

1 **SENATE FLOOR VERSION**

2 February 19, 2021

3 SENATE BILL NO. 724

By: Dahm

4
5
6 An Act relating to the Physician Advisory Committee;
7 amending Section 50, Chapter 208, O.S.L. 2013, as
8 last amended by Section 1, Chapter 34, O.S.L. 2020
9 (85A O.S. Supp. 2020, 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. 2020, 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. 2020,
17 Section 60), which relates to adoption of alternative
18 method to evaluate permanent disability; and
19 providing an effective date.

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

21 SECTION 1. AMENDATORY Section 50, Chapter 208, O.S.L.
22 2013, as last amended by Section 1, Chapter 34, O.S.L. 2020 (85A
23 O.S. Supp. 2020, Section 50), is amended to read as follows:

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

1 The employer shall have the right to choose the treating physician
2 or chiropractor.

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 or
6 chiropractor to provide medical treatment at the expense of the
7 employer; provided, however, that the injured employee, or another
8 in the employee's behalf, may obtain emergency treatment at the
9 expense of the employer where such emergency treatment is not
10 provided by the employer.

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

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

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

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

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

24 H. Fee Schedule.

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, chiropractors, dentists, counselors, hospitals,
8 ambulatory and outpatient facilities, clinical laboratory services,
9 diagnostic testing services, and ambulance services, and charges for
10 durable medical equipment, prosthetics, orthotics, and supplies.
11 The most current Fee Schedule established by the Administrator of
12 the Workers' Compensation Court prior to February 1, 2014, shall
13 remain in effect, unless or until the Legislature approves the
14 Commission's 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 the Administrative
24 Workers' Compensation Act, including, but not limited to,

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

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

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

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

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

13 c. Any entity providing durable medical equipment,
14 prosthetics, orthotics or supplies shall be accredited
15 by a CMS-approved accreditation organization. If a
16 physician provides durable medical equipment,
17 prosthetics, orthotics, prescription drugs, or
18 supplies to a patient ancillary to the patient's
19 visit, reimbursement shall be no more than ten percent
20 (10%) above cost.

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

1 injuries⁷ and other catastrophic injuries requiring
2 extended periods of intensive care. An employer or
3 insurance carrier shall have the right to audit the
4 charges and question the reasonableness and necessity
5 of medical treatment contained in a bill for treatment
6 covered by the stop-loss provision.

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

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

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

23 7. The Commission's review of medical and treatment charges
24 pursuant to this section shall be conducted pursuant to the Fee

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

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

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

23 9. When medical care includes prescription drugs dispensed by a
24 physician or other medical care provider and the NDC for the drug

1 product dispensed is for a repackaged drug, then the maximum
2 reimbursement shall be the lesser of the original labeler's NDC and
3 the lowest-cost therapeutic equivalent drug product. Payment shall
4 be based upon a sum of the allowable fee for each ingredient plus a
5 dispensing fee of Five Dollars (\$5.00) per prescription. Compounded
6 medications shall be billed by the compounding pharmacy.

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

1 or another physician, the markup shall be limited to ten percent
2 (10%) above cost.

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

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

23 13. Physicians or chiropractors providing treatment under the
24 Administrative Workers' Compensation Act shall disclose under

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

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

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

1 providers, self-insureds, group self-insurance
2 associations of this state and the public. The
3 consultant shall submit a report of its findings and a
4 proposed amended Fee Schedule to the Commission.

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

15 d. Beginning on May 28, 2019, an external evaluation
16 shall be conducted and a proposed amended Fee Schedule
17 shall be submitted to the Legislature for approval
18 during the 2020 legislative session. Thereafter, an
19 external evaluation shall be conducted and a proposed
20 amended Fee Schedule shall be submitted to the
21 Legislature for 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. REPEALER Section 17, Chapter 208, O.S.L. 2013
8 (85A O.S. Supp. 2020, Section 17), is hereby repealed.

9 SECTION 3. REPEALER Section 60, Chapter 208, O.S.L.
10 2013, as amended by Section 22, Chapter 476, O.S.L. 2019 (85A O.S.
11 Supp. 2020, Section 60), is hereby repealed.

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

13 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
14 February 19, 2021 - DO PASS
15
16
17
18
19
20
21
22
23
24