Such rules shall be reviewable by the Legislature;

8. To invest funds on behalf of the Multiple Injury Trust Fund;

9. To appoint a Commission Mediator to conduct informal sessions to attempt to resolve assigned disputes;

10. To establish a petty cash fund in an amount not to exceed Five Hundred Dollars (\$500.00) to be used for the purpose of making change for persons purchasing printed or electronic materials from the Commission, paying fees and fines, and transacting other such business with the Commission. The fund shall be established and replenished from any monies available to the Commission for operating expenses and it shall be administered pursuant to the requirements of Section 195 of Title 62 of the Oklahoma Statutes; and

11. Such other duties and responsibilities authorized by law.

D. Communications, whether in person, by electronic medium or in writing, that reflect the pre-decisional deliberations of the Commissioners among each other or with Commission staff, and which occur while exercising their quasi-judicial duties such as reviewing decisions or awards made by the administrative law judges of the

Commission pursuant to Section 78 of this title or reviewing arbitration awards pursuant to Section 322 and Section 323 of this title, shall not be subject to requirements of the Oklahoma Open Meeting Act or Oklahoma Open Records Act, shall be confidential and shall be considered protected deliberative communications.

E. It shall be the duty of an administrative law judge, under the rules adopted by the Commission, to hear and determine claims for compensation and to conduct hearings and investigations and to make such judgments, decisions, and determinations as may be required by any rule or judgment of the Commission.

Added by Laws 2013, c. 208, § 22. Amended by Laws 2019, c. 476, § 11, emerg. eff. May 28, 2019.

§85A-23. Necessary traveling expenses.

Any commissioner or employee of the Commission shall be entitled to receive his or her necessary traveling expenses as provided in the State Travel Reimbursement Act. The expenses shall be certified by the person who incurred them and shall be allowed and paid on presentation of vouchers approved by the Commission.

Added by Laws 2013, c. 208, § 23.

§85A-24. Administrative report.

On or before the first day of the regular session of the Legislature, the Commission shall submit to the Governor and the Legislature a report of the administration of this act for the preceding biennial period, together with such recommendations as the Commission may deem advisable.

Added by Laws 2013, c. 208, § 24.

§85A-25. Annual publication of aggregate information.

The Commission shall publish annually, on an aggregate basis, information pertaining to the distribution of workers' compensation insurance premiums, losses, expenses, and net income to be compiled from reports required to be filed with the Insurance Commissioner or any similar information required to be filed by the Insurance Commissioner regarding workers' compensation insurance. The Commission shall also publish in the annual report information regarding aggregate workers' compensation benefit distribution to claimants, medical providers, and attorneys, if available.

Added by Laws 2013, c. 208, § 25, eff. Feb. 1, 2014.

§85A-26. Removal of commissioners.

The Governor may, at any time, remove any commissioner for inefficiency, neglect of duty, or misconduct in office, giving him or her in advance a copy of the charges preferred and an opportunity to be heard by a three-person panel consisting of the Insurance Commissioner, the Lieutenant Governor, and the State Treasurer on not

less than ten (10) days' notice. A representative of the Attorney General's office shall attend the proceedings and on the Governor's request shall advise or assist him or her in such proceedings. Either party may procure the attendance and testimony of witnesses as provided by the Code of Civil Procedure of this state. If a commissioner is removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges made against the commissioner and his or her findings, together with a complete record of the proceeding and a transcript of the testimony, which shall constitute a public record of the state.

Added by Laws 2013, c. 208, § 26, eff. Feb. 1, 2014.

§85A-27. Jurisdiction - Duties and powers of administrative judges.

A. The Workers' Compensation Commission shall be vested with jurisdiction over all claims filed pursuant to the Administrative Workers' Compensation Act. All claims so filed shall be heard by the administrative law judge sitting without a jury. The Commission shall have full power and authority to determine all questions in relation to claims for compensation under the provisions of the Administrative Workers' Compensation Act. The Commission, upon application of either party, shall order a hearing. Upon a hearing, either party may present evidence and be represented by counsel. Except as provided in this act, the decision of the administrative law judge shall be final as to all questions of fact and law. The decision of the administrative law judge shall be issued within thirty (30) days following the submission of the case by the parties. The power and jurisdiction of the Commission 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.

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

1. To hear and determine claims for compensation, to conduct hearings and investigations, and to make such judgments, decisions, and determinations as may be required by any rule or judgment of the Commission;
2. To hear and determine challenges to an agreement to arbitrate under the Workers' Compensation Arbitration Act; and
3. To have and exercise all other powers and duties conferred or imposed by the Commission or this act.

Added by Laws 2013, c. 208, § 27, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 12, emerg. eff. May 28, 2019.

§85A-28. Multiple Injury Trust Fund - Self-insurance Guaranty Fund.

A. There are established within the Office of the State Treasurer two separate funds:

1. The "Multiple Injury Trust Fund"; and

2. The "Self-insurance Guaranty Fund".

B. Except as provided in Section 97 of this title, no money shall be appropriated from these funds for any purpose except for the use and benefit, or at the direction, of the Oklahoma Workers' Compensation Commission.

C. Except as provided in Section 96 of this title, all funds established under this section shall be administered, disbursed, and invested under the direction of the Commission and the State Treasurer.

D. All incomes derived through investment of the Multiple Injury Trust Fund shall be credited as investment income to the fund that participated in the investment.

E. No monies deposited to these funds shall be subject to any deduction, tax, levy, or any other type of assessment.

F. If the balance in the Multiple Injury Trust Fund becomes insufficient to fully compensate those employees to whom it is obligated, payment shall be suspended until such time as the Multiple Injury Trust Fund is capable of meeting its obligations, paying all arrearages, and restoring normal benefit payments.

G. On the effective maturity dates of each investment, the investment shall be transferred to the State Treasurer for deposit into the Multiple Injury Trust Fund created in this section.

H. Unless provided otherwise in the Administrative Workers' Compensation Act, all fines and penalties assessed under the Administrative Workers' Compensation Act shall be deposited into the Workers' Compensation Commission Revolving Fund. Any monies remaining in the Workers' Compensation Fund on June 30, 2015, shall be transferred to the Workers' Compensation Commission Revolving Fund.

Added by Laws 2013, c. 208, § 28, eff. Feb. 1, 2014. Amended by Laws 2014, c. 169, § 1, emerg. eff. April 25, 2014; Laws 2015, c. 344, § 1, eff. July 1, 2015.

§85A-28.1. Workers' Compensation Commission Revolving Fund.

There is hereby created in the State Treasury a revolving fund for the Workers' Compensation Commission to be designated the "Workers' Compensation Commission Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Workers' Compensation Commission from the revenues apportioned pursuant to Section 122 of Title 85A of the Oklahoma Statutes and such other sources as may be provided by law. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Workers' Compensation Commission for the purpose of funding the operations of the Commission and administering the Administrative Workers' Compensation Act and for any other purposes related to the Administrative Workers' Compensation Act that the Commission deems

appropriate. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.

Added by Laws 2015, c. 344, § 2, eff. July 1, 2015.

§85A-29. Fees.

A. Each carrier writing compensation insurance in this state shall pay to the Workers' Compensation Commission an annual fee of One Thousand Dollars (\$1,000.00).

B. Each self-insurer shall pay to the Commission an annual application fee of One Thousand Dollars (\$1,000.00).

C. Each third-party administrator and marketing firm shall pay to the Commission an annual application fee of One Thousand Dollars (\$1,000.00).

D. Fees required pursuant to this section shall be deposited to the credit of the Workers' Compensation Commission Revolving Fund. Added by Laws 2013, c. 208, § 29, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 13, emerg. eff. May 28, 2019.

§85A-30. Physically impaired persons - Adjudications of Multiple Injury Trust Fund claims.

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

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 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.

Added by Laws 2013, c. 208, § 30, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 59, emerg. eff. May 28, 2019.

§85A-31. Multiple Injury Trust Fund.

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

1. As soon as practicable after January 1 of each year, the commissioners of the Workers' Compensation Commission shall establish an assessment rate applicable to each mutual or interinsurance association, stock company, or other insurance carrier writing workers' compensation insurance in this state, each employer carrying

its own risk, and each group self-insurance association, for amounts for purposes of computing the assessment authorized by this section necessary to pay the annual obligations of the Multiple Injury Trust Fund determined on or before December 31 of each year by the Multiple Injury Trust Fund (MITF) Director, provided for in subsection Q of this section, to be outstanding for the next calendar year. The rate shall be equal for all parties required to pay the assessment. The Board of Directors for CompSource Mutual Insurance Company shall have the power to disapprove the rate established by the MITF Director until the Multiple Injury Trust Fund repays in full the amount due on any loan from CompSource Mutual Insurance Company or its predecessor CompSource Oklahoma. If the MITF Director and CompSource Mutual Insurance Company have not agreed on the assessment rate within thirty (30) days, the Workers' Compensation Commission shall set an assessment rate sufficient to cover all foreseeable obligations of the Multiple Injury Trust Fund, including interest and principal owed by the fund on any loan;

2. The assessments shall be paid to the Oklahoma Tax Commission. Insurance carriers, self-insurers, and group self-insurance associations shall pay the assessment in four equal installments not later than the fifteenth day of the month following the close of each quarter of the calendar year of the assessment. Assessments shall be determined based upon gross direct written premiums, normal premiums or actual paid losses of the paying party, as applicable, during the calendar quarter for which the assessment is due. Assessments are expressly conditioned and contingent upon preservation of the rebate equal to two-thirds (2/3) of the amount of the assessment actually paid pursuant to Sections 6101 and 6102 of Title 68 of the Oklahoma Statutes. Uninsured employers shall pay the assessment not later than the fifteenth day of the month following the close of each quarter of the calendar year of the assessment. For purposes of this section, "uninsured employer" means an employer required by law to carry workers' compensation insurance but who has failed or neglected to do so.

- a. The assessment authorized in this section shall be determined using a rate equal to the proportion that the sum of the outstanding obligations of the Multiple Injury Trust Fund as determined pursuant to paragraph 1 of this subsection bears to the combined gross direct written premiums of all such insurers; all actual paid losses of all individual self-insureds; and the normal premium of all group self-insurance associations, for the year period from January 1 to December 31 preceding the assessment.
- b. For purposes of this subsection:
 - (1) "actual paid losses" means all medical and indemnity payments, including temporary

disability, permanent disability, and death benefits, and excluding loss adjustment expenses and reserves, and

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

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

4. Each mutual or interinsurance association, stock company, or other insurance carrier writing workers' compensation insurance in this state, and each employer carrying its own risk, including each group self-insurance association, shall be notified by the Workers' Compensation Commission in writing of the rate for the assessment on or before May 1 of each year in which a rate is determined. The rate determined by the Commission shall be in effect for four calendar quarters beginning July 1 following determination by the Commission. The Commission may amend its previously determined rate on or after July 1, 2019. Parties affected by the amended rate shall be notified by the Commission in writing as is reasonable. The amended rate shall be in effect beginning October 1, 2019, for the remainder of fiscal year 2020;

5. a. No mutual or interinsurance association, stock company, or other insurance carrier writing workers' compensation insurance in this state may be assessed in any year an amount greater than seven percent (7%) of the gross direct written premiums of that insurer. The authorization for a maximum seven-percent assessment shall exist for a period of three (3) years, then revert back to six percent (6%) thereafter.
- b. No employer carrying its own risk may be assessed in any year an amount greater than seven percent (7%) of the total actual paid losses of that individual self-insured. The authorization for a maximum seven-percent assessment shall exist for a period of three (3) years, then revert back to six percent (6%) thereafter.
- c. No group self-insurance association may be assessed in any year an amount greater than seven percent (7%) of the normal premium of that group self-insurance association. The authorization for a maximum seven-percent assessment shall exist for a period of three (3) years, then revert back to six percent (6%) thereafter;

6. The Oklahoma Tax Commission shall assess and collect from any uninsured employer a temporary assessment at the rate of five percent (5%) of the total compensation for permanent total disability awards,

permanent partial disability awards and death benefits paid out during each quarter of the calendar year by employers. The assessment shall be paid in four equal installments not later than the fifteenth day of the month following the close of the calendar year of the assessments. For the purpose of this paragraph, "uninsured employer" means an employer required by law to secure its workers' compensation obligations but who has failed or neglected to do so;

7. For injuries occurring on or after July 1, 2019, the Oklahoma Tax Commission shall assess and collect from claimants a temporary assessment as follows:

- a. if an award has been made by the Workers' Compensation Court of Existing Claims or the Workers' Compensation Commission for permanent partial disability or permanent total disability, or if a Compromise Settlement or Joint Petition has been approved, the employer or insurance carrier shall pay to such employee the amount of the award less the assessment. The assessment shall be paid to the Oklahoma Tax Commission no later than the fifteenth day of the month following the close of each quarter of the calendar year in which compensation is paid or became payable, and
- b. in making and entering awards for compensation for permanent total disability or permanent partial disability, three percent (3%) of the total award or settlement shall be paid to the Tax Commission no later than the fifteenth day of the month following the close of each quarter of the calendar year in which compensation is paid or became payable. The total amount of the deduction so determined and fixed shall have the same force and effect as an award for compensation, and all provisions relating to the collection of awards shall apply to such judgments; and

8. If the revenue in any one (1) year is insufficient to make all necessary payments for obligations of the Multiple Injury Trust Fund and for the allocations provided for in subsection J of this section, the unpaid portion shall be paid as soon thereafter as funds become available.

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

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

D. Any mutual or interinsurance association, stock company, or other insurance company, which is subject to regulation by the

Insurance Commissioner, failing to make payments required in this act promptly and correctly, and failing to report payment of the same to the Insurance Commissioner within ten (10) days of payment shall be subject to administrative penalties as allowed by law, including but not limited to a fine in the amount of Five Hundred Dollars (\$500.00) or an amount equal to one percent (1%) of the unpaid amount, whichever is greater, to be paid to the Insurance Commissioner.

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

F. 1. On or before the first day of April of each year, the State Treasurer shall advise the Commission, the MITF Director and the Tax Commission of the amount of money held as of March 1 of that year by the State Treasurer to the credit of the Multiple Injury Trust Fund. On or before the first day of November of each year, the State Treasurer shall advise the Commission, the MITF Director and the Tax Commission of the amount of money held as of October 1 of that year by the State Treasurer to the credit of the Multiple Injury Trust Fund.

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

- a. advise the Chief Executive Officer of CompSource Mutual Insurance Company on or before the first day of April of the money held as of March 1 of that year by the State Treasurer to the credit of the Multiple Injury Trust Fund, and
- b. advise the Chief Executive Officer of CompSource Mutual Insurance Company on or before the first day of November of the money held as of October 1 of that year by the State Treasurer to the credit of the Multiple Injury Trust Fund.

G. Eighty percent (80%) of all sums held by the State Treasurer to the credit of the Multiple Injury Trust Fund may by order of the MITF Director be invested in or loaned on the pledge of any of the securities in which a state bank may invest the monies deposited therein by the State Treasurer; or may be deposited in state or national banks or trust companies upon insured time deposit bearing interest at a rate no less than currently being paid upon insured savings accounts in the institutions. As used in this section, "insured" means insurance as provided by an agency of the federal

government. All such securities or evidence of indebtedness shall be placed in the hands of the State Treasurer, who shall be the custodian thereof, who shall collect the principal and interest when due, and pay the same into the Multiple Injury Trust Fund. The State Treasurer shall pay by vouchers drawn on the Multiple Injury Trust Fund for the making of such investments, when signed by the MITF Director, upon delivery of such securities or evidence of indebtedness to the State Treasurer. The MITF Director may sell any of such securities, the proceeds thereof to be paid over to the State Treasurer for the Multiple Injury Trust Fund.

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

I. Beginning July 1, 2019, One Million Dollars (\$1,000,000.00) of the funds in the Multiple Injury Trust Fund shall be transferred annually on July 1 to the Oklahoma Department of Labor Revolving Fund exclusively for the operation and administration of the Oklahoma Occupational Health and Safety Standards Act and for other necessary expenses of the Department of Labor.

J. Except for the monies provided for in subsection I of this section, the Tax Commission shall pay, monthly, to the State Treasurer to the credit of the Multiple Injury Trust Fund all monies collected pursuant to the provisions of this section. The State Treasurer shall pay out of the Multiple Injury Trust Fund only upon the order and direction of the Workers' Compensation Commission acting under the provisions hereof.

