

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 COMMITTEE SUBSTITUTE
5 FOR ENGROSSED
6 SENATE BILL NO. 724

By: Dahm of the Senate

and

Gann of the House

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10 COMMITTEE SUBSTITUTE

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

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:

1 Section 50. A. The employer shall promptly provide an injured
2 employee with medical, surgical, hospital, optometric, podiatric,
3 chiropractic and nursing services, along with any medicine,
4 crutches, ambulatory devices, artificial limbs, eyeglasses, contact
5 lenses, hearing aids, and other apparatus as may be reasonably
6 necessary in connection with the injury received by the employee.
7 The employer shall have the right to choose the treating physician
8 or chiropractor.

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

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

20 D. Unless recommended by the treating doctor or chiropractor at
21 the time claimant reaches maximum medical improvement or by an
22 independent medical examiner, continuing medical maintenance shall
23 not be awarded by the Commission. The employer or insurance carrier
24 shall not be responsible for continuing medical maintenance or pain

1 management treatment that is outside the parameters established by
2 the ~~Physician Advisory Committee~~ or Official Disability Guidelines
3 (ODG). The employer or insurance carrier shall not be responsible
4 for continuing medical maintenance or pain management treatment not
5 previously ordered by the Commission or approved in advance by the
6 employer or insurance carrier.

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

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

20 G. The employer shall reimburse the employee for the actual
21 mileage in excess of twenty (20) miles round trip to and from the
22 employee's home to the location of a medical service provider for
23 all reasonable and necessary treatment, for an evaluation of an
24 independent medical examiner and for any evaluation made at the

1 request of the employer or insurance carrier. The rate of
2 reimbursement for such travel expense shall be the official
3 reimbursement rate as established by the State Travel Reimbursement
4 Act. In no event shall the reimbursement of travel for medical
5 treatment or evaluation exceed six hundred (600) miles round trip.

6 H. Fee Schedule.

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

21 2. Reimbursement for medical care shall be prescribed and
22 limited by the Fee Schedule. The director of the Employees Group
23 Insurance Division of the Office of Management and Enterprise
24 Services shall provide the Commission such information as may be

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

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

1 trade area for comparable treatment of a person with similar
2 injuries.

3 a. No reimbursement shall be allowed for any magnetic
4 resonance imaging (MRI) unless the MRI is provided by
5 an entity that meets Medicare requirements for the
6 payment of MRI services or is accredited by the
7 American College of Radiology, the Intersocietal
8 Accreditation Commission or the Joint Commission on
9 Accreditation of Healthcare Organizations. For all
10 other radiology procedures, the reimbursement rate
11 shall be the lesser of the reimbursement rate allowed
12 by the 2010 Oklahoma Fee Schedule and two hundred
13 seven percent (207%) of the Medicare Fee Schedule.

14 b. For reimbursement of medical services for Evaluation
15 and Management of injured employees as defined in the
16 Fee Schedule adopted by the Commission, the
17 reimbursement rate shall not be less than one hundred
18 fifty percent (150%) of the Medicare Fee Schedule.

19 c. Any entity providing durable medical equipment,
20 prosthetics, orthotics or supplies shall be accredited
21 by a CMS-approved accreditation organization. If a
22 physician provides durable medical equipment,
23 prosthetics, orthotics, prescription drugs, or
24 supplies to a patient ancillary to the patient's

1 visit, reimbursement shall be no more than ten percent
2 (10%) above cost.

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

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

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

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

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

12 8. Charges for prescription drugs dispensed by a pharmacy shall
13 be limited to ninety percent (90%) of the average wholesale price of
14 the prescription, plus a dispensing fee of Five Dollars (\$5.00) per
15 prescription. "Average wholesale price" means the amount determined
16 from the latest publication designated by the Commission.
17 Physicians shall prescribe and pharmacies shall dispense generic
18 equivalent drugs when available. If the National Drug Code, or
19 "NDC", for the drug product dispensed is for a repackaged drug, then
20 the maximum reimbursement shall be the lesser of the original
21 labeler's NDC and the lowest-cost therapeutic equivalent drug
22 product. Compounded medications shall be billed by the compounding
23 pharmacy at the ingredient level, with each ingredient identified
24 using the applicable NDC of the drug product, and the corresponding

1 quantity. Ingredients with no NDC area are not separately
2 reimbursable. Payment shall be based on a sum of the allowable fee
3 for each ingredient plus a dispensing fee of Five Dollars (\$5.00)
4 per prescription.

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

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

1 disclosed to patient, employer, insurance company, third-party
2 commission, certified workplace medical plan, case managers, and
3 attorneys representing claimant and defendant. If the physician, or
4 an entity in which the physician has a financial interest other than
5 an ownership interest of less than five percent (5%) in a publicly
6 traded company, buys and resells implantable devices to a hospital
7 or another physician, the markup shall be limited to ten percent
8 (10%) above cost.

9 11. Payment for medical care as required by the Administrative
10 Workers' Compensation Act shall be due within forty-five (45) days
11 of the receipt by the employer or insurance carrier of a complete
12 and accurate invoice, unless the employer or insurance carrier has a
13 good-faith reason to request additional information about such
14 invoice. Thereafter, the Commission may assess a penalty up to
15 twenty-five percent (25%) for any amount due under the Fee Schedule
16 that remains unpaid on the finding by the Commission that no good-
17 faith reason existed for the delay in payment. If the Commission
18 finds a pattern of an employer or insurance carrier willfully and
19 knowingly delaying payments for medical care, the Commission may
20 assess a civil penalty of not more than Five Thousand Dollars
21 (\$5,000.00) per occurrence.

22 12. If an employee fails to appear for a scheduled appointment
23 with a physician or chiropractor, the employer or insurance company
24 shall pay to the physician or chiropractor a reasonable charge, to

1 be determined by the Commission, for the missed appointment. In the
2 absence of a good-faith reason for missing the appointment, the
3 Commission shall order the employee to reimburse the employer or
4 insurance company for the charge.

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

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

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

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

22 d. Beginning on May 28, 2019, an external evaluation
23 shall be conducted and a proposed amended Fee Schedule
24 shall be submitted to the Legislature for approval

1 during the 2020 legislative session. Thereafter, an
2 external evaluation shall be conducted and a proposed
3 amended Fee Schedule shall be submitted to the
4 Legislature for approval every two (2) years.

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

14 SECTION 2. REPEALER Section 17, Chapter 208, O.S.L. 2013
15 (85A O.S. Supp. 2020, Section 17), is hereby repealed.

16 SECTION 3. REPEALER Section 60, Chapter 208, O.S.L.
17 2013, as amended by Section 22, Chapter 476, O.S.L. 2019 (85A O.S.
18 Supp. 2020, Section 60), is hereby repealed.

19 SECTION 4. This act shall become effective November 1, 2021.
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21 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 04/08/2021 -
22 DO PASS, As Amended.
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