

LABOR CABINET
Department of Workers' Claims
(Emergency Amended After Comments)

803 KAR 25:195E. Utilization review, appeal of utilization review decisions, and medical bill audit.

RELATES TO: KRS Chapter 342

STATUTORY AUTHORITY: KRS 342.035(5), (6), 342.260

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260 provides that the Commissioner of the Department of Workers' Claims shall promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims, and the commissioner may promulgate administrative regulations not inconsistent with the provisions of KRS Chapter 342. KRS 342.035(5) requires the commissioner to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, group self-insurer or self-insured employer pursuant to KRS Chapter 342. KRS 342.035(5) provides the commissioner of the Department of Workers' Claims shall promulgate administrative regulations that require each insurance carrier, group self-insurer and individual self-insured employer to certify to the commissioner the program it has adopted to insure compliance with the medical fee schedule provisions of KRS 342.035(1) and (4). KRS 342.035(8) requires the commissioner to adopt or develop a pharmaceutical formulary and treatment guidelines; utilization review assists in the proper implementation of the pharmaceutical formulary and treatment guidelines. This administrative regulation ~~ensures~~~~insures~~ that insurance carriers, group self-insurers, and individual self-insured employers implement a utilization review and medical bill audit program.

Section 1. Definitions.

- (1) "Business day" means any day except Saturday, Sunday or any day which is a legal holiday.
- (2) "Calendar day" means all days in a month, including Saturday, Sunday and any day which is a legal holiday.
- (3) "Carrier" is defined by KRS 342.0011(6).
- (4) "Commissioner" is defined by KRS 342.0011(9).
- (5) "Denial" means a determination by the utilization reviewer that the medical treatment, proposed treatment, service, or medication under review is not medically necessary or appropriate and, therefore, payment is not recommended.
- (6) "Department" is defined by KRS 342.0011(8).
- (7) "Medical bill audit" means the review of medical bills for services which have been provided to assure compliance with adopted fee schedules.
- (8) "Medically necessary" or "medical necessity" means healthcare services, including medications, that a medical provider, exercising prudent clinical judgment, would provide to a patient for the purpose of preventing, evaluating, diagnosing or treating, an illness, injury, disease or its symptoms, and that are:
 - (a) In accordance with generally accepted standards of medical practice;
 - (b) Clinically appropriate, in terms of type, frequency, extent site and duration; and
 - (c) Considered effective for the patient's illness, injury, or disease.
- (9) "Medical payment obligor" means any self-insured employer, carrier, insurance carrier, self-insurer, or any person acting on behalf of or as an agent of the self-insured employer, carrier, insurance carrier, or self-insurer.
- (10) "Medical provider" means physicians and surgeons, psychologists, optometrists, dentists, podiatrists, osteopathic and chiropractic practitioners, physician assistants, and

advanced practice registered nurses, acting within the scope of their license

(11) "Physician" is defined by KRS 342.0011(32).

(12) "Preauthorization" means a process whereby payment for a medical service or course of treatment is assured in advance by a carrier.

(13) **"Same medical specialty" means a branch of medical practice focused regularly and routinely on a defined group of patients, diseases, skills, body part, or type of injury and performed by a physician with the same or similar qualifications.**

~~(14) {(13)}~~ "Utilization review" means a review of the medical necessity and appropriateness of medical care and services for purposes of recommending payments for a compensable injury or disease.

~~(15) {(14)}~~ "Utilization review and medical bill audit plan" means the written plan submitted to the commissioner by each medical payment obligor describing the procedures governing utilization review and medical bill audit activities.

~~(16) {(15)}~~ "Vendor" means a person or entity which implements a utilization review and medical bill audit program for purposes of offering those services to carriers.

Section 2. Utilization Review and Medical Bill Audit Program.

(1) The utilization review program shall assure that:

(a) A utilization reviewer is appropriately qualified;

(b) Treatment rendered to an injured worker is medically necessary and appropriate; and

(c) Necessary medical services are not withheld or unreasonably delayed.

