

1 **SENATE FLOOR VERSION**

2 February 18, 2020

3 **AS AMENDED**

4 SENATE BILL NO. 1375

5 By: David

6 An Act relating to workers' compensation; amending  
7 Sections 50, as amended by Section 20, Chapter 476,  
8 O.S.L. 2019, and 56, Chapter 208, O.S.L. 2013 (85A  
9 O.S. Supp. 2019, Sections 50 and 56), which relate to  
10 medical treatment and certified workplace medical  
11 plans; adding chiropractic services to allowable  
12 medical treatment; authorizing selection of  
13 chiropractors to provide certain services; conforming  
14 language; updating statutory references; and  
15 providing an effective date.

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

17 SECTION 1. AMENDATORY Section 50, Chapter 208, O.S.L.  
18 2013, as amended by Section 20, Chapter 476, O.S.L. 2019 (85A O.S.  
19 Supp. 2019, Section 50), is amended to read as follows:

20 Section 50. A. The employer shall promptly provide an injured  
21 employee with medical, surgical, hospital, optometric, podiatric,  
22 chiropractic and nursing services, along with any medicine,  
23 crutches, ambulatory devices, artificial limbs, eyeglasses, contact  
24 lenses, hearing aids, and other apparatus as may be reasonably  
25 necessary in connection with the injury received by the employee.  
26 The employer shall have the right to choose the treating physician  
27 or chiropractor.

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

9 C. Diagnostic tests shall not be repeated sooner than six (6)  
10 months from the date of the test unless agreed to by the parties or  
11 ordered by the Commission for good cause shown.

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

23 E. An employee claiming or entitled to benefits under ~~this act~~  
24 the Administrative Workers' Compensation Act, shall, if ordered by

1 the Commission or requested by the employer or insurance carrier,  
2 submit himself or herself for medical examination. If an employee  
3 refuses to submit himself or herself to examination, his or her  
4 right to prosecute any proceeding under ~~this act~~ the Administrative  
5 Workers' Compensation Act shall be suspended, and no compensation  
6 shall be payable for the period of such refusal.

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

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

22 H. Fee Schedule.

23 1. The Commission shall conduct a review and update of the  
24 Current Procedural Terminology (CPT) in the Fee Schedule every two

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

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

1 required to complete forms for the Commission, insurance carriers,  
2 and employers.

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

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

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

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

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

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

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

5 4. The right to recover charges for every type of medical care  
6 for injuries arising out of and in the course of covered employment  
7 as defined in ~~this act~~ the Administrative Workers' Compensation Act  
8 shall lie solely with the Commission. When a medical care provider  
9 has brought a claim to the Commission to obtain payment for  
10 services, a party who prevails in full on the claim shall be  
11 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~~ the Administrative Workers'  
3 Compensation Act for the enforcement of other 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~~ the  
2 Administrative Workers' Compensation Act shall be due within forty-  
3 five (45) days of the receipt by the employer or insurance carrier  
4 of a complete and accurate invoice, unless the employer or insurance  
5 carrier has a good-faith reason to request additional information  
6 about such invoice. Thereafter, the Commission may assess a penalty  
7 up to twenty-five percent (25%) for any amount due under the Fee  
8 Schedule that remains unpaid on the finding by the Commission that  
9 no good-faith reason existed for the delay in payment. If the  
10 Commission finds a pattern of an employer or insurance carrier  
11 willfully and knowingly delaying payments for medical care, the  
12 Commission may assess a civil penalty of not more than Five Thousand  
13 Dollars (\$5,000.00) per occurrence.

