

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 2943

By: Derby

6
7 COMMITTEE SUBSTITUTE

8 An Act relating to workers' compensation; amending 85
9 O.S. 2011, Section 327, which relates to provider
10 reimbursement rates; and modifying reimbursement
11 requirements for magnetic resonance imaging
12 procedures.

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

14 SECTION 1. AMENDATORY 85 O.S. 2011, Section 327, is
15 amended to read as follows:

16 Section 327. A. For the express purpose of reducing the
17 overall cost of medical care for injured workers in the workers'
18 compensation system by five percent (5%), the Administrator of the
19 Workers' Compensation Court is hereby directed to develop a new
20 "Oklahoma Workers' Compensation Medical Fee Schedule" to be
21 implemented by January 1, 2012. Thereafter, the Administrator shall
22 conduct a review of the Fee Schedule every two (2) years. The Fee
23 Schedule shall establish the maximum rates that medical providers
24 shall be reimbursed for medical care provided to injured workers,

1 including, but not limited to, charges by physicians, dentists,
2 counselors, hospitals, ambulatory and outpatient facilities,
3 clinical laboratory services, diagnostic testing services, and
4 ambulance services, and charges for durable medical equipment,
5 prosthetics, orthotics, and supplies.

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

19 C. In making adjustments to the Fee Schedule, the Administrator
20 shall use, as a benchmark, the reimbursement rate for each Current
21 Procedural Terminology (CPT) code provided for in the fee schedule
22 published by the Centers for Medicare and Medicaid Services of the
23 U.S. Department of Health and Human Services for use in Oklahoma
24 (Medicare Fee Schedule) on the effective date of this act. For

1 services not valued by CMS, the Administrator shall establish values
2 based on the usual, customary and reasonable medical payments to
3 health care providers in the same trade area for comparable
4 treatment of a person with similar injuries.

5 1. No reimbursement shall be allowed for any magnetic resonance
6 imaging (MRI) unless the MRI ~~unit produces a field strength that is~~
7 ~~equal to or greater than 1.0 Tesla~~ is provided by an entity that
8 meets Medicare requirements for the payment of MRI services or is
9 accredited by the American College of Radiology or is accredited by
10 the Intersocietal Accreditation Commission or is accredited by the
11 Joint Commission on Accreditation of Healthcare Organizations. For
12 all other radiology procedures, the reimbursement rate shall be the
13 lesser of the reimbursement rate allowed by the 2010 Oklahoma Fee
14 Schedule or two hundred seven percent (207%) of the Medicare Fee
15 Schedule.

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

21 3. Any entity providing durable medical equipment, prosthetics,
22 orthotics or supplies must be accredited by a CMS-approved
23 accreditation organization. In the event a physician provides
24 durable medical equipment, prosthetics, orthotics, prescription

1 drugs, or supplies to a patient ancillary to the patient visit,
2 reimbursement will be no more than ten percent (10%) above cost.

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

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

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

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

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

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

21 Physicians shall prescribe and pharmacies shall dispense generic
22 equivalent drugs when available. If the NDC for the drug product
23 dispensed is for a repackaged drug, then the maximum reimbursement
24 shall be the lesser of the original labeler's NDC or the lowest cost

1 therapeutic equivalent drug product. Compounded medications shall
2 be billed by the compounding pharmacy at the ingredient level, with
3 each ingredient identified using the applicable NDC of the drug
4 product, and the corresponding quantity. Ingredients with no NDC
5 area are not separately reimbursable. Payment shall be based upon a
6 sum of the allowable fee for each ingredient plus a dispensing fee
7 of ~~five dollars~~ Five Dollars (\$5.00) per prescription.

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

20 J. Implantables are paid in addition to procedural
21 reimbursement paid for medical or surgical services. A
22 manufacturer's invoice for the actual cost to a physician, hospital
23 or other entity of an implantable device shall be adjusted by the
24 physician, hospital or other entity to reflect, at the time

1 implanted, all applicable discounts, rebates, considerations and
2 product replacement programs and must be provided to the payer by
3 the physician or hospital as a condition of payment for the
4 implantable device. In the event the physician, or an entity that
5 the physician has a financial interest in, other than an ownership
6 interest of less than five percent (5%) in a publicly traded company
7 provides implantable devices, this relationship must be disclosed to
8 patient, employer, insurance company, third party administrator,
9 certified workplace medical plan, case managers, and attorneys
10 representing claimant and defendant. In the event the physician, or
11 an entity that the physician has a financial interest in, other than
12 an ownership interest of less than five percent (5%) in a publicly
13 traded company, buys and resells implantable devices to the hospital
14 or another physician, that markup shall be limited to ten percent
15 (10%) above cost.

16 K. Payment for medical care as required by this act shall be
17 due within forty-five (45) days of the receipt by the employer or
18 insurance carrier of a complete and accurate invoice, unless the
19 employer or insurance carrier has a good faith reason to request
20 additional information about such invoice. Thereafter, a judge of
21 the Court may assess a penalty up to twenty-five percent (25%) for
22 any amount due under the Fee Schedule that remains unpaid upon the
23 finding by the Court that no good faith reason existed for the delay
24 in payment. In the event the Court finds a pattern of an employer

1 or insurance carrier willfully and knowingly delaying payments for
2 medical care, the Court may assess a civil penalty of not more than
3 Five Thousand Dollars (\$5,000.00) per occurrence.

4 L. In the event an employee fails to appear for a scheduled
5 appointment with a physician, the employer or insurance company
6 shall pay to the physician a reasonable charge, to be determined by
7 the Administrator, for the missed appointment. In the absence of a
8 good faith reason for missing the appointment, the Court shall order
9 the employee to reimburse the employer or insurance company for such
10 charge.

11 M. Physicians providing treatment under this act shall disclose
12 under penalty of perjury to the Administrator of the Workers'
13 Compensation Court, on a form prescribed by the Administrator, any
14 ownership or interest in any health care facility, business, or
15 diagnostic center that is not the physician's primary place of
16 business. Such disclosure shall include any employee leasing
17 arrangement between the physician and any health care facility that
18 is not the physician's primary place of business. A physician's
19 failure to disclose as required by this section shall be grounds for
20 the Administrator to disqualify the physician from providing
21 treatment under this act.

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