(2) The medical bill audit program shall assure that:

(a) A statement or payment for medical goods and services and charges for a deposition, report, or photocopy comply with KRS Chapter 342 and 803 KAR Chapter 25;

(b) A medical bill auditor is appropriately qualified; and

(c) A statement for medical services is not disputed without reasonable grounds.

Section 3. Utilization Review and Medical Bill Audit Plan Approval.

(1) A medical payment obligor shall fully implement and maintain a utilization review and medical bill audit program.

(2) A medical payment obligor shall provide to the commissioner a written plan describing the utilization review and medical bill audit program. The commissioner shall approve each utilization review and medical bill audit plan which complies with the requirements of this administrative regulation and KRS Chapter 342.

(3) A vendor shall submit to the commissioner for approval a written plan describing the utilization review and medical bill audit program. Upon approval, the vendor shall receive written notice from the commissioner.

(4) A medical payment obligor who contracts with an approved vendor for utilization review or medical bill audit services shall notify the commissioner of the contractual arrangement. The contractual arrangement may provide for separate utilization review and medical bill audit vendors.

(5) A plan shall be approved for a period of four (4) years.

(a) At least ninety (90) calendar days prior to the expiration of the period of approval, a medical payment obligor or its approved vendor shall apply for renewal of the approval.

(b) During the term of an approved plan, the commissioner shall be notified as soon as practicable of a material change in the approved plan or a change in the selection of a vendor.

(6) **A medical payment obligor**~~{carrier who contracts with an approved vendor for utilization review services}~~ shall provide annually to the commissioner summaries of the number of utilization reviews conducted, ~~{utilization reviews waived in accordance~~

~~with KRS 342.035(5)(c),~~ utilization reviews resulting in an approval, and utilization reviews resulting in a denial. The annual report ~~of the approved vendor~~ shall be filed with the commissioner no later than August 1 for the preceding year, including any fiscal year ending on or before June 30.

Section 4. Utilization Review and Medical Bill Audit Written Plan Requirements. The written utilization review and medical bill audit plan submitted to the commissioner shall include the following elements:

- (1) A description of the process, policies and procedures for making decisions;
- (2) A statement that medical treatment guidelines adopted by the commissioner pursuant to KRS 342.035(8)(a) shall be incorporated in the plan as the standard for utilization review medical decision making;
- (3) A description of the criteria by which claims, medical services and medical bills shall be selected for review;
- (4) A description of the:
 - (a) Qualifications of internal and consulting personnel who shall conduct utilization review and medical bill audit; and
 - (b) The manner in which the personnel shall be involved in the review process;
- (5) A description of the process to assure that a treatment plan shall be obtained for review by qualified medical personnel if a treatment plan is required by 803 KAR 25:096;
- (6) A description of the process to assure that a physician shall be designated by each injured employee as required under 803 KAR 25:096 **or 803 KAR 25:110**;
- (7) A description of the process for rendering and promptly notifying the medical provider and employee of the initial utilization review decision;
- (8) A description of the reconsideration process within the structure of the utilization review and medical bill audit program;
- (9) An assurance that a database shall be maintained, which shall:
 - (a) Record:
 1. Each instance of utilization review;
 2. Each instance of medical bill audit;
 3. The name of the reviewer;
 4. The extent of the review;
 5. The conclusions of the reviewer; and
 6. The action, if any, taken as the result of the review;
 - (b) Be maintained for a period of at least two (2) years; and
 - (c) Be subject to audit by the commissioner, or his agent, pursuant to KRS 342.035(5)(b); and
- (10) A description of the policies and procedures that shall be implemented to protect the confidentiality of patient information.

Section 5. Claim Selection Criteria.

- (1) Unless the medical payment obligor, in good faith, denies the claim as noncompensable or waives utilization review pursuant to KRS 342.035 (5)(c), medical services reasonably related or asserted to be related to the claim shall be subject to utilization review if:
 - (a) A medical provider requests preauthorization of a medical treatment or procedure;
 - (b) Notification of a surgical procedure or resident placement pursuant to an 803 KAR 25:096 treatment plan is received;
 - (c) The total medical costs cumulatively exceed \$3000;
 - (d) The total lost work days cumulatively exceed thirty (30) days; or
 - (e) An administrative law judge orders a review.

