

Technical Amendment
October 31, 2022
EDUCATION AND LABOR CABINET
(Technical 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 to promulgate administrative regulations to establish 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. KRS 342.035(1) authorizes the commissioner to consider the increased security of payment afforded by KRS Chapter 342 in determining what constitutes a reasonable fee. KRS 342.735 requires the commissioner to establish administrative regulations to expedite the payment of medical expense benefits. This administrative regulation establishes charges for pharmaceuticals provided pursuant to KRS 342.020 and expedites the payment of this class of medical expense benefits.

Section 1. Definitions.

- (1) "Brand drug" means a drug product identified as a brand by Medi-span or any other drug product commercially available from only one (1) source.
- (2) "Compound" is defined by 803 KAR 25:270, Section 1(3).
- (3) "Equivalent drug product" is defined by KRS 217.814(5).
- (4) "Generic drug" means a drug that is not a brand drug.
- (5) "Hospital" is defined by 803 KAR 25:091, Section 1(2).
- (6) "Medical payment obligor" is defined by 803 KAR 25:260, Section 1(10).
- (7) "Medical provider" is defined by 803 KAR 25:260(11).
- (8) "NDC number" means the unique eleven (11) digit, three (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 by 803 KAR 25:270, Section 1(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 by 803 KAR 25:270, Section 1(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.
- (13) "Usual and customary" means the charge a provider would apply to an otherwise uninsured patient.

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) If it is a generic drug, eighty-five (85) percent of the average wholesale price of the lowest priced equivalent drug product; or
 - (c) If it is a brand drug, ninety (90) 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 shall be:
- (a) Medi-Span, produced by Wolters-Kluwer; or
 - (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 shall be included on each statement for services.
- (4) A generic drug shall be substituted for a brand drug unless there is no equivalent drug product available or the prescribing medical provider indicates on the prescription that substitutions are prohibited.
- (5) If a claimant chooses a brand drug and a generic drug is available and allowed by the medical provider, the claimant shall pay the difference in price between the brand 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 shall 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 established in subsection (1) of this section shall 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 compounding fee of twenty (20) dollars shall be reimbursed for a compounded drug.

Section 3. Disputes; Applicability.

- (1) Any dispute arising under this administrative regulation may be resolved pursuant to 803 KAR 25:012 or 803 KAR 25:110, Section 10.
- (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, group self-insured employer, or pharmacy benefit manager may enter into an agreement with any pharmacy or other provider to provide reimbursement at a lower amount than that required in this administrative regulation.

Section 4. Balance Billing.

(1) A pharmacy filling a prescription covered under KRS 342.020 shall not 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 established in Section 2(2) of this administrative regulation.

(2) This prohibition shall be applicable to prescriptions filled pursuant to KRS 342.020 and any prescription denied or disputed by the medical payment obligor may be billed directly to the party presenting the prescription for filling.

(20 Ky.R. 717; 1015; eff. 11-10-1993; 47 Ky.R. 1264, 2026, 2585; eff. 8-31-2021; TAm eff. 10-31-2022.)

FILED WITH LRC: October 31, 2022