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MEMORANDUM

TO: Charles E. Lowther, General Counsel
Department of Workers' Claims

FROM: Emily Caudill
Regulations Compiler

RE: Acknowledgement of Proposed Administrative Regulation – 803 KAR 25:089

DATE: September 15, 2010

A copy of the administrative regulations listed above is enclosed for your files. These administrative regulations are **tentatively** scheduled for review by the Administrative Regulation Review Subcommittee at its **November 2010**, meeting. We will notify you of the date and time of this meeting when it has been scheduled.

Pursuant to KRS 13A.280, **if** a public hearing is held or you receive written comments on this ordinary administrative regulation, the Statement of Consideration for this ordinary administrative regulation is due by noon on **November 15, 2010**. Please reference KRS 13A.270 and 13A.280 for other requirements relating to public hearings and the Statement of Consideration.

If you have any questions, please do not hesitate to contact me at (502) 564-8100.

Enclosures

FILED WITH LRC
TIME: noon
SEP 15 2010
Emily B. Caudill
REGULATIONS COMPILER

1 **LABOR CABINET**

2 **DEPARTMENT OF WORKERS' CLAIMS**

3 **(Amendment)**

4 **803 KAR 25:089. Workers' compensation medical fee schedule for**
5 **physicians.**

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

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

8 NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) requires the
9 commissioner [~~executive director~~] of the Department [~~Office~~] of Workers' Claims
10 to promulgate administrative regulations to ensure that all fees, charges and
11 reimbursements for medical services under KRS Chapter 342 are limited to
12 charges that are fair, current, and reasonable for similar treatment of injured
13 persons in the same community for like services, where treatment is paid for by
14 general health insurers. KRS 342.035(4) requires the commissioner [~~executive~~
15 ~~director~~] to promulgate an administrative regulation establishing the workers'
16 compensation medical fee schedule for physicians. Pursuant to KRS 342.035, a
17 schedule of fees is to be reviewed and updated, if appropriate, every two (2)
18 years on July 1. [~~EO 2008-472, effective June 2, 2008, reorganized the Office of~~
19 ~~Workers' Claims as the Department of Workers' Claims and established the~~
20 ~~commissioner, rather than executive director, as the head of the department.~~]
21 This administrative regulation establishes the medical fee schedule for

1 physicians.

2 Section 1. Definitions. (1) "Medical fee schedule" means the Kentucky
3 Workers' Compensation Medical Fee Schedule for Physicians.

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

5 Section 2. Services Covered. (1) The medical fee schedule shall govern all
6 medical services provided to injured employees by physicians under KRS
7 Chapter 342.

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

10 (a) Another fee schedule of the Department of Workers' Claims applies;

11 (b) A lower fee is required by KRS 342.035 or a managed care plan approved
12 by the commissioner pursuant to 803 KAR 25:110; or

13 (c) An insurance carrier, self-insured group, or self-insured employer has an
14 agreement with a physician, medical bill vendor, or other medical provider to
15 provide reimbursement of a medical bill at an amount lower than the medical fee
16 schedule.

17 Section 3. Fee Computation. (1) The appropriate fee for a procedure covered
18 by the medical fee schedule shall be obtained by multiplying a relative value unit
19 for the medical procedure by the applicable conversion factor; and

20 (2) The resulting fee shall be the maximum fee allowed for the service
21 provided.

22 Section 4. (1) A physician or healthcare or medical services provider located
23 outside the boundaries of Kentucky shall be deemed to have agreed to be

1 subject to this administrative regulation if it accepts a patient for treatment who is
2 covered under KRS Chapter 342.
3 (2) Pursuant to KRS 342.035, medical fees due to an out-of-state physician or
4 healthcare or medical services provider shall be calculated under the fee
5 schedule in the same manner as for an in-state physician.
6 Section 5. Incorporation by Reference. (1) The Kentucky Workers'
7 Compensation Medical Fee Schedule for Physicians, September 15, 2010 [~~July~~
8 ~~31, 2008~~] edition, is incorporated by reference.
9 (2) This material may be inspected, copied, or obtained, subject to
10 applicable copyright law, at the Department of Workers' Claims, Prevention Park,
11 657 Chamberlin Avenue, Frankfort, Kentucky 40601, Monday through Friday, 8
12 a.m. to 4:30 p.m.