(2) Utilization review shall commence when the medical payment obligor has notice that a claims selection criteria has been met. The medical payment obligor may waive utilization review pursuant to KRS 342.035(5)(c) within two (2) business days of notice that a claims selection criteria has been met **unless additional information is required, in which case, utilization review shall be waived within two (2) business days following receipt of the requested information.**

(a) The following requirements shall apply if preauthorization has been requested and utilization review has not been waived by the medical payment obligor:

1. The initial utilization review decision shall be communicated to the medical provider and employee within two (2) business days of the initiation of the utilization review process, unless additional information is required. If additional information is required, a single request shall be made within two (2) additional business days.

2. The requested information shall be submitted by the medical provider within ten (10) business days.

3. The initial utilization review decision shall be rendered and communicated within two (2) business days following receipt of the requested information.

(b) The following requirements shall apply if retrospective utilization review occurs:

1. The initial utilization review decision shall be communicated to the medical provider and employee within **seven (7) business**~~ten (10) calendar~~ days of the initiation of the utilization review process, unless additional information is required. If additional information is required, a single request shall be made within two (2) additional business days.

2. The requested information shall be submitted by the medical provider within ten (10) business days.

3. The initial utilization review decision shall be rendered within two (2) business days following receipt of the requested information.

(3) A medical provider may request an expedited utilization review determination for proposed medical treatment or services, the lack of which could reasonably be expected to lead to serious physical or mental disability or death. The expedited utilization review determination shall be rendered and communicated within twenty-four (24) hours following a request for expedited review.

(4) Initiation of utilization review shall toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(4). The thirty (30) day period for paying medical expenses shall commence on the date of the final utilization review decision.

(5) Each medical bill audit shall be initiated within **five (5) business**~~seven (7) calendar~~ days of receipt to assure:

(a) Compliance with applicable fee schedules, in accordance with 803 KAR Chapter 25;

(b) Accuracy; and

(c) That a physician has been designated in accordance with 803 KAR 25:096 **or 803 KAR 25:110.**

(6) A medical bill audit shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(4).

Section 6. Utilization Review and Medical Bill Audit Personnel Qualifications.

(1) Utilization review personnel shall have education, training, and experience necessary for evaluating the clinical issues and services under review. The following professionals shall issue an initial utilization review approval:

(a) A physician;

(b) A registered nurse;

- (c) A licensed practical nurse;
 - (d) A medical records technician; or
 - (e) Other personnel whose training and experience qualify them to issue decisions on medical necessity or appropriateness.
- (2) Only a physician may issue an initial utilization review denial. A physician shall supervise utilization review personnel in making utilization review recommendations. Personnel shall hold the license required by the jurisdiction in which they are employed.
- (3) Personnel conducting a medical bill audit shall have the education, training or experience necessary for evaluating medical bills and statements.

Section 7. Written Notice of Denial.

- (1) Following initial review, a written notice of denial shall:
- (a) Be issued to both the medical provider and the employee in a timely manner but no more than two (2) business days after initiation of the utilization review process unless additional information was required, in which case, the written notice of denial shall be issued no later than two (2) business days after the initial utilization review decision~~ten (10) calendar days from the initiation of the utilization review process~~;
 - (b) Be clearly entitled "UTILIZATION REVIEW - NOTICE OF DENIAL"; and
 - (c) Contain:
 - 1. A statement of the medical reasons for denial;
 - 2. The name, state of licensure and medical license number of the reviewer; and
 - 3. An explanation of utilization review reconsideration rights.
- (2) Payment for medical services shall not be denied on the basis of lack of information absent documentation of a good faith effort to obtain the necessary information.

Section 8. Reconsideration.

