

1 ENGROSSED HOUSE  
2 BILL NO. 2631

By: Echols of the House

3 and

4 David of the Senate

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7  
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  
11 treatment; providing for modification of fee  
12 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 any medicine, crutches,  
20 ambulatory devices, artificial limbs, eyeglasses, contact lenses,  
21 hearing aids, and other apparatus as may be reasonably necessary in  
22 connection with the injury received by the employee. The employer  
23 shall have 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 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  
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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.

13 Passed the House of Representatives the 12th day of March, 2019.

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Presiding Officer of the House  
of Representatives

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Passed the Senate the \_\_\_ day of \_\_\_\_\_, 2019.

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Presiding Officer of the Senate

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