

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2943

By: Derby

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5  
6 AS INTRODUCED

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

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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. For  
9 all other radiology procedures, the reimbursement rate shall be the  
10 lesser of the reimbursement rate allowed by the 2010 Oklahoma Fee  
11 Schedule or two hundred seven percent (207%) of the Medicare Fee  
12 Schedule.

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

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

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

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

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

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

22           G. The Administrator's review of medical and treatment charges  
23 pursuant to this section shall be conducted pursuant to the Fee  
24 Schedule in existence at the time the medical care or treatment was

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

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

18 Physicians shall prescribe and pharmacies shall dispense generic  
19 equivalent drugs when available. If the 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 pharmacy at the ingredient level, with  
24 each ingredient identified using the applicable NDC of the drug

1 product, and the corresponding quantity. Ingredients with no NDC  
2 area are not separately reimbursable. Payment shall be based upon a  
3 sum of the allowable fee for each ingredient plus a dispensing fee  
4 of ~~five dollars~~ Five Dollars (\$5.00) per prescription.

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

17 J. Implantables are paid in addition to procedural  
18 reimbursement paid for medical or surgical services. A  
19 manufacturer's invoice for the actual cost to a physician, hospital  
20 or other entity of an implantable device shall be adjusted by the  
21 physician, hospital or other entity to reflect, at the time  
22 implanted, all applicable discounts, rebates, considerations and  
23 product replacement programs and must be provided to the payer by  
24 the physician or hospital as a condition of payment for the

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

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

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

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

19 SECTION 2. This act shall become effective November 1, 2012.

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21 53-2-8017 SDR 01/04/12

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