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Emily B Caudill
REGULATIONS COMPILER

**STATEMENT OF EMERGENCY
803 KAR 25:089E**

(1) The schedule of fees made effective by this administrative regulation governs the amount of reimbursement a medical provider may seek from a payment obligor for medical treatment provided to an employee who contracted an occupational disease or was injured in the course of employment.

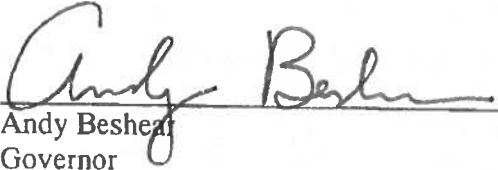
(2) The Department of Workers' Claims must amend this administrative regulation by emergency to comply with KRS 342.035(1) which requires that the schedule of fees be reviewed and updated, if appropriate, every two (2) years on July 1. Medical costs in the workers' compensation system shall be fair, current, and reasonable for similar treatment in the same community where paid for by general insurers. The medical fee schedule meets this statutory guideline. By complying with that statutory guideline, the medical fee schedule update insures injured employees receive quality and appropriate health care and medical providers are appropriately compensated.

KRS 342.035(1) directs the Commissioner to contract with a consultant to evaluate the schedule of fees. The Commissioner is to consider recommendations arising from the evaluation and promulgate a regulation, effective on an emergency basis, to effect changes to the fee schedule. This emergency regulation complies with the statutory mandate to have the schedule of fees in place by July 1 and protects human health and public health, safety, and welfare by updating medical costs.

(3) The current administrative regulation incorporates the 2022 fee schedule. After review, it was necessary to update and revise the 2022 fee schedule to address current medical costs. Because KRS 342.035(1) requires the medical fee schedule to be updated in order to remain fair, current, and reasonable, the current administrative regulation must be amended to incorporate the 2024 fee schedule.

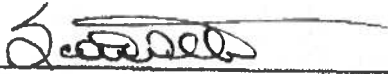
(4) The schedule of fees provided in this emergency administrative regulation cannot be provided through an ordinary administrative regulation because the ordinary rulemaking process cannot be completed in time to meet the statutory requirements.

(5) This emergency administrative regulation will be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.



Andy Beshear
Governor

5-9-24
Date



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

5/08/2024
Date

1 EDUCATION AND LABOR CABINET

2 Department of Workers' Claims

3 (Emergency Amendment)

4 803 KAR 25:089E. 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 2024 Kentucky Workers' Compensation Schedule of
18 Fees for Physicians [~~2022 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, HCPCS, or Transportation 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 2024 [2022] 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 seven (7) [~~six~~
21 ~~(6)~~] of the General Instructions of the medical fee schedule unless more specific Ground Rules are

1 applicable to that service or item, in which case the fee shall be calculated in accordance with the
2 applicable 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) "2024 Kentucky Workers' Compensation Schedule of Fees for Physicians", July 1, 2024
12 Edition [~~2022 Kentucky Workers' Compensation Schedule of Fees for Physicians, July 1, 2022~~
13 ~~Edition~~], is incorporated by reference.

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

17 (3) The fee schedule may be obtained directly from FAIR Health, Inc., at
18 <https://orders.fairhealth.org/>. A link to FAIR Health, Inc., may be found on the Department of
19 Workers' Claims website at [Services.aspx](https://elc.ky.gov/Workers-Compensation/Pages/Medical-</u>
20 <u><a href=). [~~This material may also be obtained from or through~~
21 ~~[https://labor.ky.gov/comp/Pages/Medical-Services.aspx#Physician Fee Schedule.](https://labor.ky.gov/comp/Pages/Medical-Services.aspx#Physician-Fee-Schedule)~~]

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
Education and Labor Cabinet

5/09/2024

Date

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel
Workers' Claims Legal Division
Mayo-Underwood Building, 3rd Floor
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Frankfort, Kentucky 40601
Telephone Number: (502) 782-4404
Fax Number: (502) 564-0682
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PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on June 27, 2024, 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 June 30, 2024. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: B. Dale Hamblin, Jr.
Assistant General Counsel
Workers' Claims Legal Division
Mayo-Underwood Building, 3rd Floor
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Frankfort, Kentucky 40601
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Dale.Hamblin@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

