

1 ENGROSSED SENATE
2 BILL NO. 1418

By: Dahm of the Senate

3 and

4 Gann of the House

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6 An Act relating to the Physician Advisory Committee;
7 amending Section 50, Chapter 208, O.S.L. 2013, as
8 amended by Section 20, Chapter 476, O.S.L. 2019 (85A
9 O.S. Supp. 2019, Section 50), which relates to
10 medical examination and treatment; removing authority
11 to establish parameters for certain maintenance or
12 treatment; repealing Section 17, Chapter 208, O.S.L.
13 2013 (85A O.S. Supp. 2019, Section 17), which relates
14 to appointment and duties; repealing Section 60,
15 Chapter 208, O.S.L. 2013, as amended by Section 22,
16 Chapter 476, O.S.L. 2019 (85A O.S. Supp. 2019,
17 Section 60), which relates to adoption of alternative
18 method to evaluate permanent disability; and
19 providing an effective date.

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

23 SECTION 1. AMENDATORY Section 50, Chapter 208, O.S.L.
24 2013, as amended by Section 20, Chapter 476, O.S.L. 2019 (85A O.S.
25 Supp. 2019, Section 50), is amended to read as follows:

26 Section 50. A. The employer shall promptly provide an injured
27 employee with medical, surgical, hospital, optometric, podiatric,
28 and nursing services, along with any medicine, crutches, ambulatory
29 devices, artificial limbs, eyeglasses, contact lenses, hearing aids,
30 and other apparatus as may be reasonably necessary in connection

1 with the injury received by the employee. The employer shall have
2 the right to choose the treating physician.

3 B. If the employer fails or neglects to provide medical
4 treatment within five (5) days after actual knowledge is received of
5 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. Diagnostic tests shall not be repeated sooner than six (6)
11 months from the date of the test unless agreed to by the parties or
12 ordered by the Commission for good cause shown.

13 D. Unless recommended by the treating doctor at the time
14 claimant reaches maximum medical improvement or by an independent
15 medical examiner, continuing medical maintenance shall not be
16 awarded by the Commission. The employer or insurance carrier shall
17 not be responsible for continuing medical maintenance or pain
18 management treatment that is outside the parameters established by
19 the ~~Physician Advisory Committee~~ or ODG. The employer or insurance
20 carrier shall not be responsible for continuing medical maintenance
21 or pain management treatment not previously ordered by the
22 Commission or approved in advance by the employer or insurance
23 carrier.

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1 E. An employee claiming or entitled to benefits under this act,
2 shall, if ordered by the Commission or requested by the employer or
3 insurance carrier, submit himself or herself for medical
4 examination. If an employee refuses to submit himself or herself to
5 examination, his or her right to prosecute any proceeding under this
6 act shall be suspended, and no compensation shall be payable for the
7 period of such refusal.

8 F. For compensable injuries resulting in the use of a medical
9 device, ongoing service for the medical device shall be provided in
10 situations including, but not limited to, medical device battery
11 replacement, ongoing medication refills related to the medical
12 device, medical device repair, or medical device replacement.

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

23 H. Fee Schedule.
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1 1. The Commission shall conduct a review and update of the
2 Current Procedural Terminology (CPT) in the Fee Schedule every two
3 (2) years pursuant to the provisions of paragraph 14 of this
4 subsection. The Fee Schedule shall establish the maximum rates that
5 medical providers shall be reimbursed for medical care provided to
6 injured employees, including, but not limited to, charges by
7 physicians, dentists, counselors, hospitals, ambulatory and
8 outpatient facilities, clinical laboratory services, diagnostic
9 testing services, and ambulance services, and charges for durable
10 medical equipment, prosthetics, orthotics, and supplies. The most
11 current Fee Schedule established by the Administrator of the
12 Workers' Compensation Court prior to February 1, 2014, shall remain
13 in effect, unless or until the Legislature approves the Commission's
14 proposed Fee Schedule.

15 2. Reimbursement for medical care shall be prescribed and
16 limited by the Fee Schedule. The director of the Employees Group
17 Insurance Division of the Office of Management and Enterprise
18 Services shall provide the Commission such information as may be
19 relevant for the development of the Fee Schedule. The Commission
20 shall develop the Fee Schedule in a manner in which quality of
21 medical care is assured and maintained for injured employees. The
22 Commission shall give due consideration to additional requirements
23 for physicians treating an injured worker under this act, including,
24 but not limited to, communication with claims representatives, case

1 managers, attorneys, and representatives of employers, and the
2 additional time required to complete forms for the Commission,
3 insurance carriers, and employers.

