

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 724

By: Dahm of the Senate

and

Gann of the House

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9 COMMITTEE SUBSTITUTE

10 An Act relating to the Physician Advisory Committee;
11 amending Section 50, Chapter 208, O.S.L. 2013, as
12 last amended by Section 1, Chapter 34, O.S.L. 2020
13 (85A O.S. Supp. 2020, Section 50), which relates to
14 medical examination and treatment; removing authority
15 to establish parameters for certain maintenance or
16 treatment; repealing Section 17, Chapter 208, O.S.L.
17 2013 (85A O.S. Supp. 2020, Section 17), which relates
18 to appointment and duties; repealing Section 60,
19 Chapter 208, O.S.L. 2013, as amended by Section 22,
20 Chapter 476, O.S.L. 2019 (85A O.S. Supp. 2020,
21 Section 60), which relates to adoption of alternative
22 method to evaluate permanent disability; and
23 providing an effective date.

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

SECTION 1. AMENDATORY Section 50, Chapter 208, O.S.L.
2013, as last amended by Section 1, Chapter 34, O.S.L. 2020 (85A
O.S. Supp. 2020, Section 50), is amended to read as follows:

Section 50. A. The employer shall promptly provide an injured
employee with medical, surgical, hospital, optometric, podiatric,

1 chiropractic and nursing services, along with any medicine,
2 crutches, ambulatory devices, artificial limbs, eyeglasses, contact
3 lenses, hearing aids, and other apparatus as may be reasonably
4 necessary in connection with the injury received by the employee.
5 The employer shall have the right to choose the treating physician
6 or chiropractor.

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

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

18 D. Unless recommended by the treating doctor or chiropractor at
19 the time claimant reaches maximum medical improvement or by an
20 independent medical examiner, continuing medical maintenance shall
21 not be awarded by the Commission. The employer or insurance carrier
22 shall not be responsible for continuing medical maintenance or pain
23 management treatment that is outside the parameters established by
24 the ~~Physician Advisory Committee~~ or Official Disability Guidelines

1 (ODG). The employer or insurance carrier shall not be responsible
2 for continuing medical maintenance or pain management treatment not
3 previously ordered by the Commission or approved in advance by the
4 employer or insurance carrier.

5 E. An employee claiming or entitled to benefits under the
6 Administrative Workers' Compensation Act, shall, if ordered by the
7 Commission or requested by the employer or insurance carrier, submit
8 himself or herself for medical examination. If an employee refuses
9 to submit himself or herself to examination, his or her right to
10 prosecute any proceeding under the Administrative Workers'
11 Compensation Act shall be suspended, and no compensation shall be
12 payable for the period of such refusal.

13 F. For compensable injuries resulting in the use of a medical
14 device, ongoing service for the medical device shall be provided in
15 situations including, but not limited to, medical device battery
16 replacement, ongoing medication refills related to the medical
17 device, medical device repair, or medical device replacement.

18 G. The employer shall reimburse the employee for the actual
19 mileage in excess of twenty (20) miles round trip to and from the
20 employee's home to the location of a medical service provider for
21 all reasonable and necessary treatment, for an evaluation of an
22 independent medical examiner and for any evaluation made at the
23 request of the employer or insurance carrier. The rate of
24 reimbursement for such travel expense shall be the official

1 reimbursement rate as established by the State Travel Reimbursement
2 Act. In no event shall the reimbursement of travel for medical
3 treatment or evaluation exceed six hundred (600) miles round trip.

4 H. Fee Schedule.

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

19 2. Reimbursement for medical care shall be prescribed and
20 limited by the Fee Schedule. The director of the Employees Group
21 Insurance Division of the Office of Management and Enterprise
22 Services shall provide the Commission such information as may be
23 relevant for the development of the Fee Schedule. The Commission
24 shall develop the Fee Schedule in a manner in which quality of

1 medical care is assured and maintained for injured employees. The
2 Commission shall give due consideration to additional requirements
3 for physicians treating an injured worker under the Administrative
4 Workers' Compensation Act, including, but not limited to,
5 communication with claims representatives, case managers, attorneys,
6 and representatives of employers, and the additional time required
7 to complete forms for the Commission, insurance carriers, and
8 employers.