- (1) A reconsideration process to appeal an initial decision shall be provided within the structure of utilization review.
- (a) A request for reconsideration of the initial utilization review decision shall be made by an aggrieved party within ten (10) business~~fourteen (14) calendar~~ days of receipt of a written notice of denial.
 - (b) Reconsideration of the initial utilization review decision shall be conducted by a different reviewer of the same medical specialty~~at least the same qualifications~~ as the medical provider whose treatment is being reconsidered.
 - (c) A written reconsideration decision shall be rendered within seven (7) business~~ten (10) calendar~~ days of receipt of a request for reconsideration unless a peer-to-peer conference is requested, in which case, the written reconsideration decision shall be rendered within five (5) business days after the day on which the peer-to-peer conference was held. The written decision shall be clearly entitled "UTILIZATION REVIEW - RECONSIDERATION DECISION". If the reconsideration decision is made by an appropriate specialist or subspecialist, the written decision shall further be entitled "FINAL UTILIZATION REVIEW DECISION".
 - (d) Those portions of the medical record that are relevant to the reconsideration, if authorized by the patient and in accordance with state or federal law, shall be considered and providers shall be given the opportunity to present additional information.
- (2) ~~{(a)} {If a utilization review denial is upheld upon reconsideration and a board eligible or certified physician in the appropriate specialty or subspecialty area, or a chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095 has not previously reviewed the matter, an aggrieved party may request further review by:}~~

~~{1.} {A board eligible or certified physician in the appropriate specialty or subspecialty; or}~~

~~{2.} {A chiropractor qualified pursuant to KRS 312.200(3) and 201 KAR 21:095.}~~

~~{(b)} {A written decision shall be rendered within ten (10) calendar days of the request for specialty reconsideration. The specialty decision shall be clearly entitled "FINAL UTILIZATION REVIEW DECISION".}~~

~~{(3)}~~ A reconsideration process to appeal an initial decision shall be provided within the structure of medical bill audit.

(a) A request for reconsideration of the medical bill audit decision shall be made by an aggrieved party within ten (10) business~~{fourteen (14) calendar}~~ days of receipt of that decision.

(b) Reconsideration shall be conducted by a different reviewer of at least the same qualifications as the initial reviewer.

(c) A written decision shall be rendered within seven (7) business~~{ten (10) calendar}~~ days of receipt of a request for reconsideration. The written decision shall be clearly entitled "MEDICAL BILL AUDIT RECONSIDERATION DECISION".

(d) A request for reconsideration of the medical bill audit decision shall not toll the thirty (30) day period for challenging or paying medical expenses pursuant to KRS 342.020(1).

Section 9. Peer-to-Peer Conference.

(1) If the medical payment obligor denies preauthorization following utilization review, it shall issue a written notice of denial as required in Section 7 of this administrative regulation.

(2) The medical provider whose recommendation for treatment is denied may request reconsideration, and may require the reconsideration include a peer-to-peer conference with a second utilization review physician.

(3) The request for a peer-to-peer conference shall be made by electronic communication and shall provide:

(a) A telephone number for the reviewing physician to call;

(b) A date or dates for the conference not less than five (5) business days after the date of the request unless the peer-to-peer conference request stems from a denial issued pursuant to 803 KAR 25:270, in which case, a date or dates not less than two (2) business days after the date of the request. In either case, the parties may by agreement hold the conference in a shorter time period; and

(c) A one (1)-hour period during the date or dates specified during which the requesting medical provider, or a designee, will be available to participate in the conference between the hours of 8:00 a.m. and 6:00 p.m. (Eastern Time), Monday through Friday.

(4) The reviewing physician participating in the peer-to-peer conference shall be of the same medical specialty as the medical provider requesting reconsideration.

(5) Failure of the reviewing physician to participate during the date and time specified shall result in the approval of the request for preauthorization and approval of the recommended treatment unless good cause exists for the failure to participate. In the event of good cause for failure to participate in the peer-to-peer conference, the reviewing physician shall contact the requesting medical provider to reschedule the peer-to-peer conference. The rescheduled peer-to-peer conference shall be held no later than two (2) business days following the original conference date. Failure of the requesting medical provider or its designee to participate in the peer-to-peer conference during the time he or she specified availability may result in denial of the request for reconsideration.