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

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

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

N. The Multiple Injury Trust Fund may enter into an agreement with any reinsurer licensed to sell reinsurance by the Insurance Commissioner pursuant to a competitive process administered by the Director of Central Purchasing in the Office of Management and Enterprise Services.

O. Any dividend, rebate, or other distribution, payable by CompSource Mutual Insurance Company or any other workers' compensation insurance carrier, to a state agency policyholder shall be paid to the State Treasurer, and shall be credited as follows:

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

Trust Fund to meet all lawful obligations of the Multiple Injury Trust Fund; and

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

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

Q. The person serving as the Administrator of the Multiple Injury Trust Fund on the date of passage and approval of this act shall serve as the initial MITF Director, provided such person is serving as the Administrator of the Multiple Injury Trust Fund on the effective date of this act. The MITF Director shall be appointed by and serve at the pleasure of the Governor.

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

S. The State Treasurer shall allocate to the Commission out of the Multiple Injury Trust Fund sufficient funds for administration expenses thereof in amounts to be fixed and approved by the Director for the Multiple Injury Trust Fund, unless rejected by the Workers' Compensation Commission.

T. On or after July 1, 2019, accrued and unpaid compensation from the Multiple Injury Trust Fund shall bear simple interest only at the percentage rate applicable under Section 727.1 of Title 12 of the Oklahoma Statutes from the day an award is made by the Workers' Compensation Court of Existing Claims or the Workers' Compensation Commission.

Added by Laws 2013, c. 208, § 31, eff. Feb. 1, 2014. Amended by Laws 2015, c. 344, § 3, eff. July 1, 2015; Laws 2019, c. 476, § 60, emerg. eff. May 28, 2019.

§85A-32. Permanent total disability awards.

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 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 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.

Added by Laws 2013, c. 208, § 32, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 61, emerg. eff. May 28, 2019.

§85A-33. Statute of limitations.

A. The right to claim compensation for benefits from the Multiple Injury Trust Fund shall be forever barred unless a Notice of Claim, on a form prescribed by the Workers' Compensation Commission, shall be filed with the Commission within one (1) year of the date of the last order for permanent partial disability arising from the latest claim against the last employer.

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

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

Added by Laws 2013, c. 208, § 33, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 62, emerg. eff. May 28, 2019.

§85A-34. Administration of Multiple Injury Trust Fund - Standing.

A. The MITF Director shall be charged with the administration and protection of the Multiple Injury Trust Fund and shall be notified by the Workers' Compensation Commission of all proceedings which may affect such fund.

B. The MITF Director shall have authority to conduct all business affairs relating to administration of the Multiple Injury Trust Fund, including, but not limited to, appointment of assistants, accountants, attorneys and other employees as may be necessary.

C. The MITF Director shall provide results of audit reports to the Workers' Compensation Commission annually.

D. The MITF Director shall have standing and the authority to appear in any case before the Commission in which the Commission is considering an award from the Multiple Injury Trust Fund.

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

F. The State Treasurer shall allocate to the MITF Director sufficient funds for administration expenses thereof in amounts to be fixed and approved by the Administrator for the Multiple Injury Trust Fund, unless rejected by the Governor and Attorney General.

Added by Laws 2013, c. 208, § 34, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 63, emerg. eff. May 28, 2019.

§85A-35. Obligation to pay.

A. 1. Every employer shall secure compensation as provided under this act to its employees for compensable injuries without regard to fault.

2. There shall be no liability for compensation under this act where the injury or death was substantially occasioned by the willful intention 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 shall not relieve the employer of the obligation.

Added by Laws 2013, c. 208, § 35, eff. Feb. 1, 2014.

§85A-35.1. Court reporter - Stenographic recording of settlements.

A court reporter employed by or contracted by the Workers' Compensation Commission shall be authorized to stenographically report both joint petition settlements and compromise settlements in the Workers' Compensation Court of Existing Claims. A court reporter employed by or contracted by the Workers' Compensation Court of Existing Claims shall be authorized to stenographically report both compromise settlements and joint petition settlements under the jurisdiction of the Commission.

Added by Laws 2019, c. 476, § 14, emerg. eff. May 28, 2019.

§85A-36. Liability other than immediate employer.

A. If a subcontractor fails to secure compensation required by the Administrative Workers' Compensation Act, the prime contractor shall be liable for compensation to the employees of the subcontractor unless there is an intermediate subcontractor who has workers' compensation coverage.

B. 1. Any contractor or the contractor's insurance carrier who shall become liable for the payment of compensation on account of

injury to or death of an employee of his or her subcontractor may recover from the subcontractor the amount of the compensation paid or for which liability is incurred.

2. The claim for the recovery shall constitute a lien against any monies due or to become due to the subcontractor from the prime contractor.

3. A claim for recovery shall not affect the right of the injured employee or the dependents of the deceased employee to recover compensation due from the prime contractor or his or her insurance carrier.

C. 1. a. When a subcontractor elects not to secure compensation and is not required to secure compensation pursuant to this title, the prime contractor is not liable under the Administrative Workers' Compensation Act for injuries sustained by the subcontractor or any person working with the subcontractor who is not considered an employee of the subcontractor pursuant to Section 2 of this title, and if the injured person is not an employee of the prime contractor.

b. (1) If a subcontractor has filed with the Commission an unexpired Affidavit of Exempt Status, the subcontractor and any person who works with the subcontractor but is not considered an employee of the subcontractor pursuant to Section 2 of this title shall be conclusively presumed not to be covered by the law or to be employees of the prime contractor during the term of the affidavit.

(2) This provision shall not affect the rights or coverage of any employee of a subcontractor.

2. The prime contractor's insurance carrier shall not be liable for injuries to the subcontractor described in this section who have filed an unexpired Affidavit of Exempt Status, and the carrier shall not include compensation paid by the prime contractor to the subcontractor described above in computing the insurance premium for the prime contractor.

D. 1. Any individual or business entity that is not required to secure compensation pursuant to the requirements of the Administrative Workers' Compensation Act may execute an Affidavit of Exempt Status. The "Affidavit of Exempt Status" shall be a form prescribed by the Workers' Compensation Commission available on the Commission's website. The Commission may assess a nonrefundable fee not to exceed Fifty Dollars (\$50.00) per individual or business entity for filing of an Affidavit of Exempt Status at the Commission. An Affidavit of Exempt Status executed and filed with the Commission shall expire at midnight two (2) years from the date filed. A new Affidavit of Exempt Status may be filed prior to expiration to renew an existing Affidavit of Exempt Status.

2. a. Knowingly providing false information on an executed affidavit shall constitute a misdemeanor punishable by a fine not to exceed One Thousand Dollars (\$1,000.00).
- b. In the event changed circumstances make securing compensation pursuant to the requirements of the Administrative Workers' Compensation Act necessary, the individual or business entity on whose behalf the affidavit was executed shall execute and file a Cancellation of Affidavit of Exempt Status. The Commission shall prescribe a form for cancellation of an affidavit which shall be available on the Commission's website.
- c. Affidavits shall conspicuously state on the front thereof in at least ten-point, bold-faced print that it is a crime to falsify information on the form.
- d. The Commission shall immediately notify the Workers' Compensation Fraud Unit in the Office of the Attorney General of any violations or suspected violations of this section. The Commission shall cooperate with the Fraud Unit in any investigation involving affidavits executed pursuant to this section.

The execution or filing of an affidavit shall not affect the rights or coverage of any employee of the affiant or business entity on whose behalf the affiant executes or files an affidavit.

3. Fees collected pursuant to this section shall be deposited in the State Treasury to the credit of the Workers' Compensation Commission Revolving Fund.

E. If work is performed by an independent contractor on a single-family residential dwelling occupied by the owner, or the premises of such dwelling, or for a farmer whose cash payroll for wages, excluding supplies, materials and equipment, for the preceding calendar year did not exceed One Hundred Thousand Dollars (\$100,000.00), such owner or farmer shall not be liable for compensation under the Administrative Workers' Compensation Act for injuries to the independent contractor or his or her employees.

F. If an owner of a project or job enters a contract with a contractor, and the owner of the project or job does not substantively form an employment relationship with its contractor, then the owner of the project or job shall not be liable for compensation for a compensable injury to any contractor or subcontractor in any tier or employee of any contractor or subcontractor in any tier.

Added by Laws 2013, c. 208, § 36, eff. Feb. 1, 2014. Amended by Laws 2018, c. 239, § 1.

§85A-37. Waiver of exemption or exclusion.

A. Any employer engaging in any exempted or excepted employment may at any time waive the exemptions or exceptions as to any employee or all employees engaged in the employment as the employer may elect by giving notice of waiver of the exemptions or exceptions as provided in subsection B of this section.

B. Notice of waiver of exclusion or exemption referred to in subsection A of this section shall be given in accordance with the following provisions:

1. Every employer who waives the exclusion or exemption shall post, and keep posted, in and about the employer's place of business typewritten or printed notices to that effect in accordance with a form to be prescribed by the Commission, and the employer shall file a duplicate of the notice with the Commission; and

2. The notice shall be given at least thirty (30) days before any injury. However, if the injury occurs less than thirty (30) days after the date of employment, the notice, if given at the time of employment, shall be sufficient notice.

Added by Laws 2013, c. 208, § 37, eff. Feb. 1, 2014.

§85A-38. Securing compensation.

A. An employer shall secure compensation to employees under this act in one of the following ways:

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

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

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

Commission, under rules adopted by the Commission, shall require any employer that has:

- a. less than one hundred employees or less than One Million Dollars (\$1,000,000.00) in net assets to:
 - (1) deposit with the Commission securities, an irrevocable letter of credit or a surety bond payable to the state, in an amount determined by the Commission which shall be at least an average of the yearly claims for the last three (3) years, or
 - (2) provide proof of excess coverage with such terms and conditions as is commensurate with their ability to pay the benefits required by the provisions of this act, and
- b. one hundred or more employees and One Million Dollars (\$1,000,000.00) or more in net assets to:
 - (1) secure a surety bond payable to the state, or an irrevocable letter of credit, in an amount determined by the Commission which shall be at least an average of the yearly claims for the last three (3) years, or
 - (2) provide proof of excess coverage with terms and conditions that are commensurate with their ability to pay the benefits required by the provisions of this act;

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

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

B. The Commission may waive the requirements of this section in an amount which is commensurate with the ability of the employer to pay the benefits required by the provisions of this act. Irrevocable letters of credit required by this subsection shall contain such terms as may be prescribed by the Commission and shall be issued for the benefit of the state by a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.

C. An employer who does not fulfill the requirements of this section is not relieved of the obligation to pay compensation under

this act. The security required under this section, including any interest, shall be maintained by the Commission as provided in this act until each claim for benefits is paid, settled, or lapses under this act, and costs of administration of such claims are paid.

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

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

Added by Laws 2013, c. 208, § 38, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 15, emerg. eff. May 28, 2019.

§85A-39. Carrier discharging obligations.

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

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

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

2. The Commission shall have jurisdiction over the carrier to the same extent it has over the employer under this act; and

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

Added by Laws 2013, c. 208, § 39, eff. Feb. 1, 2014.

§85A-40. Failure to secure compensation - Summary hearing - Penalties.

A. 1. Any employer who fails to secure compensation required under this 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 this act.

B. 1. Whenever the Workers' Compensation Commission has reason to believe that any employer required to secure the payment of compensation under this act has failed to do so, the Commission shall serve on the employer a proposed judgment declaring the employer to be in violation of this 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.
 - 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.
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.

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.
Added by Laws 2013, c. 208, § 40, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 16, emerg. eff. May 28, 2019.

§85A-41. Posted notice.

A. Every employer who has secured compensation under the provisions of this act shall keep posted in a conspicuous place in and about the employer's place of business typewritten or printed notices in accordance with a form prescribed by the Commission. The notices shall state that the employer has secured the payment of compensation in accordance with the provisions of this act.

B. The notices shall contain the name and address of the carrier, if any, with whom the employer has secured payment of compensation and the date of the expiration of the policy.
Added by Laws 2013, c. 208, § 41, eff. Feb. 1, 2014.

§85A-42. Required insurance policy provisions.

A. Contents. Every policy or contract of insurance issued by a carrier to an employer to secure the payment of compensation under this act shall contain:

1. a. Provisions that identify the insured employer and either identify each covered employee or describe covered employees by class or type of labor performed and the estimated number of employees of each such class or type.
- b. No single policy of workers' compensation insurance may be issued to any group of employers who are unaffiliated with one another in terms of ownership, control, or right to participate in the profits of the affiliated enterprises;

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

3. a. The agreement of the carrier that it shall promptly pay to the person entitled to compensation every

installment of compensation that may be awarded or agreed on and that this obligation shall not be affected by any default of the employer or by any default in the giving of any notice required by the policy or otherwise.

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

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

B. Cancellation.

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

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

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

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

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

- b. A carrier shall not cancel coverage issued to an employer under this act before the date specified for expiration in the policy or contract or until at least thirty (30) days have elapsed after a notice of cancellation has been mailed to the Commission and to the employer, or until ten (10) days have elapsed after the notice has been mailed to the employer and to the Commission if the cancellation is for nonpayment of premium.

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

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

C. Coverage.

1. No policy or contract of insurance shall be issued against liability under this act unless the policy or contract covers the entire liability of the employer. Split coverage whereby some employees of an employer are insured by one carrier and other

employees are insured by another carrier, or a plan of self-insurance, is expressly prohibited except for a policy issued covering the liability of an employer or of multiple employers as to specific jobs, ventures, contracts, or undertakings, but only if the policy meets with the reasonable satisfaction and approval of the Insurance Commissioner that the policy is in the best interest of the employers and the employees concerned and does not unduly or improperly affect the continuity of workers' compensation coverage by seriously and negatively affecting other carriers and agents with outstanding policies issued to any of the employers in issue.

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

D. Under such rules as may be adopted by the Insurance Commissioner, and notwithstanding other provisions of this act, he or she may certify five or more employers as an insurance group which shall be considered an employer for the purposes of this act.
Added by Laws 2013, c. 208, § 42, eff. Feb. 1, 2014.

§85A-43. Liability Unaffected - Subrogation.

A. Liability Unaffected.

1. a. The making of a claim for compensation against any employer or carrier for the injury or death of an employee shall not affect the right of the employee, or his or her dependents, to make a claim or maintain an action in court against any third party for the injury.
- b. The employer or the employer's carrier shall be entitled to reasonable notice and opportunity to join in the action.
- c. If the employer or employer's carrier join in the action against a third party for injury or death, they shall be entitled to a first lien on two-thirds (2/3) of the net proceeds recovered in the action that remain after the payment of the reasonable costs of collection, for the payment to them of the amount paid and to be paid by them as compensation to the injured employee or his or her dependents.

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

- a. reasonable fees and costs of collection shall be deducted,
- b. the employer or carrier, as applicable, shall receive two-thirds (2/3) of the remainder of the recovery or

the amount of the workers' compensation lien, whichever is less, and

- c. the remainder of the recovery shall go to the injured employee or his or her dependents.

B. Subrogation.

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

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

3. If the employer recovers against the third party, by suit or otherwise, the injured employee shall be entitled to any amount recovered in excess of the amount that the employer and carrier have paid or are liable for in compensation, after deducting reasonable costs of collection.

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

Added by Laws 2013, c. 208, § 43, eff. Feb. 1, 2014.

§85A-44. Reduction of benefits.

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

B. The claimant shall be required to disclose in a manner to be determined by the Commission the identity, address, or phone number of any person or entity which has paid benefits described in this section in connection with any claim under this act.

Added by Laws 2013, c. 208, § 44, eff. Feb. 1, 2014.

§85A-45. Temporary Total Disability - Temporary Partial Disability - Permanent Partial Disability - Permanent Total Disability.

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 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 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, 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, 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, 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 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 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.

Added by Laws 2013, c. 208, § 45, eff. Feb. 1, 2014. Amended by Laws 2015, c. 390, § 2, eff. Nov. 1, 2015; Laws 2019, c. 476, § 17, emerg. eff. May 28, 2019.

§85A-46. Permanent partial disability schedule.

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, 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 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, for the number of weeks which the partial disability of the employee bears to three hundred fifty (350) 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) weeks.

Added by Laws 2013, c. 208, § 46, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 18, emerg. eff. May 28, 2019.

§85A-47. Beneficiaries in case of death.

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 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; and

5. 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.

Added by Laws 2013, c. 208, § 47, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 19, emerg. eff. May 28, 2019.

§85A-48. Injury to minors.