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

- 1 a. No reimbursement shall be allowed for any magnetic
2 resonance imaging (MRI) unless the MRI is provided by
3 an entity that meets Medicare requirements for the
4 payment of MRI services or is accredited by the
5 American College of Radiology, the Intersocietal
6 Accreditation Commission or the Joint Commission on
7 Accreditation of Healthcare Organizations. For all
8 other radiology procedures, the reimbursement rate
9 shall be the lesser of the reimbursement rate allowed
10 by the 2010 Oklahoma Fee Schedule and two hundred
11 seven percent (207%) of the Medicare Fee Schedule.
- 12 b. For reimbursement of medical services for Evaluation
13 and Management of injured employees as defined in the
14 Fee Schedule adopted by the Commission, the
15 reimbursement rate shall not be less than one hundred
16 fifty percent (150%) of the Medicare Fee Schedule.
- 17 c. Any entity providing durable medical equipment,
18 prosthetics, orthotics or supplies shall be accredited
19 by a CMS-approved accreditation organization. If a
20 physician provides durable medical equipment,
21 prosthetics, orthotics, prescription drugs, or
22 supplies to a patient ancillary to the patient's
23 visit, reimbursement shall be no more than ten percent
24 (10%) above cost.

1 d. The Commission shall develop a reasonable stop-loss
2 provision of the Fee Schedule to provide for adequate
3 reimbursement for treatment for major burns, severe
4 head and neurological injuries, multiple system
5 injuries, and other catastrophic injuries requiring
6 extended periods of intensive care. An employer or
7 insurance carrier shall have the right to audit the
8 charges and question the reasonableness and necessity
9 of medical treatment contained in a bill for treatment
10 covered by the stop-loss provision.

11 4. The right to recover charges for every type of medical care
12 for injuries arising out of and in the course of covered employment
13 as defined in the Administrative Workers' Compensation Act shall lie
14 solely with the Commission. When a medical care provider has
15 brought a claim to the Commission to obtain payment for services, a
16 party who prevails in full on the claim shall be entitled to
17 reasonable attorney fees.

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

23 6. A treating physician may not charge more than Four Hundred
24 Dollars (\$400.00) per hour for preparation for or testimony at a

1 deposition or appearance before the Commission in connection with a
2 claim covered by the Administrative Workers' Compensation Act.

3 7. The Commission's review of medical and treatment charges
4 pursuant to this section shall be conducted pursuant to the Fee
5 Schedule in existence at the time the medical care or treatment was
6 provided. The judgment approving the medical and treatment charges
7 pursuant to this section shall be enforceable by the Commission in
8 the same manner as provided in the Administrative Workers'
9 Compensation Act for the enforcement of other compensation payments.

10 8. Charges for prescription drugs dispensed by a pharmacy shall
11 be limited to ninety percent (90%) of the average wholesale price of
12 the prescription, plus a dispensing fee of Five Dollars (\$5.00) per
13 prescription. "Average wholesale price" means the amount determined
14 from the latest publication designated by the Commission.
15 Physicians shall prescribe and pharmacies shall dispense generic
16 equivalent drugs when available. If the National Drug Code, or
17 "NDC", for the drug product dispensed is for a repackaged drug, then
18 the maximum reimbursement shall be the lesser of the original
19 labeler's NDC and the lowest-cost therapeutic equivalent drug
20 product. Compounded medications shall be billed by the compounding
21 pharmacy at the ingredient level, with each ingredient identified
22 using the applicable NDC of the drug product, and the corresponding
23 quantity. Ingredients with no NDC area are not separately
24 reimbursable. Payment shall be based on a sum of the allowable fee

1 for each ingredient plus a dispensing fee of Five Dollars (\$5.00)
2 per prescription.

3 9. When medical care includes prescription drugs dispensed by a
4 physician or other medical care provider and the NDC for the drug
5 product dispensed is for a repackaged drug, then the maximum
6 reimbursement shall be the lesser of the original labeler's NDC and
7 the lowest-cost therapeutic equivalent drug product. Payment shall
8 be based upon a sum of the allowable fee for each ingredient plus a
9 dispensing fee of Five Dollars (\$5.00) per prescription. Compounded
10 medications shall be billed by the compounding pharmacy.

