

OKLAHOMA STATE SENATE  
CONFERENCE  
COMMITTEE REPORT

May 18, 2011

Mr. President:

Mr. Speaker:

The Conference Committee, to which was referred

SB 761

By: Jolley of the Senate and Sullivan of the House

Title: Workers' compensation; requiring certain plan to follow certain guidelines. Effective date.

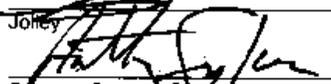
together with Engrossed House Amendments thereto, beg leave to report that we have had the same under consideration and herewith return the same with the following recommendations:

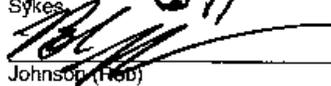
1. That the Senate recedes from all Amendments.
2. That the attached Conference Committee Substitute be adopted.

Respectfully submitted,

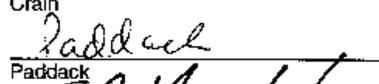
SENATE CONFEREES:

  
 \_\_\_\_\_  
 Jolley

  
 \_\_\_\_\_  
 Sykes

  
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 Johnson (Rep)

  
 \_\_\_\_\_  
 Crain

  
 \_\_\_\_\_  
 Paddack

  
 \_\_\_\_\_  
 Sparks

HOUSE CONFEREES:

Conference Committee on Public Safety, Judiciary and Military Affairs

**ADOPTED & PASSED** **MAY 20 2011**  
 Senate Action \_\_\_\_\_ Date \_\_\_\_\_ House Action \_\_\_\_\_ Date \_\_\_\_\_

*epc*

**HOUSE CONFEREES**

Jordan Fred Jordan

Martin (Steve) Steve Martin

McCullough McCullough

Moore J. H. Moore

Morrisette \_\_\_\_\_

Roan Paul D. Roan

Roberts (Dustin) D. Roberts

Schwartz Colby Schwartz

Sherrer \_\_\_\_\_

Sullivan Alan Sullivan

Tibbs Gene Tibbs

Wesselhoft Paul Wesselhoft

Williams \_\_\_\_\_

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 CONFERENCE COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED

5 SENATE BILL NO. 761

6 By: Jolley of the Senate

7 and

8 Sullivan of the House

9 CONFERENCE COMMITTEE SUBSTITUTE

10 An Act relating to workers' compensation fee  
11 schedule; amending Section 27 of Enrolled Senate Bill  
12 No. 878 of the 1st Session of the 53rd Oklahoma  
13 Legislature, which relates to fee schedule; modifying  
14 certain reimbursement rates.

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

16 SECTION 1. AMENDATORY Section 27 of Enrolled Senate Bill  
17 No. 878 of the 1st Session of the 53rd Oklahoma Legislature, is  
18 amended to read as follows:

19 Section 27. A. For the express purpose of reducing the overall  
20 cost of medical care for injured workers in the workers'  
21 compensation system by five percent (5%), the Administrator of the  
22 Workers' Compensation Court is hereby directed to develop a new  
23 "Oklahoma Workers' Compensation Medical Fee Schedule" to be  
24 implemented by January 1, 2012. Thereafter, the Administrator shall

1 conduct a review of the Fee Schedule every two (2) years. The Fee  
2 Schedule shall establish the maximum rates that medical providers  
3 shall be reimbursed for medical care provided to injured workers,  
4 including, but not limited to, charges by physicians, dentists,  
5 counselors, hospitals, ambulatory and outpatient facilities,  
6 clinical laboratory services, diagnostic testing services, and  
7 ambulance services, and charges for durable medical equipment,  
8 prosthetics, orthotics, and supplies.

9 B. Reimbursement for medical care shall be prescribed and  
10 limited by the Fee Schedule as adopted by the Administrator, after  
11 notice and public hearing. The director of the Oklahoma State  
12 Employees Group Insurance Board shall provide the Administrator such  
13 information as may be relevant in the development of the Fee  
14 Schedule. The Administrator shall develop the Fee Schedule in a  
15 manner in which quality of medical care is assured and maintained  
16 for injured workers. The Administrator shall give due consideration  
17 to additional requirements for physicians treating an injured worker  
18 under this act, including, but not limited to, communication with  
19 claims representatives, case managers, attorneys, and  
20 representatives of employers, and the additional time required to  
21 complete forms for the Court, insurance carriers, and employers.

