HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

ENGROSSED SENATE
BILL NO. 250 By: Bingman and Loveless of the Senate

and

Derby of the House

An Act relating to workers' compensation provider reimbursement; amending 85 O.S. 2011, Section 327, which relates to medical fee schedule; clarifying language; modifying reimbursement requirements for magnetic resonance imaging procedures; and declaring an emergency.

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

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

Section 327. A. For the express purpose of reducing the overall cost of medical care for injured workers in the workers' compensation system by five percent (5%), the Administrator of the Workers' Compensation Court is hereby directed to develop a new "Oklahoma Workers' Compensation Medical Fee Schedule" to be implemented by January 1, 2012. Thereafter, the Administrator shall conduct a review of the Fee Schedule every two (2) years. The Fee

Schedule shall establish the maximum rates that medical providers shall be reimbursed for medical care provided to injured workers, including, but not limited to, charges by physicians, dentists, counselors, hospitals, ambulatory and outpatient facilities, clinical laboratory services, diagnostic testing services, and ambulance services, and charges for durable medical equipment, prosthetics, orthotics, and supplies.

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

C. In making adjustments to the Fee Schedule, the Administrator shall use, as a benchmark, the reimbursement rate for each Current Procedural Terminology (CPT) code provided for in the fee schedule published by the Centers for Medicare and Medicaid Services (CMS) of

the U.S. Department of Health and Human Services for use in Oklahoma (Medicare Fee Schedule) on ~~the effective date of this act~~ August 6, 2011. 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.

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

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

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

durable medical equipment, prosthetics, orthotics, prescription drugs, or supplies to a patient ancillary to the patient visit, reimbursement will be no more than ten percent (10%) above cost.

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

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

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

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

G. The Administrator's review of medical and treatment charges pursuant to this section shall be conducted pursuant to the Fee Schedule in existence at the time the medical care or treatment was provided. The order approving the medical and treatment charges pursuant to this section shall be enforceable by the Court in the same manner as provided in the Workers' Compensation Code 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 Court. The judge of the Court may affirm the decision of the Administrator, or reverse or modify the decision only if it is found to be contrary to the Fee Schedule existing at the time the medical care or treatment was provided. The order of the judge shall be subject to the same appellate procedure set forth for all other orders of the Court.

H. Charges for prescription drugs dispensed by a pharmacy 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 designated by the Administrator. Physicians shall prescribe and pharmacies shall dispense generic equivalent drugs when available. If the National Drug Code (NDC) for the drug product dispensed is for a repackaged drug, then the maximum reimbursement shall be the lesser of the original labeler's

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

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

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

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

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

in payment. In the event the Court finds a pattern of an employer or insurance carrier willfully and knowingly delaying payments for medical care, the Court may assess a civil penalty of not more than Five Thousand Dollars ($5,000.00) per occurrence.

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

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

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby

declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 03/27/2013 - DO PASS.