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

1 attorneys representing claimant and defendant. If the physician, or
2 an entity in which the physician has a financial interest other than
3 an ownership interest of less than five percent (5%) in a publicly
4 traded company, buys and resells implantable devices to a hospital
5 or another physician, the markup shall be limited to ten percent
6 (10%) above cost.

7 11. Payment for medical care as required by the Administrative
8 Workers' Compensation Act shall be due within forty-five (45) days
9 of the receipt by the employer or insurance carrier of a complete
10 and accurate invoice, unless the employer or insurance carrier has a
11 good-faith reason to request additional information about such
12 invoice. Thereafter, the Commission may assess a penalty up to
13 twenty-five percent (25%) for any amount due under the Fee Schedule
14 that remains unpaid on the finding by the Commission that no good-
15 faith reason existed for the delay in payment. If the Commission
16 finds a pattern of an employer or insurance carrier willfully and
17 knowingly delaying payments for medical care, the Commission may
18 assess a civil penalty of not more than Five Thousand Dollars
19 (\$5,000.00) per occurrence.

20 12. If an employee fails to appear for a scheduled appointment
21 with a physician or chiropractor, the employer or insurance company
22 shall pay to the physician or chiropractor a reasonable charge, to
23 be determined by the Commission, for the missed appointment. In the
24 absence of a good-faith reason for missing the appointment, the

1 Commission shall order the employee to reimburse the employer or
2 insurance company for the charge.

3 13. Physicians or chiropractors providing treatment under the
4 Administrative Workers' Compensation Act shall disclose under
5 penalty of perjury to the Commission, on a form prescribed by the
6 Commission, any ownership or interest in any health care facility,
7 business, or diagnostic center that is not the physician's or
8 chiropractor's primary place of business. The disclosure shall
9 include any employee leasing arrangement between the physician or
10 chiropractor and any health care facility that is not the
11 physician's or chiropractor's primary place of business. A
12 physician's or chiropractor's failure to disclose as required by
13 this section shall be grounds for the Commission to disqualify the
14 physician or chiropractor from providing treatment under the
15 Administrative Workers' Compensation Act.

16 14. a. Beginning on May 28, 2019, the Commission shall
17 conduct an evaluation of the Fee Schedule, which shall
18 include an update of the list of Current Procedural
19 Terminology (CPT) codes, a line item adjustment or
20 renewal of all rates, and amendment as needed to the
21 rules applicable to the Fee Schedule.

22 b. The Commission shall contract with an external
23 consultant with knowledge of workers' compensation fee
24 schedules to review regional and nationwide

1 comparisons of Oklahoma's Fee Schedule rates and date
2 and market for medical services. The consultant shall
3 receive written and oral comment from employers,
4 workers' compensation medical service and insurance
5 providers, self-insureds, group self-insurance
6 associations of this state and the public. The
7 consultant shall submit a report of its findings and a
8 proposed amended Fee Schedule to the Commission.

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

19 d. Beginning on May 28, 2019, an external evaluation
20 shall be conducted and a proposed amended Fee Schedule
21 shall be submitted to the Legislature for approval
22 during the 2020 legislative session. Thereafter, an
23 external evaluation shall be conducted and a proposed
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1 amended Fee Schedule shall be submitted to the
2 Legislature for approval every two (2) years.

3 I. Formulary. The Commission by rule shall adopt a closed
4 formulary. Rules adopted by the Commission shall allow an appeals
5 process for claims in which a treating doctor determines and
6 documents that a drug not included in the formulary is necessary to
7 treat an injured employee's compensable injury. The Commission by
8 rule shall require the use of generic pharmaceutical medications and
9 clinically appropriate over-the-counter alternatives to prescription
10 medications unless otherwise specified by the prescribing doctor, in
11 accordance with applicable state law.

12 SECTION 2. REPEALER Section 17, Chapter 208, O.S.L. 2013
13 (85A O.S. Supp. 2020, Section 17), is hereby repealed.

14 SECTION 3. REPEALER Section 60, Chapter 208, O.S.L.
15 2013, as amended by Section 22, Chapter 476, O.S.L. 2019 (85A O.S.
16 Supp. 2020, Section 60), is hereby repealed.

17 SECTION 4. This act shall become effective November 1, 2021.

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