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Emily B Caudill
REGULATIONS COMPILER

1 LABOR CABINET

2 Department of Workers' Claims

3 (Amendment)

4 803 KAR 25:089. Workers' compensation medical fee schedule for physicians.

5 RELATES TO: KRS 342.0011(32), 342.019, 342.020, 342.035

6 STATUTORY AUTHORITY: KRS 342.020, 342.035(1), (4)

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) requires the
8 commissioner of the Department of Workers' Claims to promulgate administrative regulations to
9 ensure that all fees, charges, and reimbursements for medical services under KRS Chapter 342 are
10 limited to charges that are fair, current, and reasonable for similar treatment of injured persons in
11 the same community for like services, where treatment is paid for by general health insurers. KRS
12 342.035(4) requires the commissioner to promulgate an administrative regulation establishing the
13 workers' compensation medical fee schedule for physicians. Pursuant to KRS 342.035, a schedule
14 of fees is to be reviewed and updated, if appropriate, every two (2) years on July 1. This
15 administrative regulation establishes the medical fee schedule for physicians.

16 Section 1. Definitions.

17 (1) "Medical fee schedule" means the 2022 Kentucky Workers' Compensation Schedule of
18 Fees for Physicians [~~2020 Kentucky Workers' Compensation Schedule of Fees for Physicians~~].

1 (2) "Physician" is defined by KRS 342.0011(32).

2 Section 2. Services Covered.

3 (1) The medical fee schedule shall govern all medical services provided to injured
4 employees by physicians under KRS Chapter 342.

5 (2) The medical fee schedule shall also apply to other health care or medical services
6 providers to whom a listed CPT code is applicable unless:

7 (a) Another fee schedule of the Department of Workers' Claims applies;

8 (b) A lower fee is required by KRS 342.035 or a managed care plan approved by the
9 commissioner pursuant to 803 KAR 25:110; or

10 (c) An insurance carrier, self-insured group, or self-insured employer has an agreement
11 with a physician, medical bill vendor, or other medical provider to provide reimbursement of a
12 medical bill at an amount lower than the medical fee schedule.

13 Section 3. Fee Computation.

14 (1) The appropriate fee for a procedure or item covered by the medical fee schedule shall
15 be the Maximum Allowable Reimbursement (MAR) listed in the 2022 [2020] Kentucky Workers'
16 Compensation Schedule of Fees for Physicians for those procedures or items for which a specific
17 monetary amount is listed.

18 (2) Procedures Listed Without Specified Maximum Allowable Reimbursement Monetary
19 Amount: The appropriate fee for a procedure or item for which no specific monetary amount is
20 listed shall be determined and calculated in accordance with numerical paragraph six (6) of the
21 General Instructions of the medical fee schedule unless more specific Ground Rules are applicable

1 to that service or item, in which case the fee shall be calculated in accordance with the applicable
2 Ground Rules.

3 (3) The resulting fee shall be the maximum fee allowed for the service provided.

4 Section 4. (1) A physician or healthcare or medical services provider located outside the
5 boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative
6 regulation if it treats a patient who is covered under KRS Chapter 342.

7 (2) Pursuant to KRS 342.035, medical fees due to an out-of-state physician or healthcare
8 or medical services provider shall be calculated under the fee schedule in the same manner as for
9 an in-state physician.

10 Section 5. Incorporation by Reference.

11 (1) "2022 Kentucky Workers' Compensation Schedule of Fees for Physicians", July 1, 2022
12 Edition [~~2020 Kentucky Workers' Compensation Schedule of Fees for Physicians, July 1,~~
13 ~~2020 Edition~~], is incorporated by reference.

14 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
15 law, at the Department of Workers' Claims, Mayo-Underwood Building 3rd Floor, 500 Mero
16 Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

This is to certify the Commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260, 342.270 and 342.285.