(6) A written reconsideration decision shall be rendered within five (5) business days of date of the peer-to-peer conference. The written decision shall be entitled "FINAL UTILIZATION REVIEW DECISION."

(7) If a Final Utilization Review Decision is rendered denying authorization for treatment before an award has been entered by or agreement approved by an administrative law judge, the requesting medical provider or the injured employee may file a medical dispute pursuant to 803 KAR 25:012. If a Final Utilization Review Decision is rendered denying authorization for treatment after an award has been entered by or agreement approved by an administrative law judge, the employer shall file a medical dispute pursuant to 803 KAR 25:012.

(8) Pursuant to KRS 342.285(1), a decision of an administrative law judge on a medical dispute is subject to review by the workers' compensation board under the procedures set out in 803 KAR 25:010, Section 22.

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 WHILHOIT, Commissioner

APPROVED BY AGENCY: June 14, 2022

FILED WITH LRC: June 14, 2022 at 3:00 p.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person:B. Dale Hamblin, Jr.

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This emergency administrative regulation governs medical provider utilization review activities conducted by an insurance carrier, self-insured group, or self-insured employer pursuant to KRS Chapter 342.

(b) The necessity of this administrative regulation:

KRS 342.035(5)(c) requires the commissioner to promulgate administrative regulations governing medical provider utilization review activities conducted by an insurance carrier, self-insured group, or self-insured employer pursuant to KRS Chapter 342.

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

KRS 342.020 makes employers and their payment obligors responsible for payment of reasonable and necessary medical treatment for the cure and relief of work-place injuries and occupational diseases. Utilization review assists employers and employees in determining whether medical treatment is reasonable and necessary. Additionally, KRS 342.020(7)(f) requires employers with a managed care system to establish procedures for utilization review of medical services to assure that a course of treatment is reasonably necessary; diagnostic procedures are not unnecessarily duplicated; the frequency, scope, and duration of treatment is appropriate; pharmaceuticals are not unnecessarily prescribed; and that ongoing and proposed treatment is not experimental, cost ineffective, or harmful to the employee. This regulation provides guidance to stakeholders regarding the requirements of a utilization review program and its implementation.

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

This emergency administrative regulation provides guidance to stakeholders regarding the requirements of a statutorily required utilization review program and its implementation.

(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:

This is an amendment to new emergency administrative regulation.

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

To respond to stakeholder comments.

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

N/A

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

N/A

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

Insurance carriers, self-insured groups, self-insured employers, and injured employees.

(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, and self-insured employers will be required to have a system of utilization review to assess the reasonableness and necessity of medical treatment. Entities utilizing a managed care organization must include utilization review as part of that program. Employees will receive appropriate medical treatment in a timely manner.

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

Costs are expected to remain consistent with current costs.

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

Employers, medical payment obligors, and employees may be assured that a course of treatment is reasonably necessary; diagnostic procedures are not unnecessarily duplicated; the frequency, scope, and duration of treatment is appropriate; pharmaceuticals are not unnecessarily prescribed; and that ongoing and proposed treatment is not experimental, is cost ineffective, and not harmful to the employee.

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

(a) Initially:

No additional costs are associated with implementation.

(b) On a continuing basis:

No additional 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 is necessary to implement this emergency administrative regulation.

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

This administrative regulation does not establish any new fees or directly or indirectly increase any fees.

(9) TIERING: Is tiering applied?

Tiering is not applied because the utilization review procedure applies to all parties equally.

FISCAL NOTE

(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 342.020, 342.035, and 342.260.

(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.

(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?

None.

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

No new administrative costs will be required.

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

No new administrative costs will be required.

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 activities associated with the emergency administrative regulation are currently performed by those entities; however, the same cannot be said absent this emergency administrative regulation.

(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.

No answer provided.

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

No answer provided.

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

No answer provided.

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

No answer provided.

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

No answer provided.

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

Cost Savings (+/-):No answer provided.

Expenditures (+/-):No answer provided.

Other Explanation:

No answer provided.

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

No answer provided.