

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 1904

By: Hamilton

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5  
6 AS INTRODUCED

7 An Act relating to workers' compensation; amending 85  
8 O.S. 2001, Sections 14, as last amended by Section  
9 15, Chapter 1, 1st Extraordinary Session and 14.2, as  
10 amended by Section 16, Chapter 1, 1st Extraordinary  
11 Session, O.S.L. 2005 (85 O.S. Supp. 2006, Sections 14  
and 14.2), which relate to medical attention and  
certified workplace medical plans; modifying  
procedure for selecting a physician; and providing an  
effective date.

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

15 SECTION 1. AMENDATORY 85 O.S. 2001, Section 14, as last  
16 amended by Section 15, Chapter 1, 1st Extraordinary Session, O.S.L.  
17 2005 (85 O.S. Supp. 2006, Section 14), is amended to read as  
18 follows:

19 Section 14. A. 1. The employer shall promptly provide for an  
20 injured employee such medical, surgical or other attendance or  
21 treatment, nurse and hospital service, medicine, crutches, and  
22 apparatus as may be necessary after the injury. The treating  
23 physician shall supply the injured employee and the employer with a  
24 full examining report of injuries found at the time of examination

1 and proposed treatment, this report to be supplied within seven (7)  
2 days after the examination; also, at the conclusion of the treatment  
3 the treating physician shall supply a full report of the treatment  
4 to the employer of the injured employee.

5       2. The treating physician who renders treatment to the employee  
6 at any time shall promptly notify the employee and employer or the  
7 employer's insurer in writing after the employee has reached maximum  
8 medical improvement and is released from active medical care. If  
9 the employee is capable of returning to modified light duty work,  
10 the treating physician shall promptly notify the employee and the  
11 employer or the employer's insurer thereof in writing and shall also  
12 specify what restrictions, if any, must be followed by the employer  
13 in order to return the employee to work. In the event the treating  
14 physician provides such notification to the employer's insurer, the  
15 insurer shall promptly notify the employer. If an injured employee,  
16 only partially disabled, refuses employment consistent with any  
17 restrictions ordered by the treating physician, the employee shall  
18 not be entitled to temporary benefits during the continuance of such  
19 refusal unless in the opinion of the treating physician such refusal  
20 was justifiable; provided, before compensation may be denied, the  
21 employee shall be served with a notice setting forth the  
22 consequences of the refusal of employment and that temporary  
23 benefits will be discontinued fifteen (15) days after the date of  
24 such notice. The employee, upon receipt of such notice, may seek a

1 hearing before the Workers' Compensation Court. The Court shall  
2 grant an expedited hearing within five (5) days of any such  
3 application by the employee. At such hearing, the Court may enter  
4 an order allowing the discontinuation of such benefits, denying the  
5 discontinuance of such benefits or temporarily denying the  
6 discontinuance of such benefits pending further hearing. An order  
7 denying or temporarily denying the discontinuation of temporary  
8 benefits shall be based on a finding by the Court that probable  
9 cause exists to believe the work does not meet the conditions of the  
10 treating physician's restrictions or that the restrictions are  
11 unreasonable.

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

17 C. If the employer fails or neglects to provide medical  
18 treatment within three (3) days after actual knowledge of the injury  
19 is received by the employer, the injured employee, during the period  
20 of such neglect or failure, may select a physician to provide  
21 medical treatment at the expense of the employer; provided, however,  
22 that the injured employee, or another in the employee's behalf, may  
23 obtain emergency treatment at the expense of the employer where such  
24 emergency treatment is not provided by the employer. The attending

1 physician so selected by the employee shall notify the employer and  
2 the insurance carrier within seven (7) days after examination or  
3 treatment was first rendered. ~~Once the employer has selected a~~  
4 ~~treating physician and has offered the employee treatment, the~~  
5 ~~physician selected by the employer shall become the treating~~  
6 ~~physician.~~

7 D. ~~1.~~ If a self-insured employer, group self-insurance  
8 association plan, an employer's workers' compensation insurance  
9 carrier or an insured, which shall include any member of an approved  
10 group self-insured association, policyholder or public entity,  
11 regardless of whether such entity is insured by CompSource Oklahoma,  
12 has previously contracted with a certified workplace medical plan,  
13 the ~~employer~~ employee shall select ~~for the injured employee a~~  
14 ~~treating physician from the physicians listed within the network of~~  
15 ~~the certified workplace medical plan.~~

16 ~~2.~~ ~~The claimant may apply for a change of physician by~~  
17 ~~utilizing the dispute resolution process set out in the certified~~  
18 ~~workplace medical plan on file with the State Department of Health.~~  
19 Nothing in this section shall be construed to deny an employee the  
20 right to choose their own physician.

