

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 57th Legislature (2019)

4 HOUSE BILL 2631

 By: Echols

7 AS INTRODUCED

8 An Act relating to workers' compensation: amending
9 Section 50, Chapter 208, O.S.L. 2013 (85A O.S. Supp.
10 2018, Section 50), which relates to medical
 treatment; providing for modification of fee
 schedule; and providing an effective date.

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

14 SECTION 1. AMENDATORY Section 50, Chapter 208, O.S.L.
15 2013 (85A O.S. Supp. 2018, Section 50), is amended to read as
16 follows:

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

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

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

12 D. Unless recommended by the treating doctor at the time
13 claimant reaches maximum medical improvement or by an independent
14 medical examiner, continuing medical maintenance shall not be
15 awarded by the Commission. The employer or insurance carrier shall
16 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 shall, if ordered by the Commission or requested by the employer or

1 insurance carrier, submit himself or herself for medical
2 examination. If an employee refuses to submit himself or herself to
3 examination, his or her right to prosecute any proceeding under this
4 act shall be suspended, and no compensation shall be payable for the
5 period of such refusal.

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

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

21 H. Fee Schedule.

22 1. The Commission shall conduct a review of the Fee Schedule
23 every two (2) years; provided, the Fee Schedule shall be revised in
24 2019 to provide a three percent (3%) increase in maximum rate of

1 reimbursement to physicians and hospitals for a period of three (3)
2 years. 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, dentists, counselors, hospitals, ambulatory and
6 outpatient facilities, clinical laboratory services, diagnostic
7 testing services, and ambulance services, and charges for durable
8 medical equipment, prosthetics, orthotics, and supplies. The most
9 current Fee Schedule established by the Administrator of the
10 Workers' Compensation Court prior to the effective date of this
11 section shall remain in effect, unless or until the Legislature
12 approves the Commission's proposed Fee Schedule.

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

1 and representatives of employers, and the additional time required
2 to complete forms for the Commission, insurance carriers, and
3 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 (CMS) of
8 the 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

1 injuries, and other catastrophic injuries requiring
2 extended periods of intensive care.

3 4. The right to recover charges for every type of medical care
4 for injuries arising out of and in the course of covered employment
5 as defined in this act shall lie solely with the Commission. When a
6 medical care provider has brought a claim to the Commission to
7 obtain payment for services, a party who prevails in full on the
8 claim shall be entitled to reasonable attorney fees.

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

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

18 7. The Commission's review of medical and treatment charges
19 pursuant to this section shall be conducted pursuant to the Fee
20 Schedule in existence at the time the medical care or treatment was
21 provided. The judgment approving the medical and treatment charges
22 pursuant to this section shall be enforceable by the Commission in
23 the same manner as provided in this act for the enforcement of other
24 compensation payments.

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

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

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

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

23 11. Payment for medical care as required by this act shall be
24 due within forty-five (45) days of the receipt by the employer or

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

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

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

1 section shall be grounds for the Commission to disqualify the
2 physician from providing treatment under this act.

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. This act shall become effective November 1, 2019.

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14 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/20/2019 - DO
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