Scott C. Wilhoit
Commissioner of the Department of Workers' Claims
Labor Cabinet

6/21/2022

Date

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PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on September 28, at 10:00 a.m. (EDT) at the Department of Workers' Claims, 500 Mero Street, Frankfort, KY 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through September 30, 2022. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

803 KAR 25.089

Contact Person: B. Dale Hamblin, Jr.
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(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation incorporates the medical fee schedule for physicians and the requirements for using the fee schedule.

(b) The necessity of this administrative regulation:

Pursuant to KRS 342.035, the commissioner is required to promulgate an administrative regulation regarding fee schedules.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation incorporates the extensive fee schedule for physicians and requirements for the fee schedule.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

It is imperative to have fee schedules to control the medical costs of the workers' compensation system. Injured employees should receive quality medical care and physicians should be appropriately paid.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The medical fee schedule has been updated and will be incorporated by reference.

(b) The necessity of the amendment to this administrative regulation:

KRS 342.035 requires the schedule of fees to be reviewed and updated every two (2) years, if appropriate.

(c) How the amendment conforms to the content of the authorizing statutes:

The schedule of fees has been appropriately updated to ensure that medical fees are fair, current, and reasonable for similar treatment in the same community for general health insurance payments.

(d) How the amendment will assist in the effective administration of the statutes:

The schedule of fees assists the workers' compensation program by updating fees for physicians to ensure injured workers get qualified and appropriate medical treatment.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

All physicians and medical providers providing services to injured workers pursuant to KRS Chapter 342, injured employees, insurance carriers, self-insurance groups, and self-insured employers and employers, third party administrators.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

Insurance carriers, self-insured groups, self-insured employers, third party administrators, and medical providers must purchase the new schedule of fees to accurately bill and pay for medical services. Other parties to workers' compensation claims are only indirectly impacted by the new fee schedule.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

Insurance carriers, self-insured groups, self-insured employers or third party administrators and medical providers can purchase the fee schedule book with disk for \$120 or the disk for \$60.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

Medical providers will receive fair, current, and reasonable fees for services provided to injured workers. Injured workers will be treated by qualified medical providers.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: The contract for reviewing and updating the physicians fee schedule is \$66,935.00. The cost to print is \$1,749.

(b) On a continuing basis: No continuing costs.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The Department of Workers' Claims normal budget is the source of funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No increase in fees or funding to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

This administrative regulation sets forth a current schedule of fees to be paid to physicians. Fees have been updated to be fair, current, and reasonable for similar treatment in the same community as paid by health insurers.

(9) TIERING: Is tiering applied?

Tiering is not applied, because the updated fee schedule applies to all parties equally.

FISCAL NOTE

803 KAR 25:089

Contact Person: B. Dale Hamblin, Jr.

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(1) What units, parts, or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

The Department of Workers' Claims and all parts of government with employees.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 342.035.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

As an employer, there may be some increased costs for medical services. It is impossible to estimate not knowing what medical services will be needed by injured workers.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

No revenue is generated.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

None.

(c) How much will it cost to administer this program for the first year?

There are no new administrative costs.

(d) How much will it cost to administer this program for subsequent years?

There are no new administrative costs.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

There is no fiscal impact on state or local government because the fee schedule governs the cost of medical services between medical treatment providers and payment obligors.

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

Medical payment obligors can be assured reimbursement payments are fair, current, and reasonable for services provided to injured workers. Injured workers will be treated by qualified medical providers. Without knowing what the cost for medical treatment would have been without the fee schedule it is impossible to estimate the savings.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

Unknown.

(c) How much will it cost the regulated entities for the first year?

Insurance carriers, self-insured groups, self-insured employers or third party administrators and medical providers can purchase the fee schedule book with disk for \$120 or the disk for \$60.

(d) How much will it cost the regulated entities for subsequent years?

Nothing the second year. The fee schedule is updated every two (2) years; it is unknown what the cost will be in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-): Unknown.

Expenditures (+/-): \$120 or \$60 in the first year.