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

Added by Laws 2013, c. 208, § 48, eff. Feb. 1, 2014.

§85A-49. Temporary total disability and unemployment benefits.

Notwithstanding any other provision of this act, no compensation for temporary total disability shall be payable to an injured employee for any week for which the injured employee receives unemployment insurance benefits under the laws of this state or the unemployment insurance law of any other state. If a claim for temporary total disability is controverted and later determined to be compensable, temporary total disability shall be payable to an injured employee for any week for which the injured employee receives

unemployment benefits but only to the extent that the temporary total disability otherwise payable exceeds the unemployment benefits.
Added by Laws 2013, c. 208, § 49, eff. Feb. 1, 2014.

§85A-50. Failure to provide medical treatment - Medical examination - Fee schedule - Formulary.

A. The employer shall promptly provide an injured employee with medical, surgical, hospital, optometric, podiatric, 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.

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 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 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 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 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, 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 this 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 this 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 this 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 publically 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 this 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, the employer or insurance company shall pay to the physician 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 providing treatment under this 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 primary place of business. The disclosure shall include any employee leasing arrangement between the physician and any health care facility that is not the physician's primary place of business. A physician's failure to disclose as required by this section shall be grounds for the Commission to disqualify the physician from providing treatment under this act.

14. a. Beginning on the effective date of this act, 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 the effective date of this act, 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.

Added by Laws 2013, c. 208, § 50. Amended by Laws 2019, c. 476, § 20, emerg. eff. May 28, 2019.

§85A-51. Payment of medical expenses.

The employer shall pay one hundred percent (100%) of the medical expenses, subject to the Fee Schedule, with no maximum dollar or duration limits for all compensable injuries.

Added by Laws 2013, c. 208, § 51, eff. Feb. 1, 2014.

§85A-52. Liability for non-compensable injury.

The employer shall not be liable for any of the payments for medical services and supplies under this act if the Commission determines that there was not a compensable injury.
Added by Laws 2013, c. 208, § 52, eff. Feb. 1, 2014.

§85A-53. Physical examination.

A. An injured employee claiming to be entitled to benefits under this act shall submit to physical examination and treatment by another qualified physician, designated or approved by the Commission, as the Commission may require from time to time if reasonable and necessary.

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

C. Failure of the employee to obey a judgment of the Commission for an examination or treatment shall bar the right of the claimant to further temporary total disability compensation in respect to the injury.

Added by Laws 2013, c. 208, § 53, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 21, emerg. eff. May 28, 2019.

§85A-54. Refusal to submit to surgery.

Except in cases of hernia, which are specifically covered by Section 61 of this act, where an injured employee unreasonably refuses to submit to a surgical operation which has been advised by at least two qualified physicians and where the recommended operation does not involve unreasonable risk of life or additional serious physical impairment, the Commission shall take the refusal into consideration when determining compensation for permanent partial or permanent total disability.

Added by Laws 2013, c. 208, § 54, eff. Feb. 1, 2014.

§85A-55. Unreasonable charges.

A. If an employer or carrier believes that a charge for medical services or supplies under this act is unreasonable, it may submit the charge to the Commission for review. If the Commission determines that the charge is unreasonable, it may amend the charges to reflect the Fee Schedule established under Section 50 of this act, if applicable, or in accordance with reasonable market rates for the services or supplies provided.

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

Added by Laws 2013, c. 208, § 55, eff. Feb. 1, 2014.

§85A-56. Certified workplace medical plans.

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

B. If the employer is not covered by a certified workplace medical plan, the employer shall select the treating physician. The Commission on application of the employee shall order one change of treating physician. Upon the Commission's granting of the application, the employer shall provide a list of three physicians from whom the employee may select the replacement.
Added by Laws 2013, c. 208, § 56, eff. Feb. 1, 2014.

§85A-57. Failure to appear for scheduled appointments.

A. If an injured employee misses two or more scheduled appointments for treatment, he or she shall no longer be eligible to receive benefits under this act, unless his or her absence was:

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

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

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

Added by Laws 2013, c. 208, § 57, eff. Feb. 1, 2014.

§85A-58. Copying of medical records.

A. 1. Every hospital or other person furnishing the injured employee with medical services shall permit its records to be copied by and shall furnish full written information to the Commission, the Workers' Compensation Fraud Investigation Unit, the employer, the carrier, and the employee or the employee's dependents.

2. The reasonable cost of copies shall be paid by the requestor to the health care or medical service provider furnishing them.

B. No person who in good faith under subsection A of this section or under rules established by the Commission reports medical information shall incur legal liability for the disclosure of the information.

Added by Laws 2013, c. 208, § 58, eff. Feb. 1, 2014.

§85A-59. Computation of average weekly wages.

A. 1. Compensation under this act based on the employee's average weekly wage shall be computed by dividing the employee's

gross earnings by the number of full weeks of employment with the employer, up to a maximum of fifty-two (52) weeks.

2. If the injured employee was working on a piece basis, the average weekly wage shall be determined by dividing the earnings of the employee by the number of hours required to earn the wages during the period not to exceed fifty-two (52) weeks preceding the week in which the accident occurred and by multiplying this hourly wage by the number of hours in a full-time workweek in the employment.

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

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

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

Added by Laws 2013, c. 208, § 59, eff. Feb. 1, 2014.

§85A-60. Evaluation of permanent disability.

The Physician Advisory Committee may recommend the adoption of a method or system to evaluate permanent disability that shall deviate from, or be used in place of or in combination with the Guides. Such recommendation shall be made to the Workers' Compensation Commission which may adopt the recommendation in part or in whole. The adopted method or system shall be submitted by the Executive Director of the Commission to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate within the first ten (10) legislative days of a regular session of the Legislature. Such method or system so submitted shall be subject to disapproval by joint or concurrent resolution of the Legislature during the legislative session in which submitted. If disapproved, the existing method of determining permanent partial disability shall continue in effect. If the Legislature takes no action on the method or system submitted by the Executive Director, the method or system shall become operative thirty (30) days following the adjournment of the Legislature.

Added by Laws 2013, c. 208, § 60, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 22, emerg. eff. May 28, 2019.

§85A-61. Hernias.

A. A hernia is not a compensable injury unless the injured employee can prove by a preponderance of the evidence that it meets the definition of "compensable injury" under this act and:

1. The occurrence of the hernia followed as the result of sudden effort, severe strain, or the application of force directly to the abdominal wall;

2. There was severe pain in the hernial region;

3. The pain caused the employee's work to be substantially affected;

4. Notice of the occurrence was given to the employer within five (5) days thereafter; and

5. The physical distress following the occurrence of the hernia was such as to require the attendance of a licensed physician.

B. 1. Notwithstanding the provisions of Section 45 of this act, if it is determined that a hernia is a compensable injury under subsection A of this section, the injured employee shall be entitled to temporary total disability for six (6) weeks.

2. If the injured employee refuses to permit the hernia operation if recommended by a physician, he or she shall be entitled to temporary total disability for thirteen (13) weeks in addition to appropriate medical care.

C. If the injured employee dies within one (1) year as a direct and sole result of the hernia or a radical operation of the hernia, the deceased employee's dependents shall be entitled to death compensation under Section 48 of this act.

Added by Laws 2013, c. 208, § 61, eff. Feb. 1, 2014.

§85A-62. Nonsurgical soft tissue injury.

A. Notwithstanding the provisions of Section 45 of this title, if an employee suffers a nonsurgical soft tissue injury, temporary total disability compensation shall not exceed eight (8) weeks, regardless of the number of parts of the body to which there is a nonsurgical soft tissue injury. An employee who is treated with an injection or injections shall be entitled to an extension of an additional eight (8) weeks. For purposes of this section, an injection shall not include facet injections or intravenous injections. An employee who has been recommended by a treating physician for surgery for a soft tissue injury may petition the Workers' Compensation Commission for one extension of temporary total disability compensation and the Commission may order an extension, not to exceed sixteen (16) additional weeks. If the surgery is not performed within thirty (30) days of the approval of the surgery by the employer, its insurance carrier, or an order of the Commission authorizing the surgery, and the delay is caused by the employee acting in bad faith, the benefits for the extension period shall be terminated and the employee shall reimburse the employer any temporary total disability compensation he or she received beyond

eight (8) weeks. An epidural steroid injection, or any procedure of the same or similar physical invasiveness, shall not be considered surgery.

B. For purposes of this section, "soft tissue injury" means damage to one or more of the tissues that surround bones and joints. Soft tissue injury includes, but is not limited to, sprains, strains, contusions, tendonitis and muscle tears. Cumulative trauma is to be considered a soft tissue injury unless corrective surgery is necessary. Soft tissue injury does not include any of the following:

1. Injury to or disease of the spine, spinal discs, spinal nerves or spinal cord, where corrective surgery is performed;
2. Brain or closed-head injury as evidenced by:
 - a. sensory or motor disturbances,
 - b. communication disturbances,
 - c. complex integrated disturbances of cerebral function,
 - d. episodic neurological disorders, or
 - e. other brain and closed-head injury conditions at least as severe in nature as any condition provided in subparagraphs a through d of this paragraph; or
3. Any joint replacement.

Added by Laws 2013, c. 208, § 62, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 23, emerg. eff. May 28, 2019.

§85A-63. Reports.

A. Within ten (10) days after the date of receipt of notice or of knowledge of injury or death, the employer shall send to the Workers' Compensation Commission a report setting forth:

1. The name, address, and business of the employer;
2. The name, address, and occupation of the employee;
3. The cause and nature of the injury or death;
4. The year, month, day, approximately when, and the particular locality where, the injury or death occurred; and
5. Such other information as the Commission may require.

B. Additional reports with respect to the injury and of the condition of the employee shall be sent by the employer to the Commission at such time and in such manner as the Commission may prescribe. However, an employer may refuse to provide any information that it deems privileged or confidential.

C. Any report provided for in subsection A or B of this section shall not be evidence of any fact stated in the report in any proceeding with respect to the injury or death on account of which the report is made. Any such report shall be kept confidential and shall not be open to public inspection; provided, however, such report shall be made available immediately upon request by the injured employee named in the report, the injured employee's legal representative, or any prosecutorial authority. The report shall be

open to public inspection upon the employee's first notice of claim for compensation being filed.

D. The mailing of any report in a stamped envelope, properly addressed, within the time prescribed in subsection A or B of this section, shall be in compliance with this section. In addition, the Commission shall establish a means of electronic delivery of any report or other information required by this section.

E. 1. Any employer who after notice refuses to send any report required by this section shall be subject to a civil penalty in an amount of Five Hundred Dollars (\$500.00) for each refusal.

2. Whenever the employer has failed or refused to comply as provided in this section, the Commission may serve on the employer a proposed judgment declaring the employer to be in violation of this act and containing the amount, if any, of the civil penalty to be assessed against the employer under this section.

F. An employer may contest a proposed judgment of the Commission issued under subsection E of this section by filing with the Commission, within twenty (20) days of receipt of the proposed judgment, a written request for a hearing. If a written request for hearing is not filed with the Commission within this time, the proposed judgment, proposed penalty, or both, shall be a final judgment of the Commission. 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. 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.

G. Hearings conducted under this section shall proceed as provided in Sections 69 through 78 of this title.

H. If an employer fails to pay any civil penalty assessed against the employer after a judgment issued under this section has become final by operation of law, the Commission may petition 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 or conduct of business until such time as the employer makes all required reports and pays all civil penalties. Added by Laws 2013, c. 208, § 63, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 24, emerg. eff. May 28, 2019.

§85A-64. Certification of workplace medical plan.

A. Any person or entity may make written application to the State Commissioner of Health to have a workplace medical plan certified that provides management of quality treatment to injured employees for injuries and diseases compensable under this act. Each application for certification shall be accompanied by a fee of One Thousand Five Hundred Dollars (\$1,500.00). A workplace medical plan may be certified to provide services to a limited geographic area. A

certificate is valid for a five-year period, unless revoked or suspended. Application for certification shall be made in the form and manner and shall set forth information regarding the proposed program for providing services as the State Commissioner of Health may prescribe. The information shall include, but not be limited to:

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

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

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

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

- a. may be required by this act in a manner that is timely, effective and convenient for the employee, and
- b. utilize medical treatment guidelines and protocols consistent with those established by the Official Disability Guidelines;

2. Is reasonably geographically convenient to residents of the area for which it seeks certification;

3. Provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of service;

4. Provides adequate methods of peer review, utilization review and dispute resolution to prevent inappropriate, excessive or medically unnecessary treatment, and excludes participation in the plan by those providers who violate these treatment standards;

5. Provides aggressive case management for injured employees and a program for early return to work;

6. Provides a timely and accurate method of reporting to the State Commissioner of Health necessary information regarding medical service costs and utilization to enable the State Commissioner of Health to determine the effectiveness of the plan;

7. Authorizes necessary emergency medical treatment for an injury provided by a provider of medical, surgical, and hospital services who is not a part of the plan; and

8. Does not discriminate against or exclude from participation in the plan any category of providers of medical, surgical, or hospital services and includes an adequate number of each category of providers of medical, surgical, and hospital services to give participants access to all categories of providers and does not discriminate against ethnic minority providers of medical services.

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

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

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

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

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

1. A site visit shall be made to each certified workplace medical plan not less often than once every year, but not later than thirty (30) days following the anniversary date of issuance of the initial or latest renewal certificate;
2. A site visit shall determine whether or not a certified workplace medical plan is operating in accordance with its latest application to the State Department of Health;
3. Compliant operations shall include, but not be limited to:
 - a. timely and effective medical services available with reasonable geographic convenience,
 - b. treatment guidelines and protocols consistent with the Official Disability Guidelines, and
 - c. effective programs for utilization review, case management, grievances, and dispute resolution;
4. Performance of a site visit shall include:
 - a. inspection of organizational documentation,
 - b. inspection of systems documentation and processes,
 - c. random or systematic sampling of closed and open case management cases,

d. workplace medical plan employee and management interviews, as appropriate;

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

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

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

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

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

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

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

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

Added by Laws 2013, c. 208, § 64, eff. Feb. 1, 2014.

§85A-65. Occupational disease.

A. If an employee suffers from an occupational disease as defined in this section and is disabled or dies as a result of the disease, the employee, or, in case of death, his or her dependents, shall be entitled to compensation as if the disability or death were caused by injury arising out of work activities within the scope of employment, except as otherwise provided in this section.

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

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

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

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

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

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

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

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

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

- a. the disease is due to the nature of an employment in which the hazards of the disease actually exist and is actually incurred in the course and scope of his or her employment. This includes any disease due to or

attributable to exposure to or contact with any radioactive material by an employee in the course and scope of his or her employment,

- b. disablement or death results within three (3) years in case of silicosis or asbestosis, or one (1) year in case of any other occupational disease, except a diseased condition caused by exposure to X-rays, radioactive substances, or ionizing radiation, after the last injurious exposure to the disease in the employment, or
- c. in case of death, death follows continuous disability from the disease, commencing within the period, for which compensation has been paid or awarded or timely claim made as provided in subparagraph b of this paragraph and results within seven (7) years after the last exposure.

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

Added by Laws 2013, c. 208, § 65, eff. Feb. 1, 2014. Amended by Laws 2015, c. 390, § 3, eff. Nov. 1, 2015.

§85A-66. Silicosis and asbestosis.

A. As used in this act, unless the context otherwise requires:

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

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

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

C. Except as otherwise provided in this section, compensation for disability from uncomplicated silicosis or asbestosis shall be payable in accordance with the provisions of Sections 45 and 48 of this title.

D. 1. In case of disability or death from silicosis or asbestosis complicated with tuberculosis of the lungs, compensation

shall be payable as for uncomplicated silicosis or asbestosis, provided that the silicosis or asbestosis was an essential factor in the causing of disability or death.

2. In case of disability or death from silicosis or asbestosis complicated with any other disease, or from any other disease complicated with silicosis or asbestosis, the compensation shall be reduced as provided in subsection C of Section 65 of this title. Added by Laws 2013, c. 208, § 66, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 25, emerg. eff. May 28, 2019.

§85A-67. Notice of occupational disease or cumulative trauma.

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. Added by Laws 2013, c. 208, § 67, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 26, emerg. eff. May 28, 2019.

§85A-68. Rebuttable presumption injury not work-related.

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

B. Unless an employee gives oral or written notice to the employer within thirty (30) days of the employee's separation from employment, there shall be a rebuttable presumption that an occupational disease or cumulative trauma injury did not arise out of and in the course of employment. Such presumption must be overcome by a preponderance of the evidence. Added by Laws 2013, c. 208, § 68, eff. Feb. 1, 2014.