4 3. In making adjustments to the Fee Schedule, the Commission
5 shall use, as a benchmark, the reimbursement rate for each Current
6 Procedural Terminology (CPT) code provided for in the fee schedule
7 published by the Centers for Medicare and Medicaid Services of the
8 U.S. Department of Health and Human Services for use in Oklahoma
9 (Medicare Fee Schedule) on the effective date of this section,
10 workers' compensation fee schedules employed by neighboring states,
11 the latest edition of "Relative Values for Physicians" (RVP), usual,
12 customary and reasonable medical payments to workers' compensation
13 health care providers in the same trade area for comparable
14 treatment of a person with similar injuries, and all other data the
15 Commission deems relevant. For services not valued by CMS, the
16 Commission shall establish values based on the usual, customary and
17 reasonable medical payments to health care providers in the same
18 trade area for comparable treatment of a person with similar
19 injuries.

20 a. No reimbursement shall be allowed for any magnetic
21 resonance imaging (MRI) unless the MRI is provided by
22 an entity that meets Medicare requirements for the
23 payment of MRI services or is accredited by the
24 American College of Radiology, the Intersocietal

1 Accreditation Commission or the Joint Commission on
2 Accreditation of Healthcare Organizations. For all
3 other radiology procedures, the reimbursement rate
4 shall be the lesser of the reimbursement rate allowed
5 by the 2010 Oklahoma Fee Schedule and two hundred
6 seven percent (207%) of the Medicare Fee Schedule.

7 b. For reimbursement of medical services for Evaluation
8 and Management of injured employees as defined in the
9 Fee Schedule adopted by the Commission, the
10 reimbursement rate shall not be less than one hundred
11 fifty percent (150%) of the Medicare Fee Schedule.

12 c. Any entity providing durable medical equipment,
13 prosthetics, orthotics or supplies shall be accredited
14 by a CMS-approved accreditation organization. If a
15 physician provides durable medical equipment,
16 prosthetics, orthotics, prescription drugs, or
17 supplies to a patient ancillary to the patient's
18 visit, reimbursement shall be no more than ten percent
19 (10%) above cost.

20 d. The Commission shall develop a reasonable stop-loss
21 provision of the Fee Schedule to provide for adequate
22 reimbursement for treatment for major burns, severe
23 head and neurological injuries, multiple system
24 injuries, and other catastrophic injuries requiring

1 extended periods of intensive care. An employer or
2 insurance carrier shall have the right to audit the
3 charges and question the reasonableness and necessity
4 of medical treatment contained in a bill for treatment
5 covered by the stop-loss provision.

6 4. 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 Commission. When a
9 medical care provider has brought a claim to the Commission to
10 obtain payment for services, a party who prevails in full on the
11 claim shall be entitled to reasonable attorney fees.

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

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

21 7. The Commission's review of medical and treatment charges
22 pursuant to this section shall be conducted pursuant to the Fee
23 Schedule in existence at the time the medical care or treatment was
24 provided. The judgment approving the medical and treatment charges

1 pursuant to this section shall be enforceable by the Commission in
2 the same manner as provided in this act for the enforcement of other
3 compensation payments.

4 8. Charges for prescription drugs dispensed by a pharmacy shall
5 be limited to ninety percent (90%) of the average wholesale price of
6 the prescription, plus a dispensing fee of Five Dollars (\$5.00) per
7 prescription. "Average wholesale price" means the amount determined
8 from the latest publication designated by the Commission.

9 Physicians shall prescribe and pharmacies shall dispense generic
10 equivalent drugs when available. If the National Drug Code, or
11 "NDC", for the drug product dispensed is for a repackaged drug, then
12 the maximum reimbursement shall be the lesser of the original
13 labeler's NDC and the lowest-cost therapeutic equivalent drug
14 product. Compounded medications shall be billed by the compounding
15 pharmacy at the ingredient level, with each ingredient identified
16 using the applicable NDC of the drug product, and the corresponding
17 quantity. Ingredients with no NDC area are not separately
18 reimbursable. Payment shall be based on a sum of the allowable fee
19 for each ingredient plus a dispensing fee of Five Dollars (\$5.00)
20 per prescription.

21 9. When medical care includes prescription drugs dispensed by a
22 physician or other medical care provider and the NDC for the drug
23 product dispensed is for a repackaged drug, then the maximum
24 reimbursement shall be the lesser of the original labeler's NDC and

1 the lowest-cost therapeutic equivalent drug product. Payment shall
2 be based upon a sum of the allowable fee for each ingredient plus a
3 dispensing fee of Five Dollars (\$5.00) per prescription. Compounded
4 medications shall be billed by the compounding pharmacy.

