

LABOR CABINET
Department of Workers' Claims
(Amendment)

803 KAR 25:092. Workers' compensation pharmacy fee schedule.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.020, 342.035, 342.260, 342.270, 342.735

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035 requires the commissioner [~~Workers' Compensation Board~~] to periodically promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges, and reimbursements under KRS 342.020 shall be fair, current, reasonable and limited to that paid for similar treatment of other patients in the same community. The increased security of payment afforded by the Workers' Compensation Act may be taken into consideration in determining what fees are reasonable. KRS 342.735 requires the commissioner [~~board~~] to establish administrative regulations to expedite the payment of medical expense benefits. The function of this administrative regulation is to regulate charges for pharmaceuticals provided pursuant to KRS 342.020, and to expedite the payment of this class of medical expense benefits.

Section 1. Definitions. (1) "Brand name" has the meaning set forth in KRS 217.814(1).

(2) "Compound" is defined in 803 KAR 25:270, Section 1(3).

(3)[(2)] "Equivalent drug product" has the meaning set forth in KRS 217.814(5).

(4)[(3)] "Generic name" has the meaning set forth in KRS 217.814(6)[(2)].

(5)[(4)] "Hospital" has the meaning set forth in 803 KAR 25:091, Section 1(1).

(6) "Medical payment obligor" is defined in 803 KAR 25:260(10).

(7) "Medical provider" is defined in 803 KAR 25:260(11).]

(5) "Practitioner" means any person licensed under the professional laws of Kentucky or any other state to prescribe and administer medicine and drugs.

(6) "Wholesale price" means the average wholesale price charged by wholesalers at a given time.]

(8) "NDC number" means the unique 10-digit, 3-segment, number assigned to a drug product and maintained in the NDC Directory published by the U.S. Food and Drug Administration.

(9) "Pharmacist" is defined in 803 KAR 25:260 (15).

(10) "Pharmacy benefit manager" means an entity licensed pursuant to KRS 304.9-053 that, on behalf of a medical payment obligor:

(a) Contracts directly or indirectly with pharmacies to provide prescription drugs to individuals;

(b) Administers a prescription drug benefit;

(c) Processes or pays pharmacy claims;

(d) Makes or assists in making prior authorization determinations on prescription drugs; or

(e) Establishes a pharmacy network.

(11) "Prescription drug" is defined in 803 KAR 25:270 (18).

(12) "Repackage" means the act of taking a finished drug product from the container in which it was distributed by the original manufacturer and placing it into a different container without further manipulation of the drug.

Section 2. Payment for Pharmaceuticals. (1) Reimbursement shall be determined on the date of service. The maximum allowable reimbursement for prescription drugs shall be a dispensing fee of five (5) dollars and the lesser of:

(a) The provider's usual and customary charge for the drug;

(b) The amount the medical payment obligor has agreed to pay under its contract with a pharmacy benefit manager or other pharmacy service provider, in which case, upon request, the medical payment obligor shall certify or otherwise disclose the applicable reimbursement provision contained in the contract;

(c) If it is a generic drug, sixty (60) percent of the average wholesale price of the lowest priced equivalent drug product; or

(d) If it is a brand name drug, eighty-five (85) percent of average wholesale price.

(2) Average wholesale price shall be determined from the publication in effect on the date of service. The publication to be used is:

(a) Medi-Span, produced by Wolters-Kluwer;

(b) If the drug is not included in Medi-Span, then the Red Book, produced by Micromedex, shall be used.

(3) The usual and customary charge of the provider for the prescription drug must be included on each statement for services.

(4) A generic drug must be substituted for a brand name drug unless there is no equivalent drug product available or the prescribing medical provider indicates that substitutions are prohibited by including the words "Dispense as Written" or "No Substitution Allowed" along with a statement that the brand name drug is medically necessary.

(5) If a claimant chooses a brand name drug when a generic drug is available and allowed by the medical provider, the claimant shall pay the difference in price between the brand name and the generic drug as determined pursuant to subsection (1) of this section.

(6) A dispensing provider that is not a pharmacist shall be reimbursed the same as a pharmacist, but shall not receive a dispensing fee;

(7) Repackaged or Compounded Drugs.

(a) Pharmaceutical bills submitted for repackaged or compounded drugs must include the NDC Number of the original manufacturer registered with the U.S. Food and Drug Administration.

(b) Reimbursement shall be determined using the original manufacturer's NDC number for the product or ingredient, calculated on a per unit basis, as of the date of service. The maximum reimbursement limitations provided in subsection (1) of this section apply to each product or ingredient contained in the repackaged or compounded drug.

(c) An NDC number obtained for a repackaged or compounded drug shall not be considered the original manufacturer's NDC Number.

(d) If the original manufacturer's NDC Number is not provided on the bill, then the reimbursement shall be based on the average wholesale price of the lowest priced equivalent drug product, calculated on a per unit basis.