§85A-69. Statute of limitations.

A. Time for Filing.

1. A claim for benefits under this act, other than an occupational disease, shall be barred unless it is filed with the 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. For purposes of this section, the date of the injury shall be defined as the date an injury is caused by an accident as set forth in paragraph 9 of Section 2 of this title.

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 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 with 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. Added by Laws 2013, c. 208, § 69, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 27, emerg. eff. May 28, 2019.

§85A-70. Promulgation of rules.

The Commission is authorized and directed to promulgate rules to establish and implement a preliminary conference procedure designed to accomplish the following objectives:

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

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

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

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

Added by Laws 2013, c. 208, § 70.

§85A-71. Notice - Investigation and hearing - Evidence and construction.

A. Notice. Within ten (10) days after a claim for compensation has been filed, the Workers' Compensation Commission shall notify the employer and any other interested person of the filing of the claim.

B. Hearing.

1. The Commission shall assign the claim to an administrative law judge who shall hold a hearing on application of any interested party, or on its own motion.

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

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

4. If a hearing on the claim is ordered, the administrative law judge shall give the claimant and other interested parties ten (10)

days' notice of the hearing served personally on the claimant and other parties, or by registered mail, facsimile, electronic mail or by other electronic means with receipt of confirmation. The hearing may be held in any county of this state, as determined by the Commission. No hearing or trial shall be continued absent extraordinary circumstances as determined by the Commission.

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

C. Evidence and Construction.

1. a. At the hearing the claimant and the employer may each present evidence relating to the claim. Evidence may be presented by any person authorized in writing for such purpose. The evidence may include verified medical reports which shall be accorded such weight as may be warranted when considering all evidence in the case.

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

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

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

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

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

E. No compensation for disability of an injured employee shall be payable for any period beyond his or her death; provided, however, if an injured employee is awarded compensation for permanent partial disability by final order and then dies, a revivor action may be brought by the injured employee's spouse, minor child or children under a disability as defined by Section 67 of this title, but limited to the number of weeks of disability awarded to the injured employee minus the number of weeks of benefits paid for the permanent partial disability to the injured worker at the time of the death of the injured employee. An award of compensation for permanent partial

disability may be made after the death of the injured employee. Such revivor action may be brought only by the injured employee's spouse, minor child or children under a disability as defined by Section 67 of this title.

Added by Laws 2013, c. 208, § 71, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 28, emerg. eff. May 28, 2019.

§85A-72. Conduct of Hearing or Inquiry - Public hearings - Evidence.

A. Conduct of Hearing or Inquiry.

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

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

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

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

B. Hearings to be Public - Records.

1. a. Hearings before the Commission shall be open to the public and shall be stenographically reported. The Commission is authorized to contract for the reporting of the hearings.

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

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

C. Introduction of Evidence.

1. All oral evidence or documentary evidence shall be presented to the designated representative of the Commission at the initial hearing on a controverted claim. The oral evidence shall be stenographically reported. Each party shall present all evidence at the initial hearing. Further hearings for the purpose of introducing additional evidence shall be granted only at the discretion of the hearing officer or Commission. A request for a hearing for the

introduction of additional evidence shall show the substance of the evidence desired to be presented.

2. a. Any party proposing to introduce medical reports or testimony of physicians at the hearing of a controverted claim shall, as a condition precedent to the right to do so, furnish to the opposing party and to the Commission copies of the written reports of the physicians of their findings and opinions at least seven (7) days before the date of the hearing. If no written reports are available to a party, the party shall notify in writing the opposing party and the Commission of the name and address of the physicians proposed to be used as witnesses and the substance of their testimony at least seven (7) days before the hearing.
- b. If the opposing party desires to cross-examine the physician, he or she should notify the party who submits a medical report to him or her as soon as practicable, in order that he or she may make every effort to have the physician present for the hearing.

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

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

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

Added by Laws 2013, c. 208, § 72, eff. Feb. 1, 2014.

§85A-73. Preservation and enforcement of orders.

A. The Commission shall have the power to preserve and enforce order during any proceeding before it, to issue subpoenas for and administer oaths to and compel the attendance and testimony of witnesses, and require the production of books, papers, documents, and other evidence.

B. If any person or party attending any proceeding before the Commission disobeys or resists any lawful order or process, obstructs the hearing, neglects to produce any book, paper or document after having been ordered to do so, refuses to appear after having been subpoenaed, refuses to take oath as a witness, refuses to be examined according to law, refuses to comply with any final judgment of an administrative law judge or the Commission or willfully refuses to pay an uncontroverted medical or related expense within forty-five (45) days after the respondent has received the statement, the person or party, at the discretion of the administrative law judge or the

Commission, may be found to be in contempt of the Commission and may be subject to a fine not to exceed Ten Thousand Dollars (\$10,000.00). Added by Laws 2013, c. 208, § 73, eff. Feb. 1, 2014.

§85A-74. Rebuttable presumptions.

In any proceeding for the enforcement of a claim for compensation, there shall be a rebuttable presumption that:

1. The Commission has jurisdiction;
2. Sufficient notice was given; and
3. The injury was not occasioned by the willful intention of the injured employee to bring about the injury to himself or herself or another.

Added by Laws 2013, c. 208, § 74, eff. Feb. 1, 2014.

§85A-75. Depositions.

The Commission may cause depositions of witnesses to be taken in such manner as it may direct.

Added by Laws 2013, c. 208, § 75, eff. Feb. 1, 2014.

§85A-76. Witness fees.

Each witness who appears in obedience to a subpoena shall be entitled to the same fees as witnesses in a civil action in the district court.

Added by Laws 2013, c. 208, § 76, eff. Feb. 1, 2014.

§85A-77. Employment of attorneys.

If the Commission is a party to or is otherwise interested in a court proceeding under this act, it may employ attorneys to appear on its behalf. If requested by the Commission, it shall be the duty of the Attorney General or the prosecuting attorneys of the different districts to represent the Commission without extra compensation.

Added by Laws 2013, c. 208, § 77, eff. Feb. 1, 2014.

§85A-78. Appeals process.

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

B. The appellant shall pay a filing fee of One Hundred Seventy-five Dollars (\$175.00) to the Commission at the time of filing his or

her appeal. The fee shall be deposited to the credit of the Workers' Compensation Commission Revolving Fund.

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

1. In violation of constitutional provisions;
2. In excess of the statutory authority or jurisdiction of the Commission;
3. Made on unlawful procedure;
4. Affected by other error of law;
5. Clearly erroneous in view of the reliable, material, probative and substantial competent evidence;
6. Arbitrary or capricious;
7. Procured by fraud; or
8. Missing findings of fact on issues essential to the decision.

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

D. A fee of One Hundred Dollars (\$100.00) per appeal to the Supreme Court shall be paid to the Commission and deposited to the credit of the Workers' Compensation Commission Revolving Fund as costs for preparing, assembling, indexing and transmitting the record for appellate review. This fee shall be paid by the party taking the appeal. If more than one party to the action files an appeal from the same judgment, decision or award, the fee shall be paid by the party whose petition in error commences the principal appeal. Added by Laws 2013, c. 208, § 78, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 29, emerg. eff. May 28, 2019.

§85A-79. Failure to comply with final compensation judgement.

If any employer fails to comply with a final compensation judgment or award, any beneficiary of the judgment or award, or the Commission, may file a certified copy of the judgment or award in the office of the district court clerk of any county in this state where any property of the employer may be found. At that time, the district court clerk shall enter the judgment or award in the judgment record of the county, and the judgment or award so recorded shall be a judgment and lien as are judgments of the district court, and enforceable as such.

Added by Laws 2013, c. 208, § 79, eff. Feb. 1, 2014.

§85A-80. Review of compensation judgments.

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 Workers' Compensation Commission may review any compensation judgment, award, or decision. Such review may be done 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.

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 this act.

Added by Laws 2013, c. 208, § 80, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 30, emerg. eff. May 28, 2019.

§85A-81. Commencing proceedings on unreasonable grounds.

If the court having jurisdiction over the claim or compensation judgment proceedings determines that the proceedings have been

commenced or continued without reasonable grounds, the cost of the proceedings shall be assessed against the party who has commenced or continued the proceedings.

Added by Laws 2013, c. 208, § 81, eff. Feb. 1, 2014.

§85A-82. Claims for legal services.

- A. 1. a. Each party shall be responsible for its legal services and litigation expenses. Fees for legal services may be reviewed by the Workers' Compensation Commission.
- b. An attorney representing an injured employee may only recover attorney fees up to ten percent (10%) of any temporary total disability or temporary partial disability compensation and twenty percent (20%) of any permanent partial disability, permanent total disability, or death compensation awarded to an injured employee by the Commission from a controverted claim. If the employer makes a written offer to settle permanent partial disability, permanent total disability, or death compensation and that offer is rejected, the employee's attorney may not recover attorney fees in excess of thirty percent (30%) of the difference between the amount of any award and the settlement offer.
 - (1) Attorney fees may not be collected for recovery on noncontroverted claims.
 - (2) Attorney fees shall not be awarded on medical benefits or services.
 - (3) The fee for legal services rendered by an attorney representing an employee in connection with a change of physician requested by the injured employee, controverted by the employer, and awarded by the Commission, shall be Two Hundred Dollars (\$200.00).
 - (4) Attorney fees may include not more than ten percent (10%) of the value, or reasonable estimate thereof, of vocational rehabilitation services.
- c. A "controverted claim" means that the employer or the employer's insurance carrier has controverted whether there has been a compensable injury or whether the employee is entitled to temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, or death compensation. A request for a change in physician shall not trigger a controverted claim for purposes of recovering any attorney fees except the fees under division 3 of subparagraph b of this paragraph. A controverted claim shall not exist if the employee or

his or her representative has withheld pertinent information in his or her possession related to the claim from the employer or has violated the provisions of Section 6 of this title.

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

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

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

Added by Laws 2013, c. 208, § 82, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 31, emerg. eff. May 28, 2019.

§85A-83. Attorney signature.

A. 1. Every claim, request for benefits, controversion of benefits, request for a hearing, pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his or her individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his or her claim, request for benefits, request for additional benefits, controversion of benefits, request for a hearing, pleading, motion, or other paper, and state his or her address.

2. The signature of an attorney or party constitutes a certificate by him or her that:

- a. he or she has read the claim, request for benefits, request for additional benefits, controversion of benefits, request for a hearing, pleading, motion, or other paper,
- b. to the best of his or her knowledge, information, and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and
- c. it is not brought for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

3. If a claim, request for benefits, request for additional benefits, controversion of benefits, request for a hearing, pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

4. If a claim, request for benefits, controversion of benefits, request for a hearing, pleading, motion, or other paper is signed in violation of this act, the Commission, including administrative law

judges, on motion or on their own initiative, shall impose on the signatory, a represented party, or both, an appropriate sanction, which may include a judgment to pay to the other party or parties the amount of reasonable expenses incurred because of the filing of a claim, request for benefits, request for additional benefits, controversion of benefits, request for a hearing, pleading, motion, or other paper, including a reasonable attorney fee.

B. Appropriate sanctions, including the amount of reasonable expenses and attorney fees, may also be imposed against a party or its attorney who, without good cause shown, fails to appear for a hearing, deposition, or any other matter scheduled by the Commission or administrative law judge, or who frivolously joins another party. Added by Laws 2013, c. 208, § 83, eff. Feb. 1, 2014.

§85A-84. Payment of compensation.

A. Compensation shall be paid by check, by electronic funds transfer, issuance of debit cards, or by state warrant. Payment shall be made payable to the order of the person entitled to the compensation and paid directly to the person entitled to the compensation.

B. If the compensation beneficiary is a mental incompetent or a minor of tender years or immature judgment, the Commission, in the exercise of its discretion, may direct that payment shall be made to a legally appointed guardian of the estate of the incompetent or minor.

Added by Laws 2013, c. 208, § 84, eff. Feb. 1, 2014.

§85A-85. Clean claims.

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

Added by Laws 2013, c. 208, § 85, eff. Feb. 1, 2014.

§85A-86. Controversion of employee's right to claim compensation.

A. 1. Each employer desiring to controvert an employee's right to compensation may file with the Workers' Compensation Commission on or before the fifteenth day following notice of the alleged injury or death a statement on a form prescribed by the Commission that the right to compensation is controverted and the grounds for the controversion, the names of the claimant, employer, and carrier, if any, and the date and place of the alleged injury or death.

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

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

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

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

Added by Laws 2013, c. 208, § 86, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 32, emerg. eff. May 28, 2019.

§85A-87. Settlement of claim.

If the employer or carrier and the injured employee desire to settle the claim, they shall file a joint petition for settlement with the Workers' Compensation Commission. After the joint petition has been filed, the Commission shall order that all workers' compensation claims between the parties covered by the joint petition have been settled. No appeal shall lie from a judgment or award denying a joint petition.

Added by Laws 2013, c. 208, § 87, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 33, emerg. eff. May 28, 2019.

§85A-88. Change of insurance carriers.

A. In any case where an employer changes insurance carriers or where the employer having been self-insured, becomes insured or, having been insured, is approved to be self-insured, and the only dispute in a claim against that employer is the proper source of payment of benefits, the Commission shall direct that the appropriate compensation benefits be paid on an equal basis by the carriers or self-insured employer.

B. Upon resolution of the issue, the prevailing respondent shall be entitled to reimbursement from the other respondent of all monies paid together with interest from the date of payment pursuant to Section 727.1 of Title 12 of the Oklahoma Statutes.

Added by Laws 2013, c. 208, § 88, eff. Feb. 1, 2014.

§85A-89. Advance payments.

If the employer has made advance payments for compensation, the employer shall be entitled to be reimbursed out of any unpaid

installment or installments of compensation due. If the injured employee receives full wages during disability, he or she shall not be entitled to compensation during the period. Any wages paid by the employer, over the statutory temporary disability maximum, shall be deducted from the permanent partial disability award. Such deduction shall be made after any such applicable attorney fee and any such assessment made pursuant to Sections 45 and 46 of this title have been paid. Provided, however, no wages paid by the employer in excess of the statutory temporary disability maximum, pursuant to a collective bargaining agreement, shall be deducted from any benefit otherwise available under this title.

Added by Laws 2013, c. 208, § 89, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 34, emerg. eff. May 28, 2019.

§85A-90. Deposit or bond with commission.

The Workers' Compensation Commission may require any employer to make a deposit or bond with the Commission to secure the prompt and convenient payment of compensation, and payments shall be made on judgment of the Commission.

Added by Laws 2013, c. 208, § 90, eff. Feb. 1, 2014.

§85A-91. Interest.

Compensation shall bear interest pursuant to Section 727.1 of Title 12 of the Oklahoma Statutes from the day an award is made by either an administrative law judge or the full Workers' Compensation Commission on all accrued and unpaid compensation.

Added by Laws 2013, c. 208, § 91, eff. Feb. 1, 2014.

§85A-92. Notification of commission.

A. On making the first payment and on suspension of payment of compensation, if required by the Workers' Compensation Commission, the employer shall notify the Commission of that fact on a form prescribed by the Commission.

B. 1. Within thirty (30) days after the final payment of compensation has been made, the employer shall notify the Commission with a form prescribed by the Commission. This form shall state that the final payment has been made, the total amount of compensation paid, the name of the employee and of any other person to whom compensation has been paid, and the date of the injury or death.

2. If the employer fails to notify the Commission within thirty (30) days, the Commission may assess against the employer a civil penalty in an amount not to exceed One Hundred Dollars (\$100.00). No penalty shall be assessed without notice to the employer and giving the employer an opportunity to be heard by the Commission.

Added by Laws 2013, c. 208, § 92, eff. Feb. 1, 2014.

§85A-93. Investigation.

On its own initiative at any time that compensation payments are being made without an award, the Workers' Compensation Commission may, and in any case if the right to compensation has been controverted, if payments of compensation have been suspended, or if an employer seeks to suspend payments made under an award, or on application of an interested party, the Commission shall make such investigation, cause such medical examination to be made, hold such hearings, and take such further action as the Commission deems proper for the protection of the rights of all parties.
Added by Laws 2013, c. 208, § 93, eff. Feb. 1, 2014.

§85A-94. Incarcerated employees.

An employee who is incarcerated shall not be eligible to receive temporary total disability benefits under this title. Any medical benefits available to an incarcerated employee shall be limited by other provisions of this title in the same manner as for all injured employees.

