ENGROSSED HOUSE AMENDMENTS
TO
ENGROSSED SENATE BILL NO. 761 By: Jolley of the Senate

and

Sullivan of the House

An Act relating to medical treatment for injured employees; amending 85 O.S. 2001, Section 14, as last amended by Section 4, Chapter 452, O.S.L. 2010 (85 O.S. Supp. 2010, Section 14), which relates to medical attention; requiring certain plan to follow certain guidelines; and providing an effective date.

AUTHOR: Add the following House Coauthor: Tibbs

AMENDMENT NO. 1. Page 1, lines 6 1/2 through 9, strike the title to read

"(medical treatment for injured employees - amending 85 O.S., Section 14 - medical attention - effective date)"

AMENDMENT NO. 2, Page 1, line 12, strike the enacting clause

Passed the House of Representatives the 20th day of April, 2011.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2011.

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Presiding Officer of the Senate

ENGROSSED SENATE
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An Act relating to medical treatment for injured employees; amending 85 O.S. 2001, Section 14, as last amended by Section 4, Chapter 452, O.S.L. 2010 (85 O.S. Supp. 2010, Section 14), which relates to medical attention; requiring certain plan to follow certain guidelines; 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 last amended by Section 4, Chapter 452, O.S.L. 2010 (85 O.S. Supp. 2010, Section 14), is amended to read as follows:

Section 14. A. 1. The employer shall promptly provide for an injured employee <u>compensation for</u> such medical, surgical or other attendance or treatment, nurse and hospital service, medicine, crutches, and apparatus as may be necessary after the injury<u>, and proceed with a treatment plan only if such plan and progress is in accordance with the current guidelines and parameters recognized by the Oklahoma Workers' Compensation Physician's Advisory Committee until maximum medical improvement is attained</u>. The treating 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 treating physician shall supply a full report of the treatment to the employer of the injured employee.

2. The treating 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 treating physician shall promptly notify the employee and the employer or the employer's insurer thereof in writing. In the event that the treating physician releases a claimant for light-duty work and provides written restrictions from normal work duties, and the employer makes a good-faith offer in writing to provide a light-duty position at the same rate of pay that the claimant was receiving at the time of the injury, and the claimant refuses to accept the light-duty assignment, the claimant is not entitled to temporary total disability; provided, before compensation may be denied, the employee shall be served with a notice setting forth the consequences of the refusal of employment and that temporary benefits will be discontinued fifteen (15) days after the date of such notice. The employee, upon receipt of such notice, may seek a hearing before the Workers' Compensation Court. The Court shall

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

B. The employer's selected physician shall have the right and responsibility to treat the injured employee. A report of such examination shall be furnished to the employer and 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. Once the employer has selected a treating physician and has offered the employee treatment, the physician selected by the employer shall become the treating physician.

D. 1. 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 employer shall select for the injured employee a treating physician from the physicians listed within the network of the certified workplace medical plan.

2. The claimant 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.

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 requested by the Court. 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 payments 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. Beginning January 1, 2006, the fee and treatment schedule for physician services shall be based on the most current Relative Value Units (RVU) produced by the Centers for Medicare and Medicaid Services (CMS) for the Medicare Physician Fee Schedule as of January 1 of the prior year. These relative values shall be multiplied by appropriate conversion factors to be determined by the Administrator. The conversion factors shall be adjusted by the Consumer Price Index and shall be adequate to reflect the usual and customary rates for treatment of workers' compensation patients taking into consideration all relevant factors including, but not limited to, the additional time required to provide disability management. The Current Procedural Terminology (CPT) codes shall be adjusted to reflect any changes or

additions to the CPT codes and coding of supplies and materials as published by the American Medical Association (AMA) or CMS. If the AMA adds a new CPT code, the Administrator shall review the procedure contemplated by the new CPT code, and after such review, and notice and public hearing, the Administrator may add the new CPT code and set the base fee for the CPT code to ensure the adequacy of the physician's fee and treatment schedule. For services not valued by CMS, the Administrator 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 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 the fee and treatment schedule to ensure its adequacy. 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 all costs since the last biennial review. The fee schedule adopted by the Administrator as of January 1, 2006, shall be structured so as to result in at least a four-percent savings in workers' compensation medical costs. In no event shall the reimbursement rate for any single procedure be equal to an

amount which is less than one hundred fifteen percent (115%) of the current Medicare reimbursement rate for the procedure.

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

5. 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.

6. Charges for prescription drugs 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 of the blue book, a universally subscribed

pharmacist reference guide annually published by the Hearst Corporation. "Average wholesale price" may also be derived electronically from the drug pricing database synonymous with the latest publication of the blue book and furnished in the National Drug Data File (NDDF) by First Data Bank (FDB), a service of the Hearst Corporation. Physicians shall prescribe and pharmacies shall dispense generic equivalent drugs when available.

G. Where the employee is not covered by a certified workplace medical plan, the employer shall select the treating physician. The Court on application of the employee shall order one change of treating physician. In the event the employee makes application for such a change, the employee shall list on such application three (3) proposed physicians who are qualified to treat the body part affected. The employer may agree to one of the physicians listed by the employee or submit its own list of three (3) physicians. If the employee and employer do not agree on the physician, the Court shall select from the list of independent medical examiners maintained by the Court a treating physician who is qualified to treat the body part affected and who can see the employee within a reasonable time. Additionally, a 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.

H. 1. 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, upon application of the employee, the Court may order the employer to provide one change of case manager if the employee did not make the initial selection of the case manager.

I. 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 Court.

J. Unless recommended by the treating doctor at the time claimant reaches maximum medical improvement, continuing medical maintenance shall not be awarded by the Workers' Compensation Court unless there is clear and convincing evidence to the contrary. At any time, a judge, upon the judge's own motion or at the request of any party, may appoint an Independent Medical Examiner to determine the nature and extent of continuing medical maintenance.

SECTION 2. This act shall become effective November 1, 2011.

Passed the Senate the 8th day of March, 2011.

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Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2011.

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Presiding Officer of the House
of Representatives