Dwight T. Lovan, Commissioner
Department of Workers' Claims

9-9-2010
Date

A public hearing on this administrative regulation shall be held on October 27, 2010, at 10:30 a.m. (EST) at the offices of the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing five (5) workdays prior to the hearing, of their intent to attend. 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 until November 1, 2010. 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: Charles E. Lowther, General Counsel
Department of Worker's Claims
Prevention Park
657 Chamberlin Avenue
Frankfort, Kentucky 40601
Telephone Number: (502) 782-4464
Fax Number: (502) 564-0681

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation #: 803 KAR 25:089
Contact person: Charles E. Lowther

(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: The statute requires the schedules to be updated every two (2) years, if appropriate.
(c) How the amendment conforms to the content of the authorizing statutes: The medical fee schedule has been appropriately updated to insure 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 updated fee schedule assists the workers' compensation program by updated 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 medical fee schedule 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 $75 or the disk for $35.

(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 and all fee schedules is $64,800.00.
(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 established any fees or directly or indirectly increased any fees: This administrative regulation sets forth an updated medical fee schedule for physicians. Some 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? (Explain why or why not) Tiering is not applied, because the updated fee schedule applies to all parties equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 803 KAR 25:089 Contact Person: Charles E. Lowther

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments, or school districts)?

Yes __√____ No _____

If yes, complete questions 2-4.

2. 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? All parts of government with employees

3. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 342.035

4. 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 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 is generated

(c) How much will it cost to administer this program for the first year? No new administration costs

(d) How much will it cost to administer this program for subsequent years? No new administration 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:

803 KAR 25:089

WORKERS' COMPENSATION MEDICAL FEE SCHEDULE FOR PHYSICIANS
SUMMARY OF INCORPORATED MATERIAL
FILED WITH LRC SEPTEMBER 15, 2010

1. 2010 Workers' Compensation Medical Fee Schedule for Physicians (September 15, 2010)

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 current 2010 medical fee schedule for physicians is based on the previous fee schedule completed in 2008. The CPT codes were updated to 2010 standards. The values were changed to reflect a level of reimbursement for all services listed in the fee schedule to comply with the requirements of KRS 342.035. Fees are to be at the same level as treatment paid for by general health insurers. Reimbursement amounts were increased and/or decreased to meet commercial levels. Of the eight service areas, three showed an increase in their conversion factors while the other five demonstrated a decrease. Those services areas with increases are Anesthesia, General Medicine and Radiology. Those services demonstrating some decreases are HCPCS, General Medicine, Physical Medicine, Pathology and Surgery. The most significant increase was in the

service area of Anesthesia. While the conversion factor only changed from the 60th to 65th percentile, there was a large increase in the conversion factors from 36.22 to 61.37. This conversion factor increase was attributed to the limited amount of data available to Ingenix in 2008. For example, their data in 2008 was based on a 681 frequency of use in the Workers' Compensation arena compared to a 9,359 frequency use in 2010.

Twenty-two CPT codes with 1,000 or more frequencies in the Physical Medicine service area will remain consistent with the 2008 fee schedule. The other 42 codes will decrease based upon proposed changes from the 90th to the 85th percentile. The conversion factor in 2008 was 53.73 and has been changed to 43.95.

Code 99211 located in the Evaluation and Management Section will remain consistent with the 2008 Fee Schedule.

The surgery codes with 1,000 or more frequencies (45 decreases and 161 increases) will remain consistent with the 2008 fee schedule unless they have been designated as By Report (BR). Those codes designated as BR will be paid accordingly.

Other significant changes include updates to the transportation fees to reflect the Medicare transportation fees plus 130% and instructions on determining urban, rural, or super rural routes. By Report billing procedures were established for eyeglasses, hearing aides, contact lenses and items custom made. Reimbursement methods for durable medical equipment were clarified. The billing methods for the Certified Registered Nurse Assistant (CRNA) and Anesthesiologist were clarified. We updated

each section of the fee schedule to include the modifiers. These are the significant changes to the fee schedule completed in 2010.

The form is 349 pages.