Added by Laws 2013, c. 208, § 94, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 35, emerg. eff. May 28, 2019.

§85A-95. Deductibles.

A. On approval by the Insurance Commissioner, and following the adoption of such rules as the Insurance Commissioner deems necessary, each insurer issuing a policy under this act shall offer, as a part of the policy or as an optional endorsement to the policy, deductibles optional to the policyholder for benefits payable under this act. Deductible amounts offered shall be fully disclosed to the prospective policyholder in writing. The policyholder exercising the deductible option shall choose only one deductible amount.

B. Optional deductibles shall be offered in each policy insuring liability for workers' compensation that is issued, delivered, issued for delivery, or renewed under this act on or after approval by the Insurance Commissioner, unless an insured employer and insurer agree to renegotiate a workers' compensation policy in effect on that date so as to include a provision allowing for a deductible.

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

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

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

Added by Laws 2013, c. 208, § 95, eff. Feb. 1, 2014.

§85A-96. Self-insurance Guaranty Fund Board.

A. The Self-insurance Guaranty Fund shall be administered, supervised and protected by the Self-insurance Guaranty Fund Board. All self-insurers under the Administrative Workers' Compensation Act shall participate in the fund as a condition of authority to self-insure in this state, except public employers that self-insure pursuant to Section 107 of this title.

B. 1. The Self-insurance Guaranty Fund Board shall consist of five (5) members to be appointed as follows:

- a. the Governor shall appoint two members, one of whom shall represent an approved group self-insurance association authorized to self-insure pursuant to Section 38 or Section 102 of this title,
- b. the President Pro Tempore of the Senate shall appoint one member who shall be an attorney licensed in this state who is engaged in the primary practice of workers' compensation law,
- c. the Speaker of the House of Representatives shall appoint one member who represents a private self-insurer, and
- d. the Chair of the Oklahoma Workers' Compensation Commission shall appoint one member who shall be a licensed claims adjuster affiliated with either a private self-insurer or an approved group self-insurance association.

2. Members of the Workers' Compensation Self-insurance Guaranty Fund Board serving on January 31, 2014, shall constitute the initial appointees to the Self-insurance Guaranty Fund Board created pursuant to this section, with terms extended an additional two (2) years beyond their original, respective expiration dates.

3. In the event of a vacancy, the appointing authority for the position shall appoint a qualified successor to serve as the appointee for the unexpired term of the member so replaced. The term of office for the appointees shall be as follows:

- a. the term of office for three positions, one each appointed by the Governor, President Pro Tempore of the Senate and Speaker of the House of Representatives, shall expire on November 1, 2016, and
- b. the term of office for two positions, one each appointed by the Governor and the Chair of the Commission, shall expire on November 1, 2015.

Thereafter, successor members shall be appointed for a three-year term. Members may serve successive terms. Any person appointed to fill a vacancy shall be appointed for the unexpired portion of the term in the same manner as the original appointment.

4. The chair and vice-chair of the Board shall be elected by the Board from among its members.

5. Members of the Board shall not receive compensation for serving on the Board but shall be reimbursed from monies in the fund for their necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

C. Meetings of the Board shall be held at least quarterly. The presence of a majority of the members constitutes a quorum. No action shall be taken by the Board without the affirmative vote of at least a majority of the members.

D. The Office of the Attorney General shall provide legal counsel to assist the Board in the performance of its duties.

E. No member or personnel of the Self-insurance Guaranty Fund Board, the Workers' Compensation commissioners or any employee of the Workers' Compensation Commission shall be liable in a civil proceeding for any act performed in good faith in the execution of that person's powers or duties pursuant to Sections 96 through 100 of the Administrative Workers' Compensation Act.

Added by Laws 2013, c. 208, § 96, eff. Feb. 1, 2014. Amended by Laws 2014, c. 169, § 2, emerg. eff. April 25, 2014.

§85A-97. Self-insurance Guaranty Fund.

A. The Self-insurance Guaranty Fund shall be for the purpose of continuation of workers' compensation benefits due and unpaid or interrupted due to the inability of a self-insurer to meet its compensation obligations because its financial resources, security deposit, guaranty agreements, surety agreements and excess insurance are either inadequate or not immediately accessible for the payment of benefits. Monies in the fund, including interest, are not subject to appropriation and shall be expended to compensate employees for eligible benefits for a compensable injury under the Administrative Workers' Compensation Act, pay outstanding workers' compensation obligations of the impaired self-insurer, and for all claims for related administrative fees, operating costs of the Self-insurance Guaranty Fund Board, attorney fees, and other costs reasonably incurred by the Board in the performance of its duties.

B. Monies transferred pursuant to Section 99 of this title may be expended by the Board to provide a credit against the assessment required to be paid by each private self-insurer and group self-insurer association pursuant to Section 98 of this title.

C. Expenditures from the fund shall be made on warrants issued by the State Treasurer against claims as prescribed by law. The fund shall be subject to audit in the same manner as state funds and accounts, the cost for which shall be paid for from the fund. Added by Laws 2013, c. 208, § 97, eff. Feb. 1, 2014. Amended by Laws 2014, c. 169, § 3, emerg. eff. April 25, 2014; Laws 2018, c. 182, § 1, eff. Nov. 1, 2018.

§85A-98. Funds to be transferred to Self-insurance Guaranty Fund.

The Self-insurance Guaranty Fund shall be derived from the following sources:

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

2. In the event the net fund balance falls below Seven Hundred Fifty Thousand Dollars (\$750,000.00), the Workers' Compensation Commission shall make an assessment against each private self-insurer and group self-insurance association based on an assessment rate to be determined by the commissioners, not exceeding two percent (2%) per annum of actual paid losses of the self-insurer during the preceding calendar year, payable to the Tax Commission for deposit to the fund. The assessment against private self-insurers shall be determined using a rate equal to the proportion that the deficiency in the fund attributable to private self-insurers bears to the actual paid losses of all private self-insurers for the year period of January 1 through December 31 preceding the assessment. The assessment against group self-insurance associations shall be determined using a rate equal to the proportion that the deficiency in excess of the surplus of the Group Self-Insurance Association Guaranty Fund at the date of the transfer attributable to group self-insurance associations bears to the actual paid losses of all group self-insurance associations cumulatively for any calendar year preceding the assessment. Each self-insurer shall provide the Workers' Compensation Commission with such information as the Commission may determine is necessary to effectuate the purposes of this paragraph. For purposes of this paragraph, "actual paid losses" means all medical and indemnity payments, including temporary disability, permanent disability, and death benefits, and excluding loss adjustment expenses and reserves.

a. The assessment shall be paid within thirty (30) calendar days after the date the commissioners notify the self-insurer of the assessment.

- b. A private employer or group self-insurance association which ceases to be a self-insurer shall remain liable for any and all assessments of the self-insurer as provided in this paragraph based on actual paid losses for the calendar year period preceding the assessment.
- c. Failure of a self-insurer to pay, or timely pay, an assessment required by this paragraph, or to report payment of the same to the Commission within ten (10) days of payment, shall be grounds for revocation by the Commission of the self-insurer's permit to self-insure in this state, after notice and hearing. A former self-insurer failing to make payments required by this paragraph promptly and correctly, or failing to report payment of the same to the Commission within ten (10) days of payment, shall be subject to administrative penalties as allowed by law, including but not limited to, a fine in the amount of Five Hundred Dollars (\$500.00) or an amount equal to one percent (1%) of the unpaid amount, whichever is greater, to be paid and deposited to the credit of the Workers' Compensation Commission Revolving Fund created in Section 28.1 of this title. It shall be the duty of the Tax Commission to collect the assessment provided for in this paragraph. The Tax Commission is authorized to bring an action for recovery of any delinquent or unpaid assessments, and may enforce payment of the assessment by proceeding in accordance with Section 79 of this title.
- d. An impaired self-insurer shall be exempt from assessments beginning on the date of the Commission's designation until the Commission determines the self-insurer is no longer impaired.
- e. The Tax Commission shall determine the fund balance as of March 1 and September 1 of each year, and when otherwise requested by the Workers' Compensation Commission, and shall advise the Workers' Compensation Commission in writing within thirty (30) days of each such determination;

3. Any interest accruing on monies paid into the fund; and

4. Monies transferred pursuant to Section 99 of this title.

Added by Laws 2013, c. 208, § 98, eff. Feb. 1, 2014. Amended by Laws 2014, c. 169, § 4, emerg. eff. April 25, 2014; Laws 2018, c. 182, § 2, eff. Nov. 1, 2018; Laws 2019, c. 164, § 1, eff. Nov. 1, 2019.

§85A-99. Impaired self-insurer.

A. On determination by the Workers' Compensation Commission that a self-insurer has become an impaired self-insurer, the Commission

shall secure release of the security required by Section 38 of this title and advise the Self-insurance Guaranty Fund Board of the impairment. Claims administration, including processing, investigating and paying valid claims against an impaired self-insurer under the Administrative Workers' Compensation Act, may include payment by the surety that issued the surety bond or be under a contract between the Commission and an insurance carrier, appropriate state governmental entity or an approved service organization, as approved by the Commission.

B. Excess proceeds from the security remaining after each claim for benefits of an impaired self-insurer has been paid, settled or lapsed, and associated costs of administration of such claim have been paid, shall be transferred to the Self-insurance Guaranty Fund and may be used as a credit against the assessment required to be paid by each private self-insurer and group self-insurer association pursuant to Section 98 of this title, as determined by the Self-insurance Guaranty Fund Board.

Added by Laws 2013, c. 208, § 99, eff. Feb. 1, 2014. Amended by Laws 2014, c. 169, § 5, emerg. eff. April 25, 2014; Laws 2018, c. 182, § 3, eff. Nov. 1, 2018.

§85A-100. Self-insurance Guaranty Fund Board as party to proceedings.

A. The Self-insurance Guaranty Fund Board shall be a party in interest in all proceedings involving compensation claims against an impaired self-insurer whose compensation claims have been paid or assumed by the Commission and shall have all rights of subrogation of the impaired self-insurer. In such proceedings, the Board may assume and exercise all rights and defenses of the impaired self-insurer, including, but not limited to, the right to:

1. Appear, defend and appeal claims;
2. Receive notice of, investigate, adjust, compromise, settle and pay claims; and
3. Investigate, handle and contest claims.

B. The Board may:

1. Retain such persons as are necessary to handle claims and perform other duties of the Board;
2. Sue or be sued;
3. Negotiate and become a party to such contracts as are necessary to carry out the purposes of the Administrative Workers' Compensation Act; and

4. Exercise any other powers necessary to perform its duties under the Administrative Workers' Compensation Act as prescribed by the Board.

Added by Laws 2013, c. 208, § 100, eff. Feb. 1, 2014. Amended by Laws 2014, c. 169, § 6, emerg. eff. April 25, 2014.

§85A-101. Report on number of claims - Electronic data interchange.

A. On or before the first day of July each year, the Workers' Compensation Commission shall prepare, make public and submit a report for the prior calendar year to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and each member of the Legislature, containing 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 administrative law judges, including a detailed report of the work load and judgments written by each judge, a detailed statement of the expenses of the Commission, together with any other matter which the Commission deems proper to report.

B. After public hearing and consultation with representatives of employers, insurance carriers, and employees, the Commission shall implement, with the assistance of the Insurance Commissioner, an electronic data interchange (EDI) system that provides relevant data concerning the Oklahoma workers' compensation system and the delivery of benefits to injured workers on a timetable to be reasonably determined by the Commission.

C. To assist the Commission in developing and implementing the EDI system, there is hereby created the Oklahoma Workers' Compensation Electronic Data Interchange Advisory Committee. The Governor shall appoint five persons to serve as members of the advisory committee, one of whom shall be selected by the Governor as chair. The chair shall provide adequate notice of meetings of the advisory committee and public hearings as required by law.

Added by Laws 2013, c. 208, § 101, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 36, emerg. eff. May 28, 2019.

§85A-102. Pooled liabilities - Distribution of surplus.

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

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

1. Has been in business for at least five (5) years;
2. Has its financial statements audited by a public accounting firm which audits at least one corporate client which has assets in excess of One Billion Dollars (\$1,000,000,000.00) and on which the accounting firm has issued an unqualified opinion as to the fair presentation of the financial position of the Program showing adequate solvency and reserves; and

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

C. A group self-insurer created pursuant to this section either prior to or after the effective date of this act shall not be subject to the provisions of the Oklahoma Securities Act.
Added by Laws 2013, c. 208, § 102, eff. Feb. 1, 2014.

§85A-103. Associations pooling liability.

The Workers' Compensation Commission shall adopt rules permitting two or more group self-insurance associations to pool their liabilities under this act for the purpose of providing such group self-insurance associations specific and aggregate excess insurance.
Added by Laws 2013, c. 208, § 103, eff. Feb. 1, 2014.

§85A-104. Workers' Compensation Commission and Self-Insurance Guaranty Fund Board liability.

No member or personnel of the Workers' Compensation Commission, the Self-insurance Guaranty Fund Board, or administrative law judge shall be liable in a civil proceeding for any act performed in good faith in the performance of that person's powers or duties under this act.
Added by Laws 2013, c. 208, § 104, eff. Feb. 1, 2014.

§85A-105. Compensation Commission and Self-insurance Guaranty Fund employees as witnesses - Solicitation of employment - Ex-parte communication.

A. No employee of the Workers' Compensation Commission shall be competent to testify on any matter concerning any information the employee has received through the performance of the employee's duties under the provisions of this act.

B. The commissioners and employees of the Commission shall not solicit employment for any attorney or physician nor shall they recommend or refer any claimant or employer to an attorney or physician. If any employee of the Commission makes such a solicitation, recommendation or reference, that person, upon conviction, shall be guilty of a misdemeanor punishable, for each offense, by a fine of not more than One Thousand Dollars (\$1,000.00) or by imprisonment in the county jail not to exceed one (1) year, or by both such fine and imprisonment. The Commission shall immediately terminate the employment of any employee who is guilty of such solicitation, recommendation or reference. A commissioner guilty of such solicitation, recommendation or reference shall be subject to removal from office.

C. No administrative law judge shall engage in any ex parte communication with any party to an action pending before the Commission or with any witness or medical provider regarding the merits of a specific matter pending before the judge for resolution.

Any violation of this provision shall subject the judge to disqualification from the action or matter upon presentation of an application for disqualification.

Added by Laws 2013, c. 208, § 105, eff. Feb. 1, 2014.

§85A-106. Strict construction.

The provisions of the Administrative Workers' Compensation Act shall be strictly construed by the Workers' Compensation Commission and any appellate court reviewing a decision of the Workers' Compensation Commission.

Added by Laws 2013, c. 208, § 106, eff. Feb. 1, 2014.

§85A-107. Workers' compensation provided by public entities.

A. 1. All public entities of this state, their agencies and instrumentalities, authorities, and public trusts of which they are beneficiaries shall provide workers' compensation to their employees and elected officials engaged in either governmental or proprietary functions in accordance with this section. Compensation or indemnification for compensation shall be paid out of the funds of the public entities.

2. Except as otherwise provided, the state and all its institutions of higher education, departments, instrumentalities, institutions, and public trusts of which it or they are beneficiaries shall insure against liability for workers' compensation with CompSource Oklahoma and shall not be permitted to insure with any other insurance carrier unless:

- a. CompSource Oklahoma refuses to accept the risk when the application for insurance is made,
 - b. specifically authorized by law,
 - c. the state entity can obtain workers' compensation insurance coverage at the same cost or at a lower cost from another insurance carrier licensed in this state, or
 - d. CompSource Oklahoma begins operating as a mutual insurance company.
3. a. The state, all state institutions of higher education except comprehensive universities, and all state departments, instrumentalities, institutions, and public trusts of which the state is a beneficiary, may self-insure. Self-insurance administration may only be obtained through CompSource Oklahoma, unless CompSource Oklahoma begins operating as a mutual insurance company.
- b. If CompSource Oklahoma begins operating as a mutual insurance company:
 - (1) the state, all state institutions of higher education except comprehensive universities, and

all state departments, instrumentalities, institutions, and public trusts so electing to self-insure shall pay premiums set by CompSource Oklahoma which shall collect premiums, pay claims and provide for excess insurance, and

- (2) all dividends or profits accumulating from a self-insurance program shall be refunded to the participants on a formula devised by CompSource Oklahoma.