(e) A single dispensing fee may be reimbursed for a repackaged or compounded drug when applicable.[]

~~(1) An employee entitled to receive pharmaceuticals under KRS 342.020 may request and require that a brand name drug be used in treating the employee. Unless the prescribing practitioner has indicated that an equivalent drug product should not be substituted, an employee who requests a brand name drug shall be responsible for payment of the difference between the equivalent drug product wholesale price of the lowest priced therapeutically equivalent drug the dispensing pharmacist has in stock and the brand name drug wholesale price at the time of dispensing.~~

~~(2) Any duly licensed pharmacist dispensing pharmaceuticals pursuant to KRS Chapter 342 shall be entitled to be reimbursed in the amount of the equivalent drug product wholesale price of the lowest priced therapeutically equivalent drug the dispensing pharmacist has in stock, at~~

~~the time of dispensing, plus a five (5) dollar dispensing fee plus any applicable federal or state tax or assessment.]~~

~~(8)[(3)] If an employee's prescription is marked "Do Not Substitute," the employee shall receive a brand name drug.[the dispensing pharmacist shall be entitled to reimbursement in an amount equal to the brand name drug wholesale price, at the time of dispensing, plus a five (5) dollar dispensing fee plus any applicable federal or state tax or assessment.]~~

Section 3. Disputes; Applicability. (1) Any dispute arising under this administrative regulation shall be resolved pursuant to 803 KAR 25:012.

(2) This administrative regulation shall apply to prescriptions dispensed to a workers' compensation patient by a hospital pharmacy if the patient is not otherwise being treated or obtaining medical care from the hospital.

(3) This administrative regulation shall not apply to prescriptions dispensed by a hospital pharmacy, of a hospital regulated pursuant to 803 KAR 25:091, to a workers' compensation patient receiving medical treatment or care from the hospital on an inpatient or outpatient basis.

(4) Any insurance carrier, self-insured employer or group self-insured employer may enter into an agreement ~~[with any pharmacy]~~ to provide reimbursement at a lower amount than that required in this administrative regulation.

Section 4. Balance Billing. No pharmacy filling a prescription covered under KRS 342.020 shall knowingly collect, attempt to collect, coerce, or attempt to coerce, directly or indirectly, the payment by a workers' compensation patient of any charge in excess of that permitted under this administrative regulation, except as provided in Section 2 ~~(2)[(4)]~~ of this administrative regulation. This prohibition is applicable to prescriptions filled pursuant to KRS 342.020 and any prescription which is denied or disputed by the medical payment obligor may be billed directly to the party presenting the prescription for filling.

ROBERT L. SWISHER, Commissioner

APPROVED BY AGENCY: October 28, 2020

FILED WITH LRC: October 29, 2020 at 8:00 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on January 21, 2021, at 10:00 a.m. (EDT) by video teleconference pursuant to KRS 61.800, et seq. In keeping with KRS 13A.270, individuals interested in attending or being heard at this hearing shall notify this agency in writing of their intent to attend no later than five (5) workdays prior to the hearing along with contact information. Upon notification of intent to attend, individuals will be provided information necessary to attend the video teleconference. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. 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 January 31, 2021. 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, Department of Workers' Claims, Mayo-Underwood Building, 3rd Floor, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 782-4404, fax (502) 564-0681, email Dale.Hamblin@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does: The function of this administrative regulation is to regulate charges for pharmaceuticals provided pursuant to KRS 342.020, and to expedite the payment of this class of medical expense benefits.

(b) The necessity of this administrative regulation: Amendment to this administrative regulation is necessary to ensure reimbursement for pharmaceuticals is fair, current, reasonable and limited to that paid for similar treatment of other patients in the same community.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.035 requires the commissioner to periodically promulgate administrative regulations to adopt a schedule of fees for the purpose of ensuring that all fees, charges, and reimbursements under KRS 342.020 shall be fair, current, reasonable and limited to that paid for similar treatment of other patients in the same community. The increased security of payment afforded by the Workers' Compensation Act may be taken into consideration in determining what fees are reasonable. KRS 342.735 requires the commissioner to establish administrative regulations to expedite the payment of medical expense benefits. This administrative regulation does so with respect to pharmaceuticals.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes the reimbursement for pharmaceuticals.

(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 amendment establishes the method by which reimbursement for pharmaceuticals is calculated.

(b) The necessity of the amendment to this administrative regulation: The current language created confusion; the amendment is to clarify the confusion.

(c) How the amendment conforms to the content of the authorizing statutes: The amendment updates language to comply with the current methodology for reporting required claims information.

(d) How the amendment will assist in the effective administration of the statutes: This administrative regulation provides guidance to those paying and receiving reimbursement for pharmaceuticals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Insurance companies writing workers' compensation policies in the Commonwealth, group of self-insurers, employers carrying their own risk, and those who dispense pharmaceuticals under the provisions of KRS Chapter 342.

(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: The entities will calculate reimbursement using the method in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional cost to perform the calculation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Reimbursement will be fair, current, reasonable and limited to that paid for similar treatment of other patients in the same community.

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

(a) Initially: None

(b) On a continuing basis: There should be no additional cost.

(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 is needed to implement this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: This administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied; the administrative regulation applies to all parties equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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 agencies or departments 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 342.020, 342.035, 342.260, 342.270, 342.735.

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. Without knowing the compensation to which employees of those agencies may be entitled under KRS Chapter 342, it is impossible to estimate the effect on expenditures; however, any change from current expenditures should be minimal.

(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 will be 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? No revenue will be generated.

(c) How much will it cost to administer this program for the first year? None

(d) How much will it cost to administer this program for subsequent years? It does not appear there will be additional 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 should be no increase or decrease in the cost to administer this amendment.