

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1921

By: Dorman

AS INTRODUCED

An Act relating to workers' compensation; amending 85 O.S. 2001, Section 14, as amended by Section 1, Chapter 215, O.S.L. 2002 (85 O.S. Supp. 2004, Section 14), which relates to the Workers' Compensation Act; modifying requirement for acceptance of certain testimony; and providing an effective date.

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

SECTION 1. AMENDATORY 85 O.S. 2001, Section 14, as amended by Section 1, Chapter 215, O.S.L. 2002 (85 O.S. Supp. 2004, Section 14), is amended to read as follows:

Section 14. A. 1. The employer shall promptly provide for an injured employee such medical, surgical or other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus as may be necessary after the injury. The attending physician shall supply the injured employee and the employer with a full examining report of injuries found at the time of examination and proposed treatment, this report to be supplied within seven (7) days after the examination; also, at the conclusion of the treatment the attending physician shall supply a full report of the treatment to the employer of the injured employee.

2. The attending physician who renders treatment to the employee at any time shall promptly notify the employee and employer or the employer's insurer in writing after the employee has reached maximum medical improvement and is released from active medical care. If the employee is capable of returning to modified light duty work, the attending physician shall promptly notify the

employee and the employer or the employer's insurer thereof in writing and shall also specify what restrictions, if any, must be followed by the employer in order to return the employee to work. In the event the attending physician provides such notification to the employer's insurer, the insurer shall promptly notify the employer.

B. The employer's selected physician shall have the right to examine the injured employee and, except as otherwise provided in this section, shall have the right and responsibility to treat the injured employee. A report of such examination shall be furnished the injured employee within seven (7) days after such examination.

C. If the employer fails or neglects to provide medical treatment within three (3) days after actual knowledge of the injury is received by the employer, the injured employee, during the period of such neglect or failure, 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. The attending physician so selected by the employee shall notify the employer and the insurance carrier within seven (7) days after examination or treatment was first rendered.

D. If a self-insured employer, group self-insurance association plan, an employer's workers' compensation insurance carrier or an insured, which shall include any member of an approved group self-insured association, policyholder or public entity, regardless of whether such entity is insured by CompSource Oklahoma, has previously contracted with a certified workplace medical plan, the employee shall have two choices:

1. a. The employee shall have the right, for each work-related injury, to select any physician from a list of physicians provided by the employee at the time of

making an election not to participate in the certified workplace medical plan. The list shall consist only of physicians who have:

(1) maintained the employee's medical records prior to an injury and have a documented history of treatment with the employee prior to an injury, or

(2) maintained the medical records of an immediate family member of the employee prior to an injury and have a documented history of treatment with an immediate family member of the employee prior to an injury. For purposes of this division, immediate family member means the employee's spouse, children, parents, stepchildren, and stepparents.

b. An attending physician selected under this paragraph must agree to comply with all the rules, terms, and conditions of the certified workplace medical plan. An attending physician selected under this paragraph may refer the employee to a physician outside the certified workplace medical plan only if the physician to whom the employee is referred agrees to comply with all the rules, terms, and conditions of the certified workplace medical plan; or

2. The employee shall elect to participate in 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 at the State Department of Health.

E. The term "physician" as used in this section shall mean any person licensed in this state as a medical doctor, chiropractor, podiatrist, dentist, osteopathic physician or optometrist. The

Court may accept testimony from a psychologist ~~if the testimony is made under the direction of a medical doctor~~. If an injured employee should die, whether or not the employee has filed a claim, that fact shall not affect liability for medical attention previously rendered, and any person entitled to such benefits may enforce charges therefor as though the employee had survived.

F. 1. Whoever renders medical, surgical, or other attendance or treatment, nurse and hospital service, medicine, crutches and apparatus, or emergency treatment, may submit such charges and duration of treatment to the Administrator of the Court for review in accordance with the rules of the Administrator.