B. All counties, cities and towns, their instrumentalities and public trusts of which they are beneficiaries shall insure against their liability for workers' compensation with CompSource Oklahoma or, through any combination of the following, may:

1. Insure with an insurance carrier licensed in this state;
2. Self-insure and make any appropriation of funds to cover their risk;
3. Secure reinsurance or excess insurance over and above a self-insurance retention in any manner authorized by subsections B and C of Section 167 of Title 51 of the Oklahoma Statutes; or
4. Secure compensation for their employees in the manner provided in The Governmental Tort Claims Act, subsection C of Section 167 of Title 51 of the Oklahoma Statutes.

C. Boards of education, their instrumentalities and public trusts of which they are beneficiaries shall insure against their liability for workers' compensation through any combination of the following:

1. Insure with an insurance carrier licensed in Oklahoma;
2. Self-insure and make any appropriation of funds to cover their risk; or
3. Secure reinsurance or excess insurance over and above a self-insurance retention in any manner authorized by subsection B of Section 168 of Title 51 of the Oklahoma Statutes.

D. Comprehensive universities shall insure against their liability for workers' compensation with CompSource Oklahoma or, if it can be demonstrated to the Board of Regents of the comprehensive university prior to the inception date of a workers' compensation policy that the policy will result in a lower cost than one with CompSource Oklahoma or if CompSource Oklahoma begins operating as a mutual insurance company, through any combination of the following:

1. Insure with an insurance carrier licensed in Oklahoma; or
2. Self-insurance, making any appropriation of funds to cover their risk.

E. In addition to any other provision of this section, city, county, city-county, and public trust hospitals may insure with other insurance carriers licensed in this state if it can be demonstrated to the governing body of the hospital prior to the inception date of a workers' compensation policy each year that the policy will result

in a lower cost than one with CompSource Oklahoma or if CompSource Oklahoma begins operating as a mutual insurance company.

F. For purposes of this act, all contracts of employment for state, county, municipal, and state-funded educational entities and public trusts will be considered to have been entered into in this state regardless of where the work is performed.

G. When a person is employed by the state, a municipality, a county, or by any political subdivision thereof, and, while off-duty from the employment, is employed by a private employer, the private employer alone shall be liable for compensation under this act for any injury or death of the person arising out of and in the course of employment which occurs during the hours of actual employment by the private employer. The provisions of this subsection shall not relieve the state, a municipality or a county, or any political subdivision thereof, from providing disability benefits to which a person may be entitled pursuant to a pension or retirement plan. The provisions of this subsection shall not preclude an employee or group of employees so employed from providing separate compensation coverage for off-duty employment by a private employer.
Added by Laws 2013, c. 208, § 150, eff. Feb. 1, 2014.

§85A-108. Dismissal of claims.

Any claimant may, upon the payment of the Workers' Compensation Commission's filing fee, dismiss any claim brought by the claimant at any time before final submission of the case to the Commission for decision. Such dismissal shall be without prejudice unless the words "with prejudice" are included in the order. If any claim that is filed within the statutory time permitted by Section 18 of this act is dismissed without prejudice, a new claim may be filed within one (1) year after the entry of the order dismissing the first claim even if the statutory time for filing has expired.
Added by Laws 2013, c. 208, § 151, eff. Feb. 1, 2014.

§85A-109. Workers' compensation counselor or ombudsmen program.

A. The Workers' Compensation Commission shall establish a workers' compensation counselor or ombudsman program to assist injured workers, employers and persons claiming death benefits in obtaining benefits under this act. A special effort shall be made to equip counselors or ombudsmen with sufficient resources to assist injured workers through the system without the necessity of retaining legal representation.

B. Workers' compensation counselors or ombudsmen shall provide information to injured workers; investigate complaints; communicate with employers, insurance carriers, self-insurers, and health care providers; provide informational seminars and workshops on workers' compensation for medical providers, insurance adjustors, and employee

and employer groups; and develop informational materials for employees, employers and medical providers.

C. The Commission shall mail a notice to the injured worker within ten (10) days of the filing of an Employer's First Notice of Injury. The notice shall advise the injured worker of the availability of the services of the Commission's counselor or ombudsman program and of the availability of mediation and other forms of alternative dispute resolution to assist the injured worker. The Commission shall provide additional information as the Commission may determine necessary.

D. The Commission shall develop a program that provides for annual training for own-risk employers and claims representatives handling workers' compensation claims in Oklahoma. The training shall include information about the alternative dispute resolution program, including counselor and ombudsman programs, mediation, and other services provided by the Commission.

Added by Laws 2013, c. 208, § 152, eff. Feb. 1, 2014.

§85A-110. Alternative dispute resolution program.

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

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

C. Mediation shall be voluntary, informal, and nonbinding in any claim arising pursuant to the provisions of this act, except for claims against the Multiple Injury Trust Fund and medical treatment issues subject to a certified workplace medical plan. Provided, however, the parties may waive mediation and proceed directly to an administrative hearing.

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

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

F. Mediation is confidential and no part of the proceeding shall be considered a matter of public record. Recommendations of the mediator are not binding unless the parties enter into a settlement agreement. If an agreement is not reached, the results and statements made during the mediation are not admissible in any following proceeding.

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

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

I. Mediators shall be compensated at the rate or fee as determined by the mediator; provided, however, the rate or fee shall not exceed a maximum rate to be established by the Commission by rule. The cost of mediation shall be paid by the respondent or its insurance carrier. A mediator must schedule mediations for a minimum two-hour block of time, and may not schedule more than one mediation to take place at a time.

J. At the time of a mediation, the claimant shall be in attendance unless all parties agree, and all parties shall be represented during the entire mediation session by a person with full settlement authority to settle any issue of the claim. If a party does not have full settlement authority, or does not participate in good faith in the mediation process, the mediator shall report to the

assigned administrative law judge of the Commission who may for good cause shown assess costs, attorney fees, and sanctions.

K. To encourage early resolution of claims, an injured employee may participate in mediation without counsel. Upon compromise settlement of the claim, the parties may submit the settlement agreement to any administrative law judge for final approval. Added by Laws 2013, c. 208, § 153, eff. Feb. 1, 2014.

§85A-111. Commencement of benefit claim - Prehearing conference.

A. Any claim for any benefit under this act shall be commenced with the filing of an Employee's First Notice of Claim for Compensation by the employee with the Workers' Compensation Commission. The claim shall contain a statement that all matters stated therein are true and accurate and shall be signed by the claimant and the claimant's agent, if any. Any person who signs this statement or causes another to sign this statement knowing the statement to be false shall be guilty of perjury. An individual who signs on behalf of a claimant may be presumed to have the authorization of the claimant and to be acting at the claimant's direction.

B. If an employer controverts any issue related to the Employee's First Notice of Claim for Compensation, the employer shall file a Notice of Contested Issues on a form prescribed by the Commission. All answers and defenses to claims or other documents filed on behalf of a respondent or the respondent's insurer in a workers' compensation case shall contain a statement that all matters stated therein are true and accurate and shall be signed by the respondent, the insurer, or their respective agents, if any. Any person who signs such a statement or causes another to sign such a statement, knowing the statement to be false, shall be guilty of perjury. An individual who signs on behalf of a respondent, its insurer, or its agent may be presumed to have the authorization of the respondent, its insurer or agent and to be acting at their direction.

C. Any party shall have the right to request a prehearing conference or administrative hearing before the Commission on any issue. The Commission shall, within seven (7) days of the receipt of such notification, set the matter for prehearing conference or administrative hearing at the earliest available time. In the event the compensability of a claim is contested, the respondent shall complete discovery and secure a medical evaluation of the claimant within sixty (60) days of the filing of a request for benefits. Added by Laws 2013, c. 208, § 154, eff. Feb. 1, 2014.

§85A-112. Independent medical examiners.

A. The 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 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, an independent medical examiner shall be appointed to determine the reasonableness and necessity of the recommended surgery. Such independent medical examiner shall be qualified to perform the type of surgery recommended.

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 must be made by giving written notification to all parties and to the Commission within ten (10) days after receipt of the report. The employer shall be responsible for the reasonable charges of the physician for such testimony, preparation time, and the expense of the deposition.
Added by Laws 2013, c. 208, § 155, eff. Feb. 1, 2014.

§85A-113. Transfer of case management - Case managers.

For cases not covered by a certified workplace medical plan, and where the employer, insurance company, or own-risk employer do not provide case management, case management may be granted by the Workers' Compensation Commission on the request of any party, or when the Commission determines that case management is appropriate. The administrative law judge shall appoint a case manager from a list of qualified case managers developed, maintained and periodically reviewed by the Commission. The period of qualification shall be two (2) years. Case managers may be qualified for successive two-year periods. Case managers serving as qualified case managers on the effective date of this act shall serve the remainder of their respective two-year qualification periods and may reapply for successive qualification periods. The reasonable and customary charges of a medical case manager appointed by the Commission shall be borne by the employer or insurance carrier. One change of case manager per party shall be made upon application of any party.
Added by Laws 2013, c. 208, § 156, eff. Feb. 1, 2014.

§85A-114. Prosthetic devices.

When a compensable injury results in the loss of one or more eyes, teeth, or members of the body, or the replacement of a joint, the employer shall furnish such prosthetic devices as may be necessary as determined by the Workers' Compensation Commission in the treatment and rehabilitation of the injured worker for the lifetime of the worker. When a worker sustains a compensable injury, arising out of and in the course of his or her employment, which results in damage to a prosthetic device with which such worker is equipped, the employer shall repair or replace such device. Provided, that a subsequent injury to the part of the body for which a prosthetic device is provided shall terminate the obligation of the employer to provide such prosthetic device.

Added by Laws 2013, c. 208, § 157, eff. Feb. 1, 2014.

§85A-115. Joint Petition for settlement.

A. If the employee and employer shall reach an agreement for the full, final and complete settlement of any issue of a claim pursuant to this act, a form designated as "Joint Petition" shall be signed by both the employer and employee, or representatives thereof, and shall be approved by the Workers' Compensation Commission or an administrative law judge, and filed with the Workers' Compensation Commission. In cases in which the employee is not represented by legal counsel, the Commission or an administrative law judge shall have jurisdiction to approve a full, final and complete settlement of any issue upon the filing of an Employer's First Notice of Injury. There shall be no requirement for the filing of an Employee's First Notice of Claim for Compensation to effect such settlement in cases in which the employee is not represented by legal counsel.

B. In the event all issues of a claim are not fully, finally and completely settled by a Joint Petition, the issues not settled by the parties and subject to the Commission's continuing jurisdiction must be noted by appendix to the Joint Petition or on a form created for such purpose by the Commission. The appendix must be signed by the parties and approved by the Commission as set forth herein.

C. In the absence of fraud, a Joint Petition shall be deemed binding upon the parties thereto and a final adjudication of all rights pursuant to this title or the workers' compensation law in effect at the time of the injury or final order of the Workers' Compensation Commission. An official record shall be made by an official Commission reporter of the testimony taken to effect the Joint Petition.

D. A good-faith effort shall be made on the part of any insurance carrier or group self-insured plan to notify an insured employer of the possibility of and terms of any settlement of a workers' compensation case pursuant to this section. Written comments or objections to settlements shall be filed with the Commission and periodically shared with the management of the applicable insurer. A written notice shall be made to all policyholders of their right to a good-faith effort by their insurer to notify them of any proposed settlement, if the policyholder so chooses.

Added by Laws 2013, c. 208, § 158, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 37, emerg. eff. May 28, 2019.

§85A-116. Awards for permanent disability.

A. Awards for permanent partial disability shall be made pursuant to Sections 45 and 46 of this act, less any sums previously paid which the Workers' Compensation Commission may find to be a proper credit thereon. When the award becomes final, the whole sum

or any unpaid portion thereof shall operate as a final adjudicated obligation and payment thereof may be enforced by the claimant or in case of the claimant's death, by the surviving beneficiary entitled to the proceeds as provided in Section 47 of this act.

B. Awards for permanent total disability shall entitle the claimant to receive weekly income benefits for the period prescribed in this act. When an award for permanent total disability becomes final, the accrued portion thereof shall operate as a final adjudicated obligation and payment thereof may be enforced by the claimant or in case of the claimant's death, by the surviving beneficiary entitled to the proceeds as provided in this act. Permanent total disability awards shall not be commuted to a lump-sum payment.

Added by Laws 2013, c. 208, § 159, eff. Feb. 1, 2014.

§85A-117. Estoppel from denying employment.

Every employer and insurance carrier who schedules any employee as a person employed by the employer for the purpose of paying or collecting insurance premiums on a workers' compensation insurance policy or who pays, receives or collects any premiums upon any insurance policy covering the liability of such employer under the workers' compensation law by reason of or upon the basis of the employment of any such employee shall be estopped to deny that such employee was employed by the employer.

Added by Laws 2013, c. 208, § 160, eff. Feb. 1, 2014.

§85A-118. Fees.

A. A filing fee of One Hundred Forty Dollars (\$140.00) per case, including but not limited to any Joint Petition or medical fee dispute authorized by this title, shall be collected from the employer filing a Joint Petition or party filing a medical fee dispute by the Workers' Compensation Commission. In the event any award becomes final against an employer, such amount shall be assessed by the Commission. The filing fee shall be deposited as follows:

1. One Hundred Five Dollars (\$105.00) to the credit of the Workers' Compensation Commission Revolving Fund;
2. Ten Dollars (\$10.00) to the credit of the Attorney General's Workers' Compensation Fraud Unit Revolving Fund created by Section 19.2 of Title 74 of the Oklahoma Statutes; and
3. Twenty-five Dollars (\$25.00) to the credit of the Workers' Compensation Commission Revolving Fund for purposes of implementing the provisions of this title, including strengthening and providing additional funding for the Attorney General's Workers' Compensation Fraud Unit, providing counseling services pursuant to the workers' compensation counselor or ombudsman program and safety in the workplace.

B. A fee of One Hundred Thirty Dollars (\$130.00) per action to reopen any case pursuant to Section 32 of this title shall be collected by the Commission and assessed as costs to be paid by the party that reopens the case. The fee collected pursuant to this subsection shall be deposited to the credit of the Workers' Compensation Commission Revolving Fund for purposes of implementing the provisions of this title, including strengthening and providing additional funding for the Attorney General's Workers' Compensation Fraud Unit, providing counseling services pursuant to the workers' compensation counselor or ombudsman program and safety in the workplace.

Added by Laws 2013, c. 208, § 161, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 38, emerg. eff. May 28, 2019.

§85A-119. Copies of documents.

A. Persons requesting and receiving copies of documents on file with the Workers' Compensation Commission shall pay a fee to the Commission of One Dollar (\$1.00) for each page copied. All fees so collected shall be deposited in the State Treasury in the Workers' Compensation Commission Revolving Fund.

B. All penalties and fines imposed by the Commission, upon collection, shall be deposited to the credit of the Workers' Compensation Commission Revolving Fund.

Added by Laws 2013, c. 208, § 162, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 39, emerg. eff. May 28, 2019.

§85A-120. Inquiry about compensation claims.

A. Except as otherwise provided by state or federal law and subject to the provisions of this section, an employer may inquire about previous workers' compensation claims paid to an employee while the employee was employed by a previous employer. If the employee fails to answer truthfully about any previous permanent partial disability awards made pursuant to workers' compensation claims, the employee shall be subject to discharge by the employer.

B. 1. All requests made to the Workers' Compensation Commission for information on workers' compensation claims involving a worker, including written inquiries about prior claims and requests to access a worker's compensation claim file, must be in writing, on a form prescribed by the Commission, and accompanied by a fee of One Dollar (\$1.00) per search request, not to exceed One Dollar (\$1.00) per claims record of a particular worker. The fee shall be deposited to the credit of the Workers' Compensation Commission Revolving Fund. The form shall require identification of the person requesting the information, and the person for whom a search is being made if different from the requester. The form must contain an affidavit signed by the requester under penalty of perjury that the information sought is not requested for a purpose in violation of state or

federal law. The form must be used by all repositories of archived Court claim files. All request forms shall be maintained by the Commission as a public record, together with a record of a worker's written authorization permitting a search indexed by the worker's Social Security number as required by Section 3113 of Title 74 of the Oklahoma Statutes. The request forms and authorizations shall be indexed alphabetically by the last name of the worker.