Other Explanation:

Insurance carriers, self-insured groups, self-insured employers, third party administrators, and medical providers must purchase the new schedule of fees to accurately bill and pay for medical services. Other parties to workers' compensation claims are only indirectly impacted by the new fee schedule.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below. *"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)]*

The amendment to this administrative regulation will not have a major economic impact.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

803 KAR 25:089

WORKERS' COMPENSATION MEDICAL FEE SCHEDULE FOR PHYSICIANS

1. 2022 Kentucky Workers' Compensation Schedule of Fees for Physicians

Pursuant to KRS 342.035 (1), the commissioner of the Department of Workers' Claims is to promulgate administrative regulations to keep fees and charges and reimbursements for medical services limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. The commissioner is required pursuant to KRS 342.035(4) to promulgate administrative regulations establishing the workers' compensation medical fee schedule.

The CPT codes used in the Fee Schedule were updated to 2022 standards. The Fee Schedule is based on Fair Health Commercial Database Values at the 45th percentile with no fees in the 2022 version being reduced from those in the 2020 Fee Schedule and there was a 7.5% cap on any increase in rates over those in the 2020 Fee Schedule for the same procedure code. Fair Health benchmarks are based on actual charge data as reported on claims, which are collected and aggregated from over 60 national and regional insurers across the country. After the data is run through a vigorous validation process, charges are organized by procedure code and geographic areas. The charges are arrayed from lowest to highest and assigned a percentile. In a case where the frequency of collected data for a particular procedure code/geographic area combination is not sufficient to produce a benchmark based on the actual data for that code, a benchmark is derived for that code using a relative value and conversion factor methodology applied to charges for codes in a related procedure code group. When necessary, usual and customary rates may also be obtained from a nationally recognized source that accounts for the rural areas of Kentucky.

The conversion factor for Anesthesia is \$78.53. Increases to transportation fees are based upon current CMS values. Ground transportation is assigned 145% of Medicare and air transportation is assigned 210% of Medicare.

Codes were added to this fee schedule at the request of the stakeholders for ease of billing and reimbursement purposes. There are 8,594 codes in the 2022 Kentucky Workers' Compensation Schedule of Fees for Physicians.

Changes in the 2022 Fee Schedule reflect a level of reimbursement for all services listed in the fee schedule in order to comply with the requirements of KRS 342.035. Fees are to be fair, current, and reasonable, taking into consideration treatment paid for by general health insurers. Reimbursement amounts were increased to meet commercial levels. There are currently ten service areas in the fee schedule. The form is 315 pages. These are the significant changes to the fee schedule completed in 2022.

Documentary Evidence of Emergency

Pursuant to 13A.190(1)(a)3, this emergency administrative regulation is necessary to comply with KRS 342.035(5). The document is attached.

Additionally, without this emergency administrative regulation there is an imminent threat to the health, safety, and welfare of Kentucky's employees. Specifically, without this emergency administrative regulation, there is no assurance that fees, charges, and reimbursements under KRS 342.020 and this section shall be fair, current, and reasonable and limited to charges that are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers.

342.035 Administrative regulations -- Medical fee schedule -- Review and updating -- Action for excess fees -- Effect of failure to submit to or follow surgical or medical treatment or advice -- Certification to commissioner -- Audit -- Utilization review -- Report -- Copies of records -- Practice parameters and evidence-based guidelines -- Formulary -- Medical fee schedule for registered nurse first assistants.