5 10. Implantables are paid in addition to procedural
6 reimbursement paid for medical or surgical services. A
7 manufacturer's invoice for the actual cost to a physician, hospital
8 or other entity of an implantable device shall be adjusted by the
9 physician, hospital or other entity to reflect, at the time
10 implanted, all applicable discounts, rebates, considerations and
11 product replacement programs and shall be provided to the payer by
12 the physician or hospital as a condition of payment for the
13 implantable device. If the physician, or an entity in which the
14 physician has a financial interest other than an ownership interest
15 of less than five percent (5%) in a publically traded company,
16 provides implantable devices, this relationship shall be disclosed
17 to patient, employer, insurance company, third-party commission,
18 certified workplace medical plan, case managers, and attorneys
19 representing claimant and defendant. If the physician, or an entity
20 in which the physician has a financial interest other than an
21 ownership interest of less than five percent (5%) in a publicly
22 traded company, buys and resells implantable devices to a hospital
23 or another physician, the markup shall be limited to ten percent
24 (10%) above cost.

1 11. Payment for medical care as required by this act shall be
2 due within forty-five (45) days of the receipt by the employer or
3 insurance carrier of a complete and accurate invoice, unless the
4 employer or insurance carrier has a good-faith reason to request
5 additional information about such invoice. Thereafter, the
6 Commission may assess a penalty up to twenty-five percent (25%) for
7 any amount due under the Fee Schedule that remains unpaid on the
8 finding by the Commission that no good-faith reason existed for the
9 delay in payment. If the Commission finds a pattern of an employer
10 or insurance carrier willfully and knowingly delaying payments for
11 medical care, the Commission may assess a civil penalty of not more
12 than Five Thousand Dollars (\$5,000.00) per occurrence.

13 12. If an employee fails to appear for a scheduled appointment
14 with a physician, the employer or insurance company shall pay to the
15 physician a reasonable charge, to be determined by the Commission,
16 for the missed appointment. In the absence of a good-faith reason
17 for missing the appointment, the Commission shall order the employee
18 to reimburse the employer or insurance company for the charge.

19 13. Physicians providing treatment under this act shall
20 disclose under penalty of perjury to the Commission, on a form
21 prescribed by the Commission, any ownership or interest in any
22 health care facility, business, or diagnostic center that is not the
23 physician's primary place of business. The disclosure shall include
24 any employee leasing arrangement between the physician and any

1 health care facility that is not the physician's primary place of
2 business. A physician's failure to disclose as required by this
3 section shall be grounds for the Commission to disqualify the
4 physician from providing treatment under this act.

5 14. a. Beginning on the effective date of this act, the
6 Commission shall conduct an evaluation of the Fee
7 Schedule, which shall include an update of the list of
8 Current Procedural Terminology (CPT) codes, a line
9 item adjustment or renewal of all rates, and amendment
10 as needed to the rules applicable to the Fee Schedule.

11 b. The Commission shall contract with an external
12 consultant with knowledge of workers' compensation fee
13 schedules to review regional and nationwide
14 comparisons of Oklahoma's Fee Schedule rates and date
15 and market for medical services. The consultant shall
16 receive written and oral comment from employers,
17 workers' compensation medical service and insurance
18 providers, self-insureds, group self-insurance
19 associations of this state and the public. The
20 consultant shall submit a report of its findings and a
21 proposed amended Fee Schedule to the Commission.

22 c. The Commission shall adopt the proposed amended Fee
23 Schedule in whole or in part and make any additional
24 updates or adjustments. The Commission shall submit a

1 proposed updated and adjusted Fee Schedule to the
2 President Pro Tempore of the Senate, the Speaker of
3 the House of Representatives and the Governor. The
4 proposed Fee Schedule shall become effective on July 1
5 following the legislative session, if approved by
6 Joint Resolution of the Legislature during the session
7 in which a proposed Fee Schedule is submitted.

8 d. Beginning on the effective date of this act, an
9 external evaluation shall be conducted and a proposed
10 amended Fee Schedule shall be submitted to the
11 Legislature for approval during the 2020 legislative
12 session. Thereafter, an external evaluation shall be
13 conducted and a proposed amended Fee Schedule shall be
14 submitted to the Legislature for approval every two
15 (2) years.

16 I. Formulary. The Commission by rule shall adopt a closed
17 formulary. Rules adopted by the Commission shall allow an appeals
18 process for claims in which a treating doctor determines and
19 documents that a drug not included in the formulary is necessary to
20 treat an injured employee's compensable injury. The Commission by
21 rule shall require the use of generic pharmaceutical medications and
22 clinically appropriate over-the-counter alternatives to prescription
23 medications unless otherwise specified by the prescribing doctor, in
24 accordance with applicable state law.