2. This subsection shall not apply:

- a. to requests for claims information made by a public officer or by a public employee in the performance of his or her duties on behalf of a governmental entity or as may be allowed by law,
- b. to requests for claims information made by an insurer, self-insured employer, third-party claims administrator, or a legal representative thereof, when necessary to process or defend a workers' compensation claim,
- c. when a worker or the worker's representative requests review of the worker's claims information,
- d. when the disclosure is made for educational or research purposes and in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim,
- e. to requests for claims information made by a health care or rehabilitation provider or the provider's legal representative when necessary to process payment of health care or rehabilitation services rendered to a worker, and
- f. to requests for claims information made by an employer or personnel service company, including but not limited to an individual or entity, where the worker executes a written authorization permitting the search and designating the employer or personnel service company as the worker's representative for that purpose; however, nothing in this subparagraph shall relieve the employer or personnel service company from complying with the requirements of utilizing the form set forth in paragraph 1 of this subsection.

Added by Laws 2013, c. 208, § 163, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 40, emerg. eff. May 28, 2019.

§85A-121. Advisory Council on Workers' Compensation.

A. There is hereby created an Advisory Council on Workers' Compensation.

B. The voting membership of the Advisory Council shall consist of nine (9) members. Any member serving on the effective date of this section shall serve the remainder of his or her term. The chair

of the Workers' Compensation Commission shall be an ex officio nonvoting member.

1. The Governor shall appoint three members representing employers in this state, one of whom shall be from a list of nominees provided by the predominant statewide broad-based business organization.

2. The Speaker of the House of Representatives shall appoint three members representing employees in this state, one of whom shall be from a list of nominees provided by the most representative labor organization in the state.

3. The President Pro Tempore of the Senate shall appoint three members, two who are attorneys representing the legal profession in this state, one of whom shall be an attorney who practices primarily in the area of defense of workers' compensation claims, and one of whom shall be an attorney who primarily represents claimants, and a medical doctor or doctor of osteopathy actively engaged in the treatment of injured workers.

C. The term of office for appointees shall be as follows:

1. The term of office for three positions, one each appointed by the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall expire on January 1, 2015;

2. The term of office for three positions, one each appointed by the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall expire on January 1, 2016; and

3. The term of office for three positions, one each appointed by the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall expire on January 1, 2017.

D. Thereafter, successors in office shall be appointed for a three-year term. Members shall be eligible to succeed themselves in office.

E. Any person appointed to fill a vacancy shall be appointed for the unexpired portion of the term.

F. The chair and the vice-chair of the Advisory Council shall be appointed by the Governor.

G. Members shall receive their traveling and other necessary expenses incurred in the performance of their duties as provided in the State Travel Reimbursement Act.

H. Meetings of the Advisory Council shall be quarterly or as called by the chair or upon petition by a majority of the voting members. The presence of five voting members constitutes a quorum. No action shall be taken by the Advisory Council without the affirmative vote of at least five members.

I. The Commission shall provide office supplies and personnel of the Commission to carry out any of the duties that have been entrusted to the Advisory Council.

J. The Advisory Council shall analyze and review the workers' compensation system, the reports of the Commission, and trends in the

field of workers' compensation. The Advisory Council may recommend improvements and proper responses to developing trends. The Advisory Council shall report its findings annually 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.

K. In addition to other duties required by this section, the Advisory Council shall consult with the Commission regarding oversight of independent medical examiners as provided in Section 45 of this title.

Added by Laws 2013, c. 208, § 164, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 41, emerg. eff. May 28, 2019.

§85A-122. Costs of administering act.

A. The Workers' Compensation Commission Revolving Fund established by Section 28.1 of this title shall be used for the costs of administering this act and for other purposes as authorized by law.

B. For the purpose of providing funds for the Workers' Compensation Commission Revolving Fund, for the Workers' Compensation Administrative Fund created in Section 401.1 of this title, for the Multiple Injury Trust Fund created in Section 28 of this title, and to fund other provisions within this title, the following tax rates shall apply:

1. Each mutual or interinsurance association, stock company, CompSource Mutual Insurance Company or other insurance carrier writing workers' compensation insurance in this state shall pay to the Oklahoma Tax Commission an assessment at a rate of one percent (1%) of all gross direct premiums written during each quarter of the calendar year for workers' compensation insurance on risks located in this state after deducting from such gross direct premiums, return premiums, unabsorbed portions of any deposit premiums, policy dividends, safety refunds, savings and other similar returns paid or credited to policyholders. Such payments to the Tax Commission shall be made not later than the fifteenth day of the month following the close of each quarter of the calendar year in which such gross direct premium is collected or collectible. Contributions made by insurance carriers and CompSource Mutual Insurance Company, under the provisions of this section, shall be considered for the purpose of computing workers' compensation rates; and

2. When an employer is authorized to become a self-insurer, the Commission shall so notify the Tax Commission, giving the effective date of such authorization. The Tax Commission shall then assess and collect from the employers carrying their own risk an assessment at the rate of two percent (2%) of the total compensation for permanent total disability awards, permanent partial disability awards and death benefits paid out during each quarter of the calendar year by the employers. Such assessment shall be payable by the employers and

collected by the Tax Commission according to the provisions of this section regarding payment and collection of the assessment created in paragraph 1 of this subsection.

C. It shall be the duty of the Tax Commission to collect the payments provided for in this title. The Tax Commission is hereby authorized to bring an action for the recovery of any delinquent or unpaid payments required in this section. The Tax Commission may also enforce payments by proceeding in accordance with the provisions of Section 98 of this title.

D. The Tax Commission shall pay monthly to the State Treasurer to the credit of the Multiple Injury Trust Fund all monies collected under the provisions of this section less the annual amounts which shall be apportioned by the Oklahoma Tax Commission as follows:

1. Five Million Dollars (\$5,000,000.00) shall be payable in equal monthly installments to the credit of the Workers' Compensation Commission Revolving Fund established in Section 28.1 of this title for the fiscal year ending June 30, 2016, Three Million Dollars (\$3,000,000.00) for the fiscal year ending June 30, 2017, and Four Million Dollars (\$4,000,000.00) for the fiscal year ending June 30, 2020, and for all subsequent years to be used to implement the provisions of this title; and

2. Four Million Dollars (\$4,000,000.00) shall be payable in equal monthly installments to the credit of the Workers' Compensation Administrative Fund established in Section 401.1 of this title for the fiscal year ending June 30, 2016, Three Million Five Hundred Thousand Dollars (\$3,500,000.00) for the fiscal year ending June 30, 2017, Three Million Five Hundred Thousand Dollars (\$3,500,000.00) for the fiscal year ending June 30, 2018, Three Million Dollars (\$3,000,000.00) for the fiscal year ending June 30, 2019, and One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000.00) for the fiscal year ending June 30, 2020.

Monies deposited in the Workers' Compensation Administrative Fund shall be used by the Workers' Compensation Court of Existing Claims to implement provisions provided for in this title.

E. The refund provisions of Sections 227 through 229 of Title 68 of the Oklahoma Statutes shall be applicable to any payments made pursuant to this section.

Added by Laws 2013, c. 208, § 165, eff. Feb. 1, 2014. Amended by Laws 2015, c. 344, § 4, eff. July 1, 2015; Laws 2019, c. 476, § 64, emerg. eff. May 28, 2019.

§85A-123. Perjury.

Any form, claim, answer or report to be filed by any person with the Workers' Compensation Commission pursuant to this act shall contain or be verified by a written declaration that such form, claim, answer or report is true and made under the penalty of perjury.

Added by Laws 2013, c. 208, § 166, eff. Feb. 1, 2014.

§85A-124. Transfers from Workers' Compensation Court.

A. 1. All unexpended funds, assets, property, records, personnel and any outstanding financial obligations and encumbrances of the Workers' Compensation Court before February 1, 2014, are hereby transferred to the Workers' Compensation Commission. The personnel transferred shall retain leave, sick and annual time earned and any retirement and longevity benefits which have accrued during their employment with the state. The salaries of employees who are transferred shall not be reduced as a direct and immediate result of the transfer. There shall be no reduction-in-force as a result of the transfer.

2. Any unexpended funds, including interest thereon, held by the State Treasurer in an interest-bearing division special account maintained by the Workers' Compensation Court before February 1, 2014, from which a self-insured employer's workers' compensation obligations are paid following nonpayment by the self-insured employer for any reason, including insolvency, shall be transferred to the Workers' Compensation Commission. Such funds shall be expended by the Commission only for the purpose of paying workers' compensation obligations of the self-insured employer, and costs related to the administration of such obligations, to the extent of the availability of such funds.

B. 1. All unexpended funds, assets, property, and records and any outstanding financial obligations and encumbrances of the Workers' Compensation Self-insurance Guaranty Fund Board before February 1, 2014, are hereby transferred to the Self-insurance Guaranty Fund Board created in the Administrative Workers' Compensation Act.

2. Any unexpended funds, including interest thereon, held by the State Treasurer in the Workers' Compensation Self-insurance Guaranty Fund before February 1, 2014, shall be transferred to the Self-insurance Guaranty Fund Board created by the Administrative Workers' Compensation Act. Such funds shall be expended by the Board only as authorized in the Administrative Workers' Compensation Act.

3. Any claim existing or action or proceeding pending by, against or before the Workers' Compensation Self-insurance Guaranty Fund Board when the Board ceased existence may be continued as if the Self-insurance Guaranty Fund Board was not created, or the Self-insurance Guaranty Fund Board may be substituted in the matter. The Self-insurance Guaranty Fund Board shall be responsible and liable for all liabilities and obligations of the Workers' Compensation Self-insurance Guaranty Fund Board.

C. All property and records of the Physician Advisory Committee before February 1, 2014, are hereby transferred to the Physician

Advisory Committee created in the Administrative Workers' Compensation Act.

D. All property and records of the Advisory Council on Workers' Compensation before February 1, 2014, are hereby transferred to the Advisory Council on Workers' Compensation created in the Administrative Workers' Compensation Act.

E. All unexpended funds, assets, property, records, personnel and any outstanding financial obligations and encumbrances of the Multiple Injury Trust Fund before February 1, 2014, are hereby transferred to the Multiple Injury Trust Fund created in the Administrative Workers' Compensation Act. The personnel transferred shall retain leave, sick and annual time earned and any retirement and longevity benefits which have accrued during their employment with the state. The salaries of employees who are transferred shall not be reduced as a direct and immediate result of the transfer. There shall be no reduction-in-force as a result of the transfer.

F. The Director of the Office of Management and Enterprise Services is hereby directed to coordinate the transfer of funds, allotments, purchase orders, outstanding financial obligations or encumbrances provided for in subsections A and E of this section, and the transfer of funds, outstanding financial obligations or encumbrances provided for in subsection B of this section.

Added by Laws 2013, c. 208, § 167, eff. Feb. 1, 2014. Amended by Laws 2014, c. 169, § 7, emerg. eff. April 25, 2014.

§85A-125. Computation of time.

The time within which an act is to be done, as provided for in this act, shall be computed by excluding the first day and including the last day. If the last day is a legal holiday as defined by Section 82.1 of Title 25 of the Oklahoma Statutes, it shall be excluded.

Added by Laws 2013, c. 208, § 168, eff. Feb. 1, 2014.

§85A-200. Repealed by Laws 2019, c. 476, § 66, emerg. eff. May 28, 2019.

§85A-201. Repealed by Laws 2019, c. 476, § 66, emerg. eff. May 28, 2019.

§85A-202. Repealed by Laws 2019, c. 476, § 66, emerg. eff. May 28, 2019.

§85A-203. Repealed by Laws 2019, c. 476, § 66, emerg. eff. May 28, 2019.

§85A-204. Repealed by Laws 2019, c. 476, § 66, emerg. eff. May 28, 2019.

§85A-205. Repealed by Laws 2019, c. 476, § 66, emerg. eff. May 28, 2019.

§85A-206. Repealed by Laws 2019, c. 476, § 66, emerg. eff. May 28, 2019.

§85A-207. Repealed by Laws 2019, c. 476, § 66, emerg. eff. May 28, 2019.

§85A-208. Repealed by Laws 2019, c. 476, § 66, emerg. eff. May 28, 2019.

§85A-209. Repealed by Laws 2019, c. 476, § 66, emerg. eff. May 28, 2019.

§85A-210. Repealed by Laws 2019, c. 476, § 66, emerg. eff. May 28, 2019.

§85A-211. Repealed by Laws 2019, c. 476, § 66, emerg. eff. May 28, 2019.

§85A-212. Repealed by Laws 2019, c. 476, § 66, emerg. eff. May 28, 2019.

§85A-213. Repealed by Laws 2019, c. 476, § 66, emerg. eff. May 28, 2019.

§85A-300. Short title - Workers' Compensation Arbitration Act.

Sections 300 through 328 of this title shall be known and may be cited as the "Workers' Compensation Arbitration Act".

Added by Laws 2013, c. 208, § 121, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 42, emerg. eff. May 28, 2019.

§85A-301. Arbitration agreements.

All agreements to arbitrate claims for injuries covered by the Administrative Workers' Compensation Act shall be valid and enforceable in this state when:

1. The employer provides notice of the existence of an agreement to arbitrate to both the employee and the employer's workers' compensation insurance provider;

2. The employer files an alternative dispute resolution program with the Workers' Compensation Commission, as defined in the Administrative Workers' Compensation Act;

3. The employers' Certified Medical Plan files an alternative dispute resolution program with the Commission, as defined in the Administrative Workers' Compensation Act; or

4. The agreement is subject to the Federal Arbitration Act and contains a provision that requires that, in addition to other remedies, any party to the arbitration be given the opportunity to appeal any decision on any issue of the arbitrator to the Workers' Compensation Commission.

Added by Laws 2013, c. 208, § 122, eff. Feb. 1, 2014.

§85A-302. Notice.

A. Except as otherwise provided in the Workers' Compensation Arbitration Act, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

B. A person has notice if the person has knowledge of the notice or has received notice.

C. A person shall be deemed to have received notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business, or at another location held out by the person as a place of delivery of the communications.

Added by Laws 2013, c. 208, § 123, eff. Feb. 1, 2014.

§85A-303. Agreements governed by act.

The Workers' Compensation Arbitration Act governs an agreement to arbitrate made on or after February 1, 2014. The Workers' Compensation Arbitration Act governs an agreement to arbitrate made before February 1, 2014, if all the parties to the agreement or to the arbitration proceeding agree in writing.

Added by Laws 2013, c. 208, § 124, eff. Feb. 1, 2014.

§85A-304. Waiver.

A. Except as otherwise provided in subsections B and C of this section and in the laws of this state outside of this title, a party to an agreement to arbitrate or to an arbitration proceeding may waive, or the parties may vary the effect of, the requirements of this act to the extent permitted by law.

B. Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

1. Waive or agree to vary the effect of the requirements of subsection A of Section 305, subsection A of Section 306, Section 307, subsection A or B of Section 317, Section 326 or Section 328 of this title;

2. Agree to unreasonably restrict the right to notice of the initiation of an arbitration proceeding under Section 309 of this title;

3. Agree to unreasonably restrict the right to disclosure of any facts by an arbitrator under Section 312 of this title;

4. Waive the right of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under Section 316 of this title; or

5. Agree to conduct arbitration proceedings outside of this state.

C. A party to an agreement to arbitrate or to an arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or subsection A or C of Section 304, Sections 307, 314 and 318, subsection D or E of Section 320, Sections 322, 323 and 324, or subsection A or B of Section 325 of this title. Added by Laws 2013, c. 208, § 125, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 43, emerg. eff. May 28, 2019.

§85A-305. Application for judicial relief.

A. Except as otherwise provided in Section 107 of this title, an application for judicial relief under this act shall be made by application and motion to the Workers' Compensation Commission and heard in the manner provided by law or rule of the Commission for making and hearing motions.

B. Unless a civil action involving the agreement to arbitrate is pending, notice of an initial application and motion to the Commission under this act shall be served in the manner provided by law for the service of a summons in the filing of a civil action. Otherwise, notice of the motion shall be given in the manner provided by law or rule of court for serving motions in pending cases. Added by Laws 2013, c. 208, § 126, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 44, emerg. eff. May 28, 2019.

§85A-306. Agreement to submit to arbitration.

A. A written agreement to submit any existing or subsequent controversy arising between the parties to arbitration is valid, enforceable, and irrevocable except on a ground that exists at law or in equity for the revocation of a contract.

B. An arbitrator shall decide whether a condition precedent to arbitration has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable.

C. If a party to a proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the Commission, unless the Commission otherwise orders.

Added by Laws 2013, c. 208, § 127, eff. Feb. 1, 2014.

§85A-307. Refusal to arbitrate.