- (1) Periodically, the commissioner shall promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges, and reimbursements under KRS 342.020 and this section shall be fair, current, and reasonable and shall be limited to such charges as are fair, current, and reasonable for similar treatment of injured persons in the same community for like services, where treatment is paid for by general health insurers. In determining what fees are reasonable, the commissioner may also consider the increased security of payment afforded by this chapter. On or before November 1, 1994, and on July 1 every two (2) years thereafter, the schedule of fees contained in administrative regulations promulgated pursuant to this section shall be reviewed and updated, if appropriate. Within ten (10) days of April 4, 1994, the commissioner shall execute a contract with an appropriately qualified consultant pursuant to which each of the following elements within the workers' compensation system are evaluated; the methods of health care delivery; quality assurance and utilization mechanisms; type, frequency, and intensity of services; risk management programs; and the schedule of fees contained in administrative regulation. The consultant shall present recommendations based on its review to the commissioner not later than sixty (60) days following execution of the contract. The commissioner shall consider these recommendations and, not later than thirty (30) days after their receipt, promulgate a regulation which shall be effective on an emergency basis, to effect a twenty-five percent (25%) reduction in the total medical costs within the program.
- (2) No provider of medical services or treatment required by this chapter, its agent, servant, employee, assignee, employer, or independent contractor acting on behalf of any medical provider, shall knowingly collect, attempt to collect, coerce, or attempt to coerce, directly or indirectly, the payment of any charge, for services covered by a workers' compensation insurance plan for the treatment of a work-related injury or occupational disease, in excess of that provided by a schedule of fees, or cause the credit of any employee to be impaired by reason of the employee's failure or refusal to pay the excess charge. In addition to the penalty imposed in KRS 342.990 for violations of this subsection, any individual who sustains damages by any act in violation of the provisions of this subsection shall have a civil cause of action in Circuit Court to enjoin further violations and to recover the actual damages sustained by the individual, together with the costs of the lawsuit, including a reasonable attorney's fee.
- (3) Where these requirements are furnished by a public hospital or other institution, payment thereof shall be made to the proper authorities conducting it. No compensation shall be payable for the death or disability of an employee if his or her death is caused, or if and insofar as his disability is aggravated, caused, or

continued, by an unreasonable failure to submit to or follow any competent surgical treatment or medical aid or advice.

(4) The commissioner shall, by December 1, 1994, promulgate administrative regulations to adopt a schedule of fees for the purpose of regulating charges by medical providers and other health care professionals for testimony presented and medical reports furnished in the litigation of a claim by an injured employee against the employer. The workers' compensation medical fee schedule for physicians, 803 KAR 25:089, having an effective date of February 9, 1995, shall remain in effect until July 1, 1996, or until the effective date of any amendments promulgated by the commissioner, whichever occurs first, it being determined that this administrative regulation is within the statutory grant of authority, meets legislative intent, and is not in conflict with the provisions of this chapter. The medical fee schedule and amendments shall be fair, current, and reasonable and otherwise comply with this section.

(5) (a) To ensure compliance with subsections (1) and (4) of this section, the commissioner shall promulgate administrative regulations by December 31, 1994, which require each insurance carrier, self-insured group, and self-insured employer to certify to the commissioner the program or plan it has adopted to ensure compliance.

(b) In addition, the commissioner shall periodically have an independent audit conducted by a qualified independent person, firm, company, or other entity hired by the commissioner, in accordance with the personal service contract provisions contained in KRS 45A.690 to 45A.725, to ensure that the requirements of subsection (1) of this section are being met. The independent person, firm, company, or other entity selected by the commissioner to conduct the audit shall protect the confidentiality of any information it receives during the audit, shall divulge information received during the audit only to the commissioner, and shall use the information for no other purpose than the audit required by this paragraph.

(c) The commissioner shall promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, self-insured group, or self-insured employer pursuant to this chapter. Utilization review required under administrative regulations may be waived if the insurance carrier, self-insured group, or self-insured employer agrees that the recommended medical treatment is medically necessary and appropriate or if the injured employee elects not to proceed with the recommended medical treatment.

(d) Periodically, or upon request, the commissioner shall report to the Interim Joint Committee on Economic Development and Workforce Investment of the Legislative Research Commission or to the corresponding standing committees of the General Assembly, as appropriate, the degree of compliance or lack of compliance with the provisions of this section and make recommendations thereon.

(e) The cost of implementing and carrying out the requirements of this subsection

shall be paid from funds collected pursuant to KRS 342.122.