803 KAR 25.089E

Contact Person: B. Dale Hamblin, Jr.
Phone: (502) 782-4404
Email: dale.hamblin@ky.gov

(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 employees 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 employees pursuant to KRS Chapter 342, injured employees, insurance carriers, self-insurance groups, self-insured employers and 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 for \$150, a portable document format ("PDF") version for \$75 for the first user and \$60 for each user thereafter, or an electronic version for \$175 for the first user and \$60 for each user thereafter.

(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 employees. Injured employees 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 \$85,010.

(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 IMPACT STATEMENT

803 KAR 25::089E

Contact Person: B. Dale Hamblin, Jr.

Phone: (502) 782-4404

Email: dale.hamblin@ky.gov

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

KRS 342.035.

(2) Identify the promulgating agency and any other affected state units, parts, or divisions: The promulgating agency is the Department of Workers' Claims within the Education and Labor Cabinet. Every state unit, part, or division, with one employee subject to KRS Chapter 342, is affected; specifically, this administrative regulation governs the allowable reimbursements a medical provider may charge, and a payment obligor pay, for physician services provided under KRS Chapter 342.

(a) Estimate the following for the first year:

Expenditures: The contract for reviewing and updating the physicians fee schedule is \$85,010.00.

Revenues: None

Cost Savings: While there is no direct cost savings, ensuring that charges and fees 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, helps ensure injured employees receive treatment by qualified medical providers while maintaining premium costs.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

There will be no continuing expenditures related to the 2024 Workers' Compensation Medical Fee Schedule for Physicians; however, the Department is statutorily required to reevaluate the fee schedule every two years and additional expenditures will be required to perform these subsequent evaluations. While there is no direct cost savings, ensuring that charges and fees 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, helps ensure injured employees receive treatment by qualified medical providers while maintaining premium costs. This administrative regulation does not generate revenue.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts): All local entities with one employee subject to KRS Chapter 342, is affected; specifically, this administrative regulation governs the allowable reimbursements a medical provider may charge, and a payment obligor pay, for physician services provided under KRS Chapter 342.

(a) Estimate the following for the first year:

Expenditures: The fee schedule book may be purchased for \$150, a portable document format (“PDF”) version for \$75 for the first user and \$60 for each user thereafter, or an electronic version for \$175 for the first user and \$60 for each user thereafter. There may be increased medical costs for self-insured employers; however, without knowing what medical services will be required, it is not possible to estimate any increase. Employers that have obtained a workers’ compensation insurance policy will not experience expenditures outside of insurance premiums.

Revenues: None

Cost Savings: While there is no direct cost savings, ensuring that charges and fees 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, helps ensure injured employees receive treatment by qualified medical providers while maintaining premium costs.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

There will be no change in expenditures, revenues, or cost savings in the second year; however, the Department is statutorily required to reevaluate the fee schedule every two years and additional expenditures may be required following subsequent evaluations.

(4) Identify additional regulated entities not listed in questions (2) or (3): Insurance carriers, self-insured groups, self-insured employers, third-party administrators, and medical providers.

(a) Estimate the following for the first year:

Expenditures: The fee schedule book may be purchased for \$150, a portable document format (“PDF”) version for \$75 for the first user and \$60 for each user thereafter, or an electronic version for \$175 for the first user and \$60 for each user thereafter.

Revenues: None

Cost Savings: While there is no direct cost savings, ensuring that charges and fees 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, helps ensure injured employees receive treatment by qualified medical providers while maintaining premium costs.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

There will be no change in expenditures, revenues, or cost savings in the second year; however, the Department is statutorily required to reevaluate the fee schedule every two years and additional expenditures may be required following subsequent evaluations.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation: There is no direct fiscal impact on state or local government because the fee schedule governs the cost of medical services between medical treatment providers and payment obligors. Where an employer is self-insured and directly paying workers’ compensation benefits, there may be some increased costs for medical services; however,

without knowing what medical services will be required, it is not possible to estimate the fiscal impact. Employers that have obtained a workers' compensation insurance policy will not experience expenditures outside of insurance premiums.