A. On application and motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate under the agreement:

1. If the refusing party does not appear or does not oppose the motion, the Workers' Compensation Commission shall order the parties to arbitrate; and

2. If the refusing party opposes the motion, the Commission shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate. The Commission may also assess costs against the party opposing the motion if it concludes the opposition was not brought in good faith to be deposited in the Workers' Compensation Commission Revolving Fund created in Section 28.1 of this title.

B. On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the Commission shall proceed summarily to decide the issue. If the Commission finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate. The Commission may also assess costs against the party opposing the motion if the Commission concludes the opposition was not brought in good faith to be deposited in the Workers' Compensation Fund created by the Administrative Workers' Compensation Act.

C. If the Commission finds that the parties have not entered into an enforceable arbitration agreement, the dispute shall be resolved under the Administrative Workers' Compensation Act.

D. If an action is initiated in district court to determine whether an enforceable arbitration agreement exists, on motion by the responding party, that proceeding shall be transferred to the Commission for determination.

E. If a party challenges the enforceability of an arbitration agreement, the underlying claim, including all benefits, shall be stayed until the Commission determines whether an enforceable arbitration agreement exists.

Added by Laws 2013, c. 208, § 128, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 45, emerg. eff. May 28, 2019.

§85A-308. Judgement for provisional remedies.

A. Before an arbitrator is appointed and authorized to act, the Commission, on application and motion of a party to an arbitration proceeding and for good cause shown, may enter a judgment for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

B. After an arbitrator is appointed and authorized to act:

1. The arbitrator may issue further or revised orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy, to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

2. A party to an arbitration proceeding may move the Commission for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

C. A party does not waive a right of arbitration by making an application and motion under subsection A or B of this section.
Added by Laws 2013, c. 208, § 129.

§85A-309. Initiation of arbitration.

A. A person shall initiate an arbitration proceeding by giving written notice to the Commission and the other parties to the arbitration agreement. Notice shall be served on the parties in the manner prescribed by the arbitration agreement, or, if the arbitration agreement does not address the method of notice, then by the service of process for civil actions provided under Title 12 of the Oklahoma Statutes.

B. Notice of an arbitration proceeding shall contain:

1. The general nature of the controversy;
2. The remedy and alleged damages sought; and
3. A copy of the arbitration agreement governing the

controversy.

C. An objection to the sufficiency of notice shall be made to the Commission before the initial hearing with the appointed arbitrator.

Added by Laws 2013, c. 208, § 130, eff. Feb. 1, 2014.

§85A-310. Consolidation of separate arbitration proceedings.

A. Except as otherwise provided in subsection C of this section, on application and motion of a party to an arbitration agreement or arbitration proceeding, the Commission may order consolidation of separate arbitration proceedings as to all or some of the claims if:

1. There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

2. The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

3. The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

4. Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

B. The Commission may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

C. The Commission may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

Added by Laws 2013, c. 208, § 131, eff. Feb. 1, 2014.

§85A-311. Method of appointing arbitrator.

A. If the parties to an arbitration agreement agree on a method for appointing an arbitrator, that method shall be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails, or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the Commission, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator appointed by the Commission has all the powers of an arbitrator designated by the arbitration agreement.

B. An individual who has a known, direct, and material interest in the outcome of the arbitration proceeding, or a known, existing, and substantial relationship with a party to the arbitration proceeding, may not serve as an arbitrator unless agreed to in writing by the parties.

Added by Laws 2013, c. 208, § 132, eff. Feb. 1, 2014.

§85A-312. Disclosures.

A. Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to the parties to the arbitration agreement, the parties to the arbitration proceeding, and any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including but not limited to:

1. A financial or personal interest in the outcome of the arbitration proceeding; and

2. An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness, or another arbitrator.

B. An arbitrator has a continuing obligation to disclose to the parties to the arbitration agreement, the arbitration proceeding, and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

C. If an arbitrator discloses a conflict under subsection A or B of this section, any party to the arbitration agreement or the arbitration proceeding may have the arbitrator removed by filing a notice of conflict with the Workers' Compensation Commission. If a notice of conflict is not filed within ten (10) days of disclosure of the conflict, the parties waive their rights to have any order or award entered vacated under Section 323 of this title.

Added by Laws 2013, c. 208, § 133, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 46, emerg. eff. May 28, 2019.

§85A-313. Multiple arbitrators.

If there is more than one arbitrator, the powers of an arbitrator shall be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under Section 315 of this title.

Added by Laws 2013, c. 208, § 134, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 47, emerg. eff. May 28, 2019.

§85A-314. Immunity from civil liability.

A. Arbitrators and arbitration organizations providing services under this act are immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

B. The immunity afforded by this section supplements any immunity under other law.

C. The failure of an arbitrator to make a disclosure required by Section 312 of this title shall not cause any loss of immunity under this section.

D. An arbitrator or representative of an arbitration organization is not competent to testify in a judicial, administrative, or similar proceeding and may not be required to produce records as to any statement, conduct, decision, or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection shall not apply to:

1. The extent necessary to determine the claim of an arbitrator, arbitration organization, or representative of the arbitration organization against a party to the arbitration proceeding; or

2. A hearing on an application and motion to vacate an award under paragraph 1 or 2 of subsection A of Section 323 of this title if the movant establishes prima facie that a ground for vacating the award exists.

E. If a person commences a civil action against an arbitrator, arbitration organization, or representative of an arbitration organization arising from the services of the arbitrator, organization, or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection D of this section, and the court decides that the arbitrator, arbitration organization, or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization, or representative reasonable attorney fees and other reasonable expenses of litigation.

Added by Laws 2013, c. 208, § 135, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 48, emerg. eff. May 28, 2019.

§85A-315. Summary disposition - Notice of hearing - Right to be heard - Replacement arbitrator.

A. Arbitrations shall be conducted in a fair and expeditious manner. The authority conferred on arbitrators includes, without limitation, the power to hold conferences and hearings with the parties, determine the admissibility, relevance, materiality and weight of any evidence, as well as ask questions of any witnesses during the proceedings.

B. An arbitrator may decide a request for summary disposition of a claim or particular issue:

1. If all interested parties agree; or

2. On request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding and the other parties have a reasonable opportunity to respond.

C. If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five (5) days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. On request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing from time to time as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy on the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The Commission, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

D. At a hearing under subsection C of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy, and to cross-examine witnesses appearing at the hearing.

E. If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator shall be appointed according to the rules of the arbitration organization through which the arbitration is being conducted or, in the absence of such rules, by application to the Commission.

Added by Laws 2013, c. 208, § 136, eff. Feb. 1, 2014.

§85A-316. Payment of legal fees.

A. A party to an arbitration proceeding may be represented by a lawyer.

B. Each party shall be responsible for payment of his or her legal fees incurred during arbitration, except as provided for in Section 321 of this title.

C. The employee's attorney may not recover legal fees in excess of the limits described in Section 82 of this title.

Added by Laws 2013, c. 208, § 137, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 49, emerg. eff. May 28, 2019.

§85A-317. Subpoenas - Depositions - Discovery.

A. An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena shall be served in the manner for service of subpoenas in a civil action and, upon application and motion to the Commission by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action. A witness may be allowed to appear telephonically or by any other available means that allows contemporaneous cross-examination.

B. In order to make the proceedings fair, expeditious, and cost-effective, on request of a party or witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

C. An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious, and cost-effective.

D. If an arbitrator permits discovery under subsection C of this section, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding, and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.

E. An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state.

F. All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition, or a discovery proceeding as a witness apply to an arbitration proceeding

as if the controversy were the subject of a civil action in this state.

G. The Commission may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the Commission so as to make the arbitration proceeding fair, expeditious, and cost-effective.
Added by Laws 2013, c. 208, § 138, eff. Feb. 1, 2014.

§85A-318. Pre-award ruling.

If an arbitrator makes a pre-award ruling in favor of a party, the party may request the arbitrator to incorporate the ruling into an award under Section 319 of this title. A prevailing party may make an application and motion to the Commission for an expedited judgment to confirm the award under Section 322 of this title, in which case the Workers' Compensation Commission shall summarily decide the motion. The Commission shall issue a judgment to confirm the award unless the Commission vacates, modifies, or corrects the award under Section 323 or 324 of this title.
Added by Laws 2013, c. 208, § 139, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 50, emerg. eff. May 28, 2019.

§85A-319. Record of the award.

A. An arbitrator shall make a record of the award. The award may contain the evidence and conclusion upon which the award was based unless the agreement of the parties specifies the type of award to be issued. The record shall be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

B. An award shall be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the Commission. The Commission may extend or the parties to the arbitration proceeding may agree in a record to extend the time. The Commission or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.
Added by Laws 2013, c. 208, § 140, eff. Feb. 1, 2014.

§85A-320. Modification of awards.

A. On motion by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

1. On a ground stated in paragraph 1 or 3 of subsection A of Section 324 of this title;

2. Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

3. To clarify the award.

B. A motion under subsection A of this section shall be made and notice given to all parties within twenty (20) days after the award is issued to the parties.

C. A party to the arbitration proceeding shall give notice of any objection to the motion within ten (10) days after receipt of the motion.

D. If a motion to the Workers' Compensation Commission is pending under Section 323 or 324 of this title, the Commission may submit the claim to the arbitrator to consider whether to modify or correct the award:

1. On a ground stated in paragraph 1 or 3 of subsection A of Section 324 of this title;

2. Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

3. To clarify the award.

E. An award modified or corrected under this section is subject to Sections 322, 323 and 324 of this title.

Added by Laws 2013, c. 208, § 141, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 51, emerg. eff. May 28, 2019.

§85A-321. Benefits - Attorney fees.

A. An arbitrator may award benefits set forth in Sections 45, 46, 47 and 51 of this title.

B. An arbitrator may award reasonable attorney fees and other reasonable expenses of arbitration if the arbitrator finds that a party was not acting in good faith throughout the arbitration.

C. As to all remedies other than those authorized by subsections A and B of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the Workers' Compensation Commission is not a ground for refusing to confirm an award under Section 322 of this title or for vacating an award under Section 323 of this title.

D. An arbitrator's expenses and fees, together with other expenses, shall be paid by the employer.

E. If an arbitrator awards relief under subsection A of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award.

Added by Laws 2013, c. 208, § 142, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 52, emerg. eff. May 28, 2019.

§85A-322. Judgments confirming the award.

After a party to an arbitration proceeding receives notice of an award, the party may make an application and motion to the Workers' Compensation Commission for a judgment confirming the award at which time the Commission shall issue a confirming judgment unless the award is modified or corrected under Section 320 or 324 of this title or is vacated under Section 323 of this title.

Added by Laws 2013, c. 208, § 143, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 53, emerg. eff. May 28, 2019.

§85A-323. Vacation of awards.

A. On an application and motion to the court by a party to an arbitration proceeding, the Workers' Compensation Commission shall vacate an award made in the arbitration proceeding if:

1. The award was procured by corruption, fraud, or other undue means;
2. There was:
 - a. evident partiality by an arbitrator appointed as a neutral arbitrator,
 - b. corruption by an arbitrator, or
 - c. misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;
3. An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy, or otherwise conducted the hearing contrary to Section 315 of this title, so as to prejudice substantially the rights of a party to the arbitration proceeding;
4. An arbitrator exceeded his or her powers under this act;
5. The arbitration was conducted without proper notice of the initiation of an arbitration as required in Section 309 of this title so as to prejudice substantially the rights of a party to the arbitration proceeding; or
6. It is determined that an arbitrator did not disclose a conflict under Section 312 of this title.

B. An application and motion under this section shall be filed within thirty (30) days after the movant receives notice of the award or within thirty (30) days after the movant receives notice of a modified or corrected award, unless the movant alleges that the award was procured by corruption, fraud, or other undue means, in which case the motion shall be made within ninety (90) days after the ground is known or by the exercise of reasonable care would have been known by the movant.

C. If the Commission vacates an award it may order a rehearing. If the award is vacated on a ground stated in paragraph 1, 2 or 6 of subsection A of this section, the rehearing shall be before a new arbitrator. If the award is vacated on a ground stated in paragraph 3, 4 or 5 of subsection A of this section, the rehearing may be before the arbitrator who made the award or the arbitrator's

successor. The arbitrator shall render the decision in the rehearing within the same time as that provided in subsection B of Section 319 of this title for an award.

D. If the Commission denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

Added by Laws 2013, c. 208, § 144, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 54, emerg. eff. May 28, 2019.

§85A-324. Modification of awards by Commission.

A. On application and motion made within thirty (30) days after movant receives notice of the award or within thirty (30) days after the movant receives notice of a modified or corrected award, the Commission shall modify or correct the award if:

1. There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing, or property referred to in the award;

2. The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

3. The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

B. If a motion made under subsection A of this section is granted, the Commission shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the Commission shall confirm the award.

C. A motion to modify or correct an award under this section may be joined with a motion to vacate the award.

Added by Laws 2013, c. 208, § 145, eff. Feb. 1, 2014.

§85A-325. Judgment entered by Commission.

A. On granting a motion to confirm or vacate an order, the Commission shall enter a judgment in conformity therewith. The judgment may be recorded, docketed and enforced as any other judgment in its jurisdiction.

B. On application of a prevailing party, the Commission may award reasonable attorney fees and other reasonable expenses of litigation incurred in the proceeding.

Added by Laws 2013, c. 208, § 146, eff. Feb. 1, 2014.

§85A-326. Exclusive jurisdiction.

The Commission has exclusive jurisdiction to enforce and enter judgment confirming, vacating, correcting or modifying an award under this act.

Added by Laws 2013, c. 208, § 147, eff. Feb. 1, 2014.

§85A-327. Appeals.

A party may appeal the following actions to the district court as provided in Section 328 of this title:

1. An order denying a motion to compel arbitration;
2. An order granting a motion to stay arbitration;
3. An order confirming or denying confirmation of an award;
4. An order modifying or correcting an award;
5. An order vacating an award without directing a rehearing; or
6. A final judgment entered under the Workers' Compensation Arbitration Act.

Added by Laws 2013, c. 208, § 148, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 55, emerg. eff. May 28, 2019.

§85A-328. Selection of court.

An application and motion under judicial review of a judgment or award entered by the Commission under this act shall be made in the district court in the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the court in the county in which it was held. Otherwise, the motion may be made in the district court in the county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the district court located either in Oklahoma City or Tulsa. All subsequent motions shall be made in the court hearing the initial motion unless the court otherwise directs.

Added by Laws 2013, c. 208, § 149, eff. Feb. 1, 2014.

§85A-400. Workers' Compensation Court.

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 arise 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 judge shall be appointed for a term to expire on July 1, 2022. 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 judge may be removed for cause by the Court on the Judiciary prior to the expiration of his or her term.

D. Each 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 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 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.

3. Until January 1, 2020, the individual serving as Administrator on the effective date of this act shall continue to serve in that capacity.

G. The Court of Existing Claims shall contract with the Workers' Compensation Commission to integrate its case management and records Information Technology System into the system of the 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 the effective date of this act.

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 this act shall be abrogated by the terms of this 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 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, 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.
Added by Laws 2013, c. 208, § 169, eff. Feb. 1, 2014. Amended by Laws 2019, c. 476, § 56, emerg. eff. May 28, 2019.

§85A-401. Workers' Compensation Court of Existing Claims Revolving Fund.

There is hereby created in the State Treasury a revolving fund for the Workers' Compensation Court of Existing Claims to be designated the "Workers' Compensation Court of Existing Claims Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Workers' Compensation Court of Existing Claims from all fees, penalties and fines imposed by the Workers' Compensation Court of Existing Claims or its Administrator. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Workers' Compensation Court of Existing Claims for the purpose of defraying necessary expenses of the Workers' Compensation Court of Existing Claims in performance of its duties. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.
Added by Laws 2014, c. 360, § 1.

§85A-401.1. Workers' Compensation Administrative Fund.

There is hereby created in the State Treasury a revolving fund for the Workers' Compensation Court of Existing Claims to be designated the "Workers' Compensation Administrative Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Workers' Compensation Court of Existing Claims from revenues apportioned pursuant to Section 122 of Title 85A of the Oklahoma Statutes. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Workers' Compensation Court of Existing Claims for the purpose of funding the operations of the

Court, for administering the provisions of Titles 85 and 85A of the Oklahoma Statutes, and for any other purpose related to the Administrative Workers' Compensation Act that the Court deems appropriate. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of the Office of Management and Enterprise Services for approval and payment.
Added by Laws 2015, c. 344, § 5, eff. July 1, 2015.