2. Such charges and duration of treatment shall be limited to the usual, customary and reasonable charges and duration of treatment as prescribed and limited by a schedule of fees and treatment for all medical providers to be adopted, after notice and public hearing, by the Administrator. Said fee and treatment schedule shall be based on the usual, customary and reasonable medical charges of health care providers in the same trade area for comparable treatment of a person with similar injuries and the duration of treatment prevailing in this state for persons with similar injuries. The fee and treatment schedule shall be reviewed biennially by the Administrator and, after such review, and notice and public hearing, the Administrator shall be empowered to amend or alter said fee and treatment schedule to ensure its adequacy; provided, however, the fee and treatment schedule shall not be amended or altered until January 1, 2003, except to require the utilization of the latest Current Procedural Terminology (CPT) codes as published by the American Medical Association or the Centers for Medicare and Medicaid Services' codes and coding of supplies and materials. Until January 1, 2003, the fee and treatment schedule adopted by the Administrator effective October 1, 2000, shall govern and apply to all health care services rendered and supplies provided

after September 30, 2000, to employees with compensable injuries, regardless of the employee's date of injury. The Administrator shall not increase the overall maximum reimbursement levels for health care providers, including hospitals and ambulatory surgical centers, in an amount exceeding the cumulative percentage of change of the Consumer Price Index - Urban (CPI-U) for medical costs since the last biennial review.

3. The Administrator shall adopt a new fee and treatment schedule to be effective not later than January 1, 1998, which establishes maximum allowable reimbursement levels for preparation for or testimony at a deposition or court appearance which shall not exceed Two Hundred Dollars (\$200.00) per hour and for work-related or medical disability evaluation services.

4. The Administrator's review of medical and treatment charges pursuant to this section shall be conducted pursuant to the fee and treatment schedule in existence at the time the medical care or treatment was provided. The order of the approving medical and treatment charges pursuant to this section shall be enforceable by the Court in the same manner as provided in the Workers' Compensation Act for the enforcement of other compensation payments. Any party feeling aggrieved by the order, decision or award of the Administrator shall, within ten (10) days, have the right to request a hearing on such medical and treatment charges by a judge of the Workers' Compensation Court. The judge of the Court may affirm the decision of the Administrator, or reverse or modify said decision only if it is found to be contrary to the fee and treatment schedule existing at the time the said medical care or treatment was provided. The order of the judge shall be subject to the same appellate procedure set forth in Section 3.6 of this title for all other orders of the Court. The right to recover charges for every type of medical care for personal injuries arising out of and in the course of covered employment as herein defined, shall lie solely

with the Workers' Compensation Court, and all jurisdiction of the other trial courts of this state over such action is hereby abolished. The foregoing provision, relating to approval and enforcement of such charges and duration of treatment, shall not apply where a written contract exists between the employer or insurance carrier and the person who renders such medical, surgical or other attendance or treatment, nurse and hospital service, or furnishes medicine, crutches or apparatus. When a medical care provider has brought a claim in the Workers' Compensation Court to obtain payment for services, a party who prevails in full on the claim shall be entitled to a reasonable attorney fee.

G. Where the employee is not covered by a certified workplace medical plan, the Court on application of the employee shall order one change of physician; provided, such change of physician shall be allowed for each individual body part injured if the treating physician determines that the employee's injured body parts cannot be treated by the same physician. Any change of physician pursuant to this subsection shall be at the expense of the employer; provided, the employer shall not be liable to make any of the payments provided for in this section, in case of contest of liability, where the Court shall decide that the injury does not come within the provisions of the Workers' Compensation Act. On application of the employee for a change of physician, the Court shall set the matter for hearing within seven (7) days of filing the application. At or before the hearing, the employee shall present to the employer a list of three physicians qualified to treat the employee's injury, and the employer shall choose one of the physicians. The Court shall order that the selected physician be allowed to treat the employee at the expense of the employer. Except in cases covered by a certified workplace medical plan, in any case where the claimant and the treating physician disagree as to the necessity of surgery, the claimant may petition the Court for

the appointment of an independent medical examiner to determine the appropriateness of the surgery. In no event may the independent medical examiner, whether directly, or indirectly by virtue of a pecuniary interest, economically benefit from the performance of said surgery or be allowed to perform such surgery unless both employee and employer agree through written stipulation and said stipulation occurs prior to appointment, referral and notice to said independent medical examiner.

H. 1. Whenever a workers' compensation case is not covered under a certified workplace medical plan, case management may be utilized whenever the employee has more than three (3) lost workdays in succession. For cases not covered by a certified workplace medical plan, and where the insurance company does not provide case management, case management may be granted by the Workers' Compensation Court on the request of any party, or when the Court determines that case management is appropriate. The Court shall appoint a case manager from a list of qualified case managers developed, maintained and periodically reviewed by the Court.

2. The reasonable and customary charges of a medical case manager appointed by the Court shall be borne by the employer.

3. Except in cases covered by a certified workplace medical plan, a case manager may be replaced if requested by the employee.

SECTION 2. This act shall become effective November 1, 2005.

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