22 C. In making adjustments to the Fee Schedule, the Administrator  
23 shall use, as a benchmark, the reimbursement rate for each Current  
24 Procedural Terminology (CPT) code provided for in the fee schedule

1 published by the Centers for Medicare and Medicaid Services of the  
2 U.S. Department of Health and Human Services for use in Oklahoma  
3 (Medicare Fee Schedule) on the effective date of this act. For  
4 services not valued by CMS, the Administrator shall establish values  
5 based on the usual, customary and reasonable medical payments to  
6 health care providers in the same trade area for comparable  
7 treatment of a person with similar injuries.

8 1. No reimbursement shall be allowed for any magnetic resonance  
9 imaging (MRI) unless the MRI unit produces a field strength that is  
10 equal to or greater than 1.0 Tesla. For all other radiology  
11 procedures, the reimbursement rate shall be the lesser of the  
12 reimbursement rate allowed by the 2010 Oklahoma Fee Schedule or two  
13 hundred seven percent (207%) of the Medicare Fee Schedule.

14 2. For reimbursement of medical services for Evaluation and  
15 Management of injured employees as defined in the fee schedule  
16 adopted by the Administrator, the reimbursement rate shall not be  
17 less than one hundred fifty percent (150%) of the Medicare Fee  
18 Schedule.

19 3. Any entity providing durable medical equipment, prosthetics,  
20 orthotics or supplies must be accredited by a CMS-approved  
21 accreditation organization. In the event a physician provides  
22 durable medical equipment, prosthetics, orthotics, prescription  
23 drugs, or supplies to a patient ancillary to the patient visit,  
24 reimbursement will be ~~no more than ten percent (10%) above cost~~ at

1 ninety percent (90%) of the Medicare allowable rate for the same  
2 item. Such durable medical equipment, prosthetics, orthotics or  
3 supplies are not considered implantable devices as provided in  
4 subsection J of this section, which are separate and paid in  
5 addition to hospital or other entity procedural or surgical  
6 reimbursement.

7 4. The Administrator shall develop a reasonable stop loss  
8 provision of the Fee Schedule to provide for adequate reimbursement  
9 for treatment for major burns, severe head and neurological  
10 injuries, multiple system injuries, and other catastrophic injuries  
11 requiring extended periods of intensive care.

12 D. The right to recover charges for every type of medical care  
13 for injuries arising out of and in the course of covered employment  
14 as defined in this act shall lie solely with the Workers'  
15 Compensation Court and its administration. When a medical care  
16 provider has brought a claim in the Court to obtain payment for  
17 services, a party who prevails in full on the claim shall be  
18 entitled to a reasonable attorney fee.

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

24

1 F. A treating physician may not charge more than Four Hundred  
2 Dollars (\$400.00) per hour for preparation for or testimony at a  
3 deposition or court appearance in connection with a claim covered by  
4 the Workers' Compensation Code.

5 G. The Administrator's review of medical and treatment charges  
6 pursuant to this section shall be conducted pursuant to the Fee  
7 Schedule in existence at the time the medical care or treatment was  
8 provided. The order approving the medical and treatment charges  
9 pursuant to this section shall be enforceable by the Court in the  
10 same manner as provided in the Workers' Compensation Code for the  
11 enforcement of other compensation payments. Any party feeling  
12 aggrieved by the order, decision or award of the Administrator  
13 shall, within ten (10) days, have the right to request a hearing on  
14 such medical and treatment charges by a judge of the Court. The  
15 judge of the Court may affirm the decision of the Administrator, or  
16 reverse or modify the decision only if it is found to be contrary to  
17 the Fee Schedule existing at the time the medical care or treatment  
18 was provided. The order of the judge shall be subject to the same  
19 appellate procedure set forth for all other orders of the Court.

20 H. Charges for prescription drugs dispensed by a pharmacy shall  
21 be limited to ninety percent (90%) of the average wholesale price of  
22 the prescription, plus a dispensing fee of Five Dollars (\$5.00) per  
23 prescription. "Average wholesale price" means the amount determined  
24 from the latest publication designated by the Administrator.

1 Physicians shall prescribe and pharmacies shall dispense generic  
2 equivalent drugs when available. If the NDC for the drug product  
3 dispensed is for a repackaged drug, then the maximum reimbursement  
4 shall be the lesser of the original labeler's NDC or the lowest cost  
5 therapeutic equivalent drug product. Compounded medications shall  
6 be billed by the compounding pharmacy at the ingredient level, with  
7 each ingredient identified using the applicable NDC of the drug  
8 product, and the corresponding quantity. Ingredients with no NDC  
9 area are not separately reimbursable. Payment shall be based upon a  
10 sum of the allowable fee for each ingredient plus a dispensing fee  
11 of five dollars (\$5.00) per prescription.

