

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1054

By: Roberts (Dustin)

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6 AS INTRODUCED

7 An Act relating to workers' compensation; amending 85
8 O.S. 2001, Section 14, as last amended by Section 4,
9 Chapter 452, O.S.L. 2010 (85 O.S. Supp. 2010, Section
10 14) which relates to medical treatment in workers'
11 compensation cases; requiring certain testing; and
12 providing an effective date.

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

14 SECTION 1. AMENDATORY 85 O.S. 2001, Section 14, as last
15 amended by Section 4, Chapter 452, O.S.L. 2010 (85 O.S. Supp. 2010,
16 Section 14), is amended to read as follows:

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

1 the treating physician shall supply a full report of the treatment
2 to the employer of the injured employee. The treating physician
3 shall test the injured employee for the use or consumption of any
4 substance provided for in Section 465.20 of Title 63 of the Oklahoma
5 Statutes, and the results of the test shall be included in the
6 report supplied to the employer.

7 2. The treating physician who renders treatment to the employee
8 at any time shall promptly notify the employee and employer or the
9 employer's insurer in writing after the employee has reached maximum
10 medical improvement and is released from active medical care. If
11 the employee is capable of returning to modified light duty work,
12 the treating physician shall promptly notify the employee and the
13 employer or the employer's insurer thereof in writing. In the event
14 that the treating physician releases a claimant for light-duty work
15 and provides written restrictions from normal work duties, and the
16 employer makes a good-faith offer in writing to provide a light-duty
17 position at the same rate of pay that the claimant was receiving at
18 the time of the injury, and the claimant refuses to accept the
19 light-duty assignment, the claimant is not entitled to temporary
20 total disability; 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 shall have the right and
13 responsibility to treat the injured employee. A report of such
14 examination shall be furnished to the employer and the injured
15 employee within seven (7) days after such examination.

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

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

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

15 2. The claimant may apply for a change of physician by
16 utilizing the dispute resolution process set out in the certified
17 workplace medical plan on file with the State Department of Health.

18 E. The term "physician" as used in this section shall mean any
19 person licensed in this state as a medical doctor, chiropractor,
20 podiatrist, dentist, osteopathic physician or optometrist. The
21 Court may accept testimony from a psychologist if the testimony is
22 requested by the Court. If an injured employee should die, whether
23 or not the employee has filed a claim, that fact shall not affect
24 liability for medical attention previously rendered, and any person

1 entitled to such benefits may enforce charges therefor as though the
2 employee had survived.

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

8 2. Such charges and duration of treatment shall be limited to
9 the usual, customary and reasonable payments and duration of
10 treatment as prescribed and limited by a schedule of fees and
11 treatment for all medical providers to be adopted, after notice and
12 public hearing, by the Administrator. Beginning January 1, 2006,
13 the fee and treatment schedule for physician services shall be based
14 on the most current Relative Value Units (RVU) produced by the
15 Centers for Medicare and Medicaid Services (CMS) for the Medicare
16 Physician Fee Schedule as of January 1 of the prior year. These
17 relative values shall be multiplied by appropriate conversion
18 factors to be determined by the Administrator. The conversion
19 factors shall be adjusted by the Consumer Price Index and shall be
20 adequate to reflect the usual and customary rates for treatment of
21 workers' compensation patients taking into consideration all
22 relevant factors including, but not limited to, the additional time
23 required to provide disability management. The Current Procedural
24 Terminology (CPT) codes shall be adjusted to reflect any changes or

1 additions to the CPT codes and coding of supplies and materials as
2 published by the American Medical Association (AMA) or CMS. If the
3 AMA adds a new CPT code, the Administrator shall review the
4 procedure contemplated by the new CPT code, and after such review,
5 and notice and public hearing, the Administrator may add the new CPT
6 code and set the base fee for the CPT code to ensure the adequacy of
7 the physician's fee and treatment schedule. For services not valued
8 by CMS, the Administrator shall establish values based on the usual,
9 customary and reasonable medical payments to health care providers
10 in the same trade area for comparable treatment of a person with
11 similar injuries and the duration of treatment prevailing in this
12 state for persons with similar injuries. The fee and treatment
13 schedule shall be reviewed biennially by the Administrator and,
14 after such review, and notice and public hearing, the Administrator
15 shall be empowered to amend or alter the fee and treatment schedule
16 to ensure its adequacy. The Administrator shall not increase the
17 overall maximum reimbursement levels for health care providers,
18 including hospitals and ambulatory surgical centers, in an amount
19 exceeding the cumulative percentage of change of the Consumer Price
20 Index - Urban (CPI-U) for all costs since the last biennial review.
21 The fee schedule adopted by the Administrator as of January 1, 2006,
22 shall be structured so as to result in at least a four-percent
23 savings in workers' compensation medical costs. In no event shall
24 the reimbursement rate for any single procedure be equal to an

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

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

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

14 5. The Administrator's review of medical and treatment charges
15 pursuant to this section shall be conducted pursuant to the fee and
16 treatment schedule in existence at the time the medical care or
17 treatment was provided. The order of the approving medical and
18 treatment charges pursuant to this section shall be enforceable by
19 the Court in the same manner as provided in the Workers'
20 Compensation Act for the enforcement of other compensation payments.
21 Any party feeling aggrieved by the order, decision or award of the
22 Administrator shall, within ten (10) days, have the right to request
23 a hearing on such medical and treatment charges by a judge of the
24 Workers' Compensation Court. The judge of the Court may affirm the

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

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

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

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

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

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

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

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

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

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

53-1-5586 SDR 12/29/10