21 E. The term "physician" as used in this section shall mean any  
22 person licensed in this state as a medical doctor, chiropractor,  
23 podiatrist, dentist, osteopathic physician or optometrist. The  
24 Court may accept testimony from a psychologist if the testimony is

1 requested by the Court. If an injured employee should die, whether  
2 or not the employee has filed a claim, that fact shall not affect  
3 liability for medical attention previously rendered, and any person  
4 entitled to such benefits may enforce charges therefor as though the  
5 employee had survived.

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

11 2. Such charges and duration of treatment shall be limited to  
12 the usual, customary and reasonable payments and duration of  
13 treatment as prescribed and limited by a schedule of fees and  
14 treatment for all medical providers to be adopted, after notice and  
15 public hearing, by the Administrator. Beginning January 1, 2006,  
16 the fee and treatment schedule for physician services shall be based  
17 on the most current Relative Value Units (RVU) produced by the  
18 Centers for Medicare and Medicaid Services (CMS) for the Medicare  
19 Physician Fee Schedule as of January 1 of the prior year. These  
20 relative values shall be multiplied by appropriate conversion  
21 factors to be determined by the Administrator. The conversion  
22 factors shall be adjusted by the Consumer Price Index and shall be  
23 adequate to reflect the usual and customary rates for treatment of  
24 workers' compensation patients taking into consideration all

1 relevant factors including, but not limited to, the additional time  
2 required to provide disability management. The Current Procedural  
3 Terminology (CPT) codes shall be adjusted to reflect any changes or  
4 additions to the CPT codes and coding of supplies and materials as  
5 published by the American Medical Association (AMA) or CMS. If the  
6 AMA adds a new CPT code, the Administrator shall review the  
7 procedure contemplated by the new CPT code, and after such review,  
8 and notice and public hearing, the Administrator may add the new CPT  
9 code and set the base fee for the CPT code to ensure the adequacy of  
10 the physician's fee and treatment schedule. For services not valued  
11 by CMS, the Administrator shall establish values based on the usual,  
12 customary and reasonable medical payments to health care providers  
13 in the same trade area for comparable treatment of a person with  
14 similar injuries and the duration of treatment prevailing in this  
15 state for persons with similar injuries. The fee and treatment  
16 schedule shall be reviewed biennially by the Administrator and,  
17 after such review, and notice and public hearing, the Administrator  
18 shall be empowered to amend or alter the fee and treatment schedule  
19 to ensure its adequacy. The Administrator shall not increase the  
20 overall maximum reimbursement levels for health care providers,  
21 including hospitals and ambulatory surgical centers, in an amount  
22 exceeding the cumulative percentage of change of the Consumer Price  
23 Index - Urban (CPI-U) for all costs since the last biennial review.  
24 The fee schedule adopted by the Administrator as of January 1, 2006,

1 shall be structured so as to result in at least a four-percent  
2 savings in workers' compensation medical costs. In no event shall  
3 the reimbursement rate for any single procedure be equal to an  
4 amount which is less than one hundred fifteen percent (115%) of the  
5 current Medicare reimbursement rate for the procedure.

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

12 4. An invoice for the actual cost to the hospital of an  
13 implantable device shall be adjusted by the hospital to reflect all  
14 applicable discounts, rebates, considerations and product  
15 replacement programs and must be provided to the payor by the  
16 hospital as a condition of payment for the implantable device.

17 5. The Administrator's review of medical and treatment charges  
18 pursuant to this section shall be conducted pursuant to the fee and  
19 treatment schedule in existence at the time the medical care or  
20 treatment was provided. The order of the approving medical and  
21 treatment charges pursuant to this section shall be enforceable by  
22 the Court in the same manner as provided in the Workers'  
23 Compensation Act for the enforcement of other compensation payments.  
24 Any party feeling aggrieved by the order, decision or award of the

1 Administrator shall, within ten (10) days, have the right to request  
2 a hearing on such medical and treatment charges by a judge of the  
3 Workers' Compensation Court. The judge of the Court may affirm the  
4 decision of the Administrator, or reverse or modify said decision  
5 only if it is found to be contrary to the fee and treatment schedule  
6 existing at the time the said medical care or treatment was  
7 provided. The order of the judge shall be subject to the same  
8 appellate procedure set forth in Section 3.6 of this title for all  
9 other orders of the Court. The right to recover charges for every  
10 type of medical care for personal injuries arising out of and in the  
11 course of covered employment as herein defined, shall lie solely  
12 with the Workers' Compensation Court, and all jurisdiction of the  
13 other trial courts of this state over such action is hereby  
14 abolished. The foregoing provision, relating to approval and  
15 enforcement of such charges and duration of treatment, shall not  
16 apply where a written contract exists between the employer or  
17 insurance carrier and the person who renders such medical, surgical  
18 or other attendance or treatment, nurse and hospital service, or  
19 furnishes medicine, crutches or apparatus. When a medical care  
20 provider has brought a claim in the Workers' Compensation Court to  
21 obtain payment for services, a party who prevails in full on the  
22 claim shall be entitled to a reasonable attorney fee.