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

21 13. Physicians or chiropractors providing treatment under ~~this~~  
22 ~~act~~ the Administrative Workers' Compensation Act shall disclose  
23 under penalty of perjury to the Commission, on a form prescribed by  
24 the Commission, any ownership or interest in any health care

1 facility, business, or diagnostic center that is not the physician's  
2 or chiropractor's primary place of business. The disclosure shall  
3 include any employee leasing arrangement between the physician or  
4 chiropractor and any health care facility that is not the  
5 physician's or chiropractor's primary place of business. A  
6 physician's or chiropractor's failure to disclose as required by  
7 this section shall be grounds for the Commission to disqualify the  
8 physician or chiropractor from providing treatment under ~~this act~~  
9 the Administrative Workers' Compensation Act.

10 14. a. Beginning on ~~the effective date of this act~~ May 28,  
11 2019, the Commission shall conduct an evaluation of  
12 the Fee Schedule, which shall include an update of the  
13 list of Current Procedural Terminology (CPT) codes, a  
14 line item adjustment or renewal of all rates, and  
15 amendment as needed to the rules applicable to the Fee  
16 Schedule.

17 b. The Commission shall contract with an external  
18 consultant with knowledge of workers' compensation fee  
19 schedules to review regional and nationwide  
20 comparisons of Oklahoma's Fee Schedule rates and date  
21 and market for medical services. The consultant shall  
22 receive written and oral comment from employers,  
23 workers' compensation medical service and insurance  
24 providers, self-insureds, group self-insurance

1 associations of this state and the public. The  
2 consultant shall submit a report of its findings and a  
3 proposed amended Fee Schedule to the Commission.

4 c. The Commission shall adopt the proposed amended Fee  
5 Schedule in whole or in part and make any additional  
6 updates or adjustments. The Commission shall submit a  
7 proposed updated and adjusted Fee Schedule to the  
8 President Pro Tempore of the Senate, the Speaker of  
9 the House of Representatives and the Governor. The  
10 proposed Fee Schedule shall become effective on July 1  
11 following the legislative session, if approved by  
12 Joint Resolution of the Legislature during the session  
13 in which a proposed Fee Schedule is submitted.

14 d. Beginning on ~~the effective date of this act~~ May 28,  
15 2019, an external evaluation shall be conducted and a  
16 proposed amended Fee Schedule shall be submitted to  
17 the Legislature for approval during the 2020  
18 legislative session. Thereafter, an external  
19 evaluation shall be conducted and a proposed amended  
20 Fee Schedule shall be submitted to the Legislature for  
21 approval every two (2) years.

22 I. Formulary. The Commission by rule shall adopt a closed  
23 formulary. Rules adopted by the Commission shall allow an appeals  
24 process for claims in which a treating doctor determines and

1 documents that a drug not included in the formulary is necessary to  
2 treat an injured employee's compensable injury. The Commission by  
3 rule shall require the use of generic pharmaceutical medications and  
4 clinically appropriate over-the-counter alternatives to prescription  
5 medications unless otherwise specified by the prescribing doctor, in  
6 accordance with applicable state law.

7 SECTION 2. AMENDATORY Section 56, Chapter 208, O.S.L.  
8 2013 (85A O.S. Supp. 2019, Section 56), is amended to read as  
9 follows:

10 Section 56. A. If the employer has previously contracted with  
11 a certified workplace medical plan, the employer shall select for  
12 the injured employee a treating physician or chiropractor from the  
13 physicians or chiropractors listed within the network of the  
14 certified workplace medical plan. The employee may apply for a  
15 change of physician or chiropractor by utilizing the dispute  
16 resolution process set out in the certified workplace medical plan  
17 on file with the State Department of Health.

18 B. If the employer is not covered by a certified workplace  
19 medical plan, the employer shall select the treating physician or  
20 chiropractor. The Commission on application of the employee shall  
21 order one change of treating physician or chiropractor. Upon the  
22 Commission's granting of the application, the employer shall provide  
23 a list of three physicians, **one of which shall be a chiropractor,**  
24 from whom the employee may select the replacement.

SECTION 3. This act shall become effective November 1, 2020.

COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY  
February 18, 2020 - DO PASS AS AMENDED

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