

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 HOUSE BILL 1754

By: Moore

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6 AS INTRODUCED

7 An Act relating to workers' compensation; amending 85  
8 O.S. 2011, Section 326, which relates to the  
9 providing of medical care; requiring a treating  
10 physician to have certain tests conducted on an  
injured employee; providing location of testing;  
providing for payment for testing; 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 326, is  
15 amended to read as follows:

16 Section 326. A. Within seven (7) days of actual knowledge of  
17 an injury, the employer shall provide the employee reasonable and  
18 necessary medical care with a physician of the employer's choice.  
19 The providing of medical care shall not be construed as an admission  
20 of compensability of an injury or illness. The physician selected  
21 by the employer shall become the treating physician. The treating  
22 physician shall have drug and alcohol testing conducted on the  
23 employee. The testing shall be conducted by the clinic, hospital or  
24 facility where the employee was first treated for the injury. The

1 insurance carrier covering the injured employee shall pay the cost  
2 of the test.

3 B. If the employer fails or neglects to provide medical  
4 treatment within seven (7) days after actual knowledge is received  
5 of an injury, the injured employee may select a physician to provide  
6 medical treatment at the expense of the employer; provided, however,  
7 that the injured employee, or another in the employee's behalf, may  
8 obtain emergency treatment at the expense of the employer where such  
9 emergency treatment is not provided by the employer.

10 C. If a self-insured employer, group self-insurance association  
11 plan, an employer's workers' compensation insurance carrier or an  
12 insured has previously contracted with a certified workplace medical  
13 plan, the employer shall select for the injured employee a treating  
14 physician from the physicians listed within the network of the  
15 certified workplace medical plan. The claimant may apply for a  
16 change of physician by utilizing the dispute resolution process set  
17 out in the certified workplace medical plan on file with the State  
18 Department of Health. If the dispute resolution process has been  
19 exhausted, the Workers' Compensation Court may appoint an  
20 independent medical examiner to determine the nature of medical  
21 treatment needed by the injured worker.

22 D. The term "physician" as used in this section shall mean any  
23 person licensed in this state as a medical doctor, chiropractor,  
24 podiatrist, dentist, osteopathic physician or optometrist. The

1 Court may accept testimony from a psychologist if the testimony is  
2 requested by the Court.

3 E. ~~Where~~ If the employee is not covered by a certified  
4 workplace medical plan, the employer shall select the treating  
5 physician as provided in subsection A of this section. The Court on  
6 application of the employee shall order one change of treating  
7 physician for any affected body part. If the employer objects, the  
8 Court shall set the request for change of treating physician for  
9 hearing within ten (10) days. Provided, that no change of treating  
10 physician can be authorized for a part of the body if no authorized  
11 medical care has been provided for that part of the body for one  
12 hundred eighty (180) days prior to the date of the filing of the  
13 application for change of treating physician. Provided further,  
14 regardless of the number of parts of the body injured, a maximum of  
15 two (2) changes of physician may be allowed in a claim. In the  
16 event the employee makes application for such a change, the employee  
17 shall list on such application three (3) proposed physicians who are  
18 qualified to treat the body part affected. The employer may agree  
19 to one of the physicians listed by the employee or submit its own  
20 list of three (3) physicians. If the employer and employee do not  
21 agree on the physician, the Court may select a physician who is  
22 qualified to treat the body part affected and who can see the  
23 employee within a reasonable time, with preference given to  
24 physicians who are qualified independent medical examiners.

1 F. Diagnostic tests shall not be repeated sooner than six (6)  
2 months from the date of the test unless agreed to by the parties or  
3 ordered by the Court.

4 G. Effective March 1, 2012, the scope and duration of medical  
5 treatment shall be provided in accordance with the current edition  
6 of the "Official Disability Guidelines", as published by the Work  
7 Loss Data Institute. For medical treatment not addressed by the  
8 Official Disability Guidelines or addressed but not recommended in  
9 the ODG section in regard to injuries to the cervical, thoracic, or  
10 lumbar spine, the Physician Advisory Committee shall adopt the  
11 Oklahoma Treatment Guidelines as provided in Section ~~73~~ 373 of this  
12 ~~act~~ title. Medical treatment provided by or at the direction of the  
13 treating physician in accordance with the current edition of the  
14 Official Disability Guidelines or Oklahoma Treatment Guidelines is  
15 presumed to be reasonable and necessary medical care. The employer  
16 or insurance carrier shall not be responsible for charges for  
17 medical treatment not provided in accordance with the current  
18 edition of the Official Disability Guidelines or Oklahoma Treatment  
19 Guidelines unless the medical treatment was provided in a medical  
20 emergency, the medical treatment was preauthorized by the employer  
21 or insurance carrier, or the medical treatment is approved by the  
22 Court upon a finding based on clear and convincing evidence provided  
23 by a qualified independent medical examiner that medical treatment

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1 provided according to either ODG or OTG is not in the best interest  
2 of the employee.

3 H. Unless recommended by the treating doctor at the time  
4 claimant reaches maximum medical improvement or by an independent  
5 medical examiner, continuing medical maintenance shall not be  
6 awarded by the Court. At the request of any party, the judge shall  
7 appoint an independent medical examiner to determine the nature and  
8 extent of continuing medical maintenance. The issue of continuing  
9 medical maintenance may be reviewed by the Court at any time. The  
10 employer or insurance carrier shall not be responsible for  
11 continuing medical maintenance or pain management treatment that is  
12 outside the parameters established by the Physician Advisory  
13 Committee. The employer or insurance carrier shall not be  
14 responsible for continuing medical maintenance or pain management  
15 treatment not previously ordered by the Court or approved in advance  
16 by the employer or insurance carrier.

17 I. An employee claiming or entitled to benefits under the  
18 Workers' Compensation Code, shall, if ordered by the Court or  
19 requested by the employer or insurance carrier, submit himself or  
20 herself for medical examination. If an employee refuses to submit  
21 himself or herself to examination, his or her right to prosecute any  
22 proceeding under the Workers' Compensation Code shall be suspended,  
23 and no compensation shall be payable for the period of such refusal.

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1 J. For compensable injuries resulting in the use of a medical  
2 device, ongoing service for the medical device would be provided in  
3 situations including, but not limited to, medical device battery  
4 replacement, ongoing medication refills related to the medical  
5 device, medical device repair or medical device replacement.

6 K. The employer shall reimburse the employee for the actual  
7 mileage in excess of twenty (20) miles round-trip to and from the  
8 employee's home to the location of a medical service provider for  
9 all reasonable and necessary treatment, for an evaluation of an  
10 independent medical examiner and for any evaluation made at the  
11 request of the employer or insurance carrier. The rate of  
12 reimbursement for such travel expense shall be the official  
13 reimbursement rate as established by the State Travel Reimbursement  
14 Act. In no event shall the reimbursement of travel for medical  
15 treatment or evaluation exceed six hundred (600) miles round trip.

16 SECTION 2. This act shall become effective November 1, 2013.

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