23 6. Charges for prescription drugs shall be limited to ninety  
24 percent (90%) of the average wholesale price of the prescription,

1 plus a dispensing fee of Five Dollars (\$5.00) per prescription.  
2 "Average wholesale price" means the amount determined from the  
3 latest publication of the blue book, a universally subscribed  
4 pharmacist reference guide annually published by the Hearst  
5 Corporation. "Average wholesale price" may also be derived  
6 electronically from the drug pricing database synonymous with the  
7 latest publication of the blue book and furnished in the National  
8 Drug Data File (NDDF) by First Data Bank (FDB), a service of the  
9 Hearst Corporation. Physicians shall prescribe and pharmacies shall  
10 dispense generic equivalent drugs when available.

11 G. Where the employee is not covered by a certified workplace  
12 medical plan, the ~~employer~~ employee shall select the treating  
13 physician. ~~The Court on application of the employee shall order one~~  
14 ~~change of treating physician. In the event the employee makes~~  
15 ~~application for such a change, the employee shall list on such~~  
16 ~~application three (3) proposed physicians who are qualified to treat~~  
17 ~~the body part affected. The employer may agree to one of the~~  
18 ~~physicians listed by the employee or submit its own list of three~~  
19 ~~(3) physicians. If the employee and employer do not agree on the~~  
20 ~~physician, the Court shall select from the list of independent~~  
21 ~~medical examiners maintained by the Court a treating physician who~~  
22 ~~is qualified to treat the body part affected and who can see the~~  
23 ~~employee within a reasonable time. Additionally, a change of~~  
24 ~~physician shall be allowed for each individual body part injured if~~

1 ~~the treating physician determines that the employee's injured body~~  
2 ~~parts cannot be treated by the same physician.~~

3 H. 1. For cases not covered by a certified workplace medical  
4 plan, and where the insurance company does not provide case  
5 management, case management may be granted by the Workers'  
6 Compensation Court on the request of any party, or when the Court  
7 determines that case management is appropriate. The Court shall  
8 appoint a case manager from a list of qualified case managers  
9 developed, maintained and periodically reviewed by the Court.

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

12 3. Except in cases covered by a certified workplace medical  
13 plan, upon application of the employee, the Court may order the  
14 employer to provide one change of case manager if the employee did  
15 not make the initial selection of the case manager.

16 I. Diagnostic tests shall not be repeated sooner than six (6)  
17 months from the date of the test unless agreed to by the parties or  
18 ordered by the Court.

19 SECTION 2. AMENDATORY 85 O.S. 2001, Section 14.2, as  
20 amended by Section 16, Chapter 1, 1st Extraordinary Session, O.S.L.  
21 2005 (85 O.S. Supp. 2006, Section 14.2), is amended to read as  
22 follows:

23 Section 14.2 A. If a self-insured employer, group self-  
24 insurance association plan, an employer's workers' compensation

1 insurance carrier or an insured, which shall include any member of  
2 an approved group self-insured association, policyholder or public  
3 entity, regardless of whether such entity is insured by CompSource,  
4 has contracted with a workplace medical plan that is certified by  
5 the State Commissioner of Health as provided in Section 14.3 of this  
6 title, the ~~employer~~ employee shall ~~select for the injured employee a~~  
7 ~~treating physician from the physicians listed within the network of~~  
8 ~~the certified workplace medical plan. The claimant may apply to the~~  
9 ~~certified workplace medical plan for a one-time change of physician~~  
10 ~~to another appropriate physician within the network of the certified~~  
11 ~~workplace medical plan by utilizing the dispute resolution process~~  
12 ~~set out in the certified workplace medical plan on file with the~~  
13 ~~State Department of Health~~ exercise the election for which provision  
14 is made in subsection D of Section 14 of this title.

15 Notwithstanding any other provision of law, those employees who  
16 are subject to such certified workplace medical plan shall receive  
17 medical treatment in the manner prescribed by the plan.

18 B. The provisions of this section shall not preclude:

19 1. An employee, who has exhausted the dispute resolution  
20 process of the certified workplace medical plan, from petitioning  
21 the Workers' Compensation Court or the Administrator of the Workers'  
22 Compensation Court for a change of treating physician within the  
23 certified workplace medical plan or, if a physician who is qualified  
24 to treat the employee's injuries is not available within the plan,

1 for a change of physician outside the plan, if the physician agrees  
2 to comply with all the rules, terms and conditions of the certified  
3 workplace medical plan; or

4 2. An employee from seeking emergency medical treatment as  
5 provided in Section 14 of this title.

6 C. The provisions of this section shall not apply to treatment  
7 received by an employee for an accepted accidental injury or  
8 occupational disease for which treatment began prior to November 4,  
9 1994.

10 SECTION 3. This act shall become effective November 1, 2007.

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