(b) Methodology and resources used to determine the fiscal impact: This administrative regulation governs the charges and reimbursement for medical treatment provided to injured employees. The CPT codes used in the Fee Schedule were updated to 2024 standards. The Fee Schedule is based on Fair Health Commercial Database Values at the 45th percentile with no fees in the 2024 version being reduced from those in the 2022 Fee Schedule and there was a 7.5% cap on any increase in rates over those in the 2022 Fee Schedule for the same procedure code, with the exception of home health, which is designated By Report, and dental codes, which have no cap. Radiology rates were retained at the 2022 Fee Schedule rates. 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 9,137 codes in the 2024 Kentucky Workers' Compensation Schedule of Fees for Physicians.

Employers that have obtained a workers' compensation insurance policy will not experience expenditures outside of insurance premiums.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

It is not anticipated that this administrative regulation will create an overall negative or adverse major economic impact to the entities identified in questions (2) - (4).

(b) The methodology and resources used to reach this conclusion: The National Council on Compensation Insurance (NCCI) has reported a loss cost decrease in the voluntary market and a favorable loss experience for Kentucky over the last three years. This NCCI report reflects the result of prior fee schedules which were created using the same methodology used to establish in the 2024 Workers' Compensation Medical Fee Schedule for Physicians.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE

803 KAR 25:089E

WORKERS' COMPENSATION MEDICAL FEE SCHEDULE FOR PHYSICIANS

1. 2024 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 2024 standards. The Fee Schedule is based on Fair Health Commercial Database Values at the 45th percentile with no fees in the 2024 version being reduced from those in the 2022 Fee Schedule and there was a 7.5% cap on any increase in rates over those in the 2022 Fee Schedule for the same procedure code, with the exception of home health and dental codes, which have no cap. Radiology rates were retained at the 2022 Fee Schedule rates. 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 9,137 codes in the 2024 Kentucky Workers' Compensation Schedule of Fees for Physicians.

Changes in the 2024 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 321 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.

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MEMORANDUM

TO: B. Dale Hamblin, Jr., Asst. General Counsel, Workers' Claims Legal Division, Education and Labor Cabinet

FROM: Emily Caudill, Regulations Compiler

RE: Acknowledgement of Proposed Ordinary & Emergency Regulation – 803 KAR 0025:089 & E.

DATE: May 14 2024

A copy of the ordinary and emergency administrative regulations listed above are enclosed for your files. Pursuant to KRS 13A.190, the emergency administrative regulation became effective upon filing with our office on **MAY 15, 2024** and, unless an extension on the accompanying ordinary is requested, will expire either in 270 days on **February 9, 2025**, or when replaced by its corresponding ordinary regulation, whichever occurs first. Please note - Expiration dates may be impacted by legislation or other statutes.

Emergency regulation

The emergency regulation is tentatively scheduled for review by the Administrative Regulation Review Subcommittee at its **July 2024** meeting. We will notify you of the date and time of this meeting once it has been scheduled. Pursuant to KRS 13A.280, *if* comments are received during the public comment period, a Statement of Consideration for this emergency regulation is due **by noon on July 15, 2024**.

Ordinary regulation

The ordinary regulation is tentatively scheduled for review by the Administrative Regulation Review Subcommittee at its **August 2024** meeting. We will notify you of the date and time of this meeting once it has been scheduled. Pursuant to KRS 13A.280, *if* comments are received during the public comment period, a Statement of Consideration for this ordinary regulation or a one-month extension request is due **by noon on August 15, 2024**.

Please reference KRS 13A.270 and 13A.280 for other requirements relating to the public hearing and public comment period and Statements of Consideration.

If you have questions, please contact us at RegsCompiler@LRC.ky.gov or (502) 564-8100.

Enclosures