

STATEMENT OF EMERGENCY
803 KAR 25:089E.

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. This emergency regulation complies with the statutory mandate of being in place by July 1 and protects human health and public health, safety, and welfare by updating medical costs. The administrative regulation currently in effect incorporates the 2020 fee schedule. After review, it was necessary to update and revise the 2020 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 regulation must be amended to incorporate the 2022 fee schedule. This emergency regulation will be replaced by an ordinary administrative regulation. 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. 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

SCOTT C. WILHOIT, Commissioner

LABOR CABINET
Department of Workers' Claims
(Emergency Amendment)

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

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

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) requires the commissioner of the Department of Workers' Claims to promulgate administrative regulations to ensure that all fees, charges, and reimbursements for medical services under KRS Chapter 342 are 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. KRS 342.035(4) requires the commissioner to promulgate an administrative regulation establishing the workers' compensation medical fee schedule for physicians. Pursuant to KRS 342.035, a schedule of fees is to be reviewed and updated, if appropriate, every two (2) years on July 1. This administrative regulation establishes the medical fee schedule for physicians.

Section 1. Definitions.

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

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

Section 2. Services Covered.

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

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

- (a) Another fee schedule of the Department of Workers' Claims applies;
- (b) A lower fee is required by KRS 342.035 or a managed care plan approved by the commissioner pursuant to 803 KAR 25:110; or
- (c) An insurance carrier, self-insured group, or self-insured employer has an agreement with a physician, medical bill vendor, or other medical provider to provide reimbursement of a medical bill at an amount lower than the medical fee schedule.

Section 3. Fee Computation.

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

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

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

Section 4.

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

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

Section 5. Incorporation by Reference.

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

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Workers' Claims, Mayo-Underwood Building 3rd Floor, 500 Mero 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

APPROVED BY AGENCY: June 21, 2022

FILED WITH LRC: June 24, 2022 at 10:15 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 31, at 10:00 a.m. (EDT) at the Department of Workers' Claims, 500 Mero Street, Frankfort, Kentucky 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 August 31, 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.

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel, Workers' Claims Legal Division, 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:

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 insure 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 for printing 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

(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:

(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.