12 I. When medical care includes prescription drugs dispensed by a  
13 physician or other medical care provider, the employer or insurance  
14 carrier shall be required to pay the lesser of the reimbursement  
15 amount specified under the schedule of fees adopted by the  
16 Administrator, the reimbursement amount for prescription drugs  
17 obtained by mail order, when mail order is available, or the  
18 reimbursement amount for prescription drugs obtained at a retail  
19 pharmacy. If the National Drug Code (NDC) for the drug product  
20 dispensed is for a repackaged drug, then the maximum reimbursement  
21 shall be the lesser of the original labeler's NDC or the lowest cost  
22 therapeutic equivalent drug product. Compounded medications shall  
23 be billed by the compounding.

24

1 J. ~~Implantables~~ Implantable devices are paid in addition to  
2 procedural reimbursement paid for medical or surgical services. A  
3 manufacturer's invoice for the actual cost to a physician, hospital  
4 or other entity of an implantable device shall be adjusted by the  
5 physician, hospital or other entity to reflect, at the time  
6 implanted, all applicable discounts, rebates, considerations and  
7 product replacement programs and must be provided to the payer by  
8 the physician or hospital as a condition of payment for the  
9 implantable device. Payment for implantable devices shall be equal  
10 to the actual cost as evidenced by the vendor invoice, as reduced by  
11 all applicable discounts, rebates, considerations and product  
12 replacement programs, plus ten percent (10%). In the event the  
13 physician, or a company or distributorship providing implantable  
14 devices for resale to a hospital or an other entity that the  
15 physician has a financial interest in, other than an ownership  
16 interest of less than five percent (5%) in a publicly traded  
17 company, provides implantable devices, this relationship must be  
18 disclosed to patient, employer, insurance company, third party  
19 administrator, certified workplace medical plan, case managers, and  
20 attorneys representing claimant and defendant. In the event the  
21 physician, or a company or distributorship providing implantable  
22 devices for resale or an other entity that the physician has a  
23 financial interest in, other than an ownership interest of less than  
24 five percent (5%) in a publicly traded company, ~~buys and resells~~

1 ~~implantable devices to the hospital or another physician, that~~  
2 ~~markup shall be limited to ten percent (10%) above cost is the~~  
3 implantable device vendor, payment for such devices shall be limited  
4 to ninety percent (90%) of the average payment for like implantable  
5 devices sold by non-physician owned vendors.

6 K. Payment for medical care as required by this act shall be  
7 due within forty-five (45) days of the receipt by the employer or  
8 insurance carrier of a complete and accurate invoice, unless the  
9 employer or insurance carrier has a good faith reason to request  
10 additional information about such invoice. Thereafter, a judge of  
11 the Court may assess a penalty up to twenty-five percent (25%) for  
12 any amount due under the Fee Schedule that remains unpaid upon the  
13 finding by the Court that no good faith reason existed for the delay  
14 in payment. In the event the Court finds a pattern of an employer  
15 or insurance carrier willfully and knowingly delaying payments for  
16 medical care, the Court may assess a civil penalty of not more than  
17 Five Thousand Dollars (\$5,000.00) per occurrence.

18 L. In the event an employee fails to appear for a scheduled  
19 appointment with a physician, the employer or insurance company  
20 shall pay to the physician a reasonable charge, to be determined by  
21 the Administrator, for the missed appointment. In the absence of a  
22 good faith reason for missing the appointment, the Court shall order  
23 the employee to reimburse the employer or insurance company for such  
24 charge.

1 M. Physicians providing treatment under this act shall disclose  
2 under penalty of perjury to the Administrator of the Workers'  
3 Compensation Court, on a form prescribed by the Administrator, any  
4 ownership or interest in any health care facility, business, or  
5 diagnostic center that is not the physician's primary place of  
6 business. Such disclosure shall include any employee leasing  
7 arrangement between the physician and any health care facility that  
8 is not the physician's primary place of business. A physician's  
9 failure to disclose as required by this section shall be grounds for  
10 the Administrator to disqualify the physician from providing  
11 treatment under this act.

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