- (6) The commissioner may promulgate administrative regulations incorporating managed care or other concepts intended to reduce costs or to speed the delivery or payment of medical services to employees receiving medical and related benefits under this chapter.
- (7) For purposes of this chapter, any medical provider shall charge only its customary fee for photocopying requested documents. However, in no event shall a photocopying fee of a medical provider or photocopying service exceed fifty cents (\$0.50) per page. However, a medical provider shall not charge a fee when the initial copy of medical records is provided to the injured worker or his or her attorney in response to a written request pursuant to KRS 422.317. In addition, there shall be no charge for reviewing any records of a medical provider, during regular business hours, by any party who is authorized to review the records and who requests a review pursuant to this chapter.
- (8)
 - (a) The commissioner shall develop or adopt practice parameters or evidence-based treatment guidelines for medical treatment for use by medical providers under this chapter, including but not limited to chronic pain management treatment and opioid use, and promulgate administrative regulations in order to implement the developed or adopted practice parameters or evidenced-based treatment guidelines on or before December 31, 2019. The commissioner may adopt any parameters for medical treatment as developed and updated by the federal Agency for Health Care Policy Research, or the commissioner may adopt other parameters for medical treatment which are developed by qualified bodies, as determined by the commissioner, with periodic updating based on data collected during the application of the parameters.
 - (b) The commissioner shall develop or adopt a pharmaceutical formulary for medications prescribed for the cure of and relief from the effects of a work injury or occupational disease and promulgate administrative regulations to implement the developed or adopted pharmaceutical formulary on or before December 31, 2018.
 - (c) Any provider of medical services under this chapter who has followed the practice parameters or treatment guidelines or formularies developed or adopted and implemented pursuant to this subsection shall be presumed to have met the appropriate legal standard of care in medical malpractice cases regardless of any unanticipated complication that may thereafter develop or be discovered.
- (9)
 - (a) Notwithstanding any other provision of law to the contrary, the medical fee schedule adopted under subsection (4) of this section shall require all worker's compensation insurance carriers, worker's compensation self-insured groups, and worker's compensation self-insured employers to provide coverage and payment for surgical first assisting services to registered nurse first assistants as defined in KRS 216B.015.
 - (b) The provisions of this subsection apply only if reimbursement for an assisting

physician would be covered and a registered nurse first assistant who performed the services is used as a substitute for the assisting physician. The reimbursement shall be made directly to the registered nurse first assistant if the claim is submitted by a registered nurse first assistant who is not an employee of the hospital or the surgeon performing the services.

Effective: June 29, 2021

History: Amended 2021 Ky. Acts ch. 124, sec. 5, effective June 29, 2021. -- Amended 2018 Ky. Acts ch. 40, sec. 2, effective July 14, 2018. -- Amended 2010 Ky. Acts ch. 24, sec. 1782, effective July 15, 2010. -- Amended 2007 Ky. Acts ch. 121, sec. 1, effective June 26, 2007. -- Amended 2005 Ky. Acts ch. 7, sec. 35, effective March 1, 2005. -- Amended 1996 Ky. Acts ch. 332, sec. 2, effective July 15, 1996; and ch. 355, sec. 5, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 181, Part 5, sec. 19, effective April 4, 1994. -- Amended 1987 (1st Extra. Sess.) Ky. Acts ch. 1, sec. 6, effective January 4, 1988. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 4886.

Legislative Research Commission Note (7/14/2018). This statute was amended in Section 2 of 2018 Ky. Acts ch. 40. Subsection (2) of Section 20 of that Act reads, "Sections 2, 4, and 5 and subsection (7) of Section 13 of this Act are remedial and shall apply to all claims irrespective of the date of injury or last exposure, provided that, as applied to any fully and finally adjudicated claim, the amount of indemnity ordered or awarded shall not be reduced and the duration of medical benefits shall not be limited in any way."

Legislative Research Commission Note (7/15/96). This section was amended by 1996 Ky. Acts chs. 332 and 355 which are in conflict. Under KRS 446.250, Acts ch. 332, which was last enacted by the General Assembly, prevails.