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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 and Emergency Administrative Regulation – 803 KAR 25:091 & E

DATE: September 15, 2010

A copy of the administrative regulation and the emergency administrative regulation listed above are enclosed for your files. This administrative regulation and the emergency administrative regulation 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 the 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.

The above-referenced emergency administrative regulation was filed with our office and became effective on **September 15, 2010** and will expire in 180 days on **March 14, 2011**, or when replaced by the ordinary administrative regulation, whichever occurs first.

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

STATEMENT OF EMERGENCY
803 KAR 25:091E
WORKERS' COMPENSATION HOSPITAL FEE SCHEDULE

(1) 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. A fee schedule shall be 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. This emergency administrative regulation complies with the statutory mandate in KRS 342.035(1) and protects human health and public health, safety, and welfare.

(2) When the regulations were last changed percentage multipliers used inadvertently resulted in potential inequities to hospitals and other entities such as ambulatory surgery centers and stand alone rehabilitation facilities within the hospital definition which do not file the HCFA 2552. The current changes are intended to correct any inequity. Adjustments are made to the percentage multipliers to cost to charge ratios for hospitals and other facilities within the definitions of this regulation which do not file HCFA Form 2552. This should result in more consistent and fair charges. In addition to rectifying any inequity this change will assist in keeping quality medical providers whose services may have been adversely impacted by the previous changes involved in providing treatment to injured workers.

(3) This emergency regulation will be replaced by an ordinary administrative regulation. This emergency regulation is identical to the ordinary administrative regulation that will be filed at the same time.

STEVEN L. BESHEAR, GOVERNOR

DATE

9-9-2015

DWIGHT T. LOVAN, COMMISSIONER
DEPARTMENT OF WORKERS' CLAIMS

DATE

LABOR CABINET

Department of Workers' Compensation

(Emergency Administrative Regulation)

803 KAR 25:091E. Workers' compensation hospital fee schedule.

RELATES TO: KRS 216B.105, 342.020, 342.035, 342.315

STATUTORY AUTHORITY: KRS 342.020, 342.035(1), 342.260(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) and 342.260(1) require[~~requires~~] the Commissioner [~~Executive Director~~] of the Department[~~Office~~] of Workers' Claims to promulgate administrative regulations to adopt a medical fee schedule for fees, charges and reimbursements under KRS 342.020. KRS 342.020 requires the employer to pay for hospital treatment, including nursing, medical, and surgical supplies and appliances. [~~EO 2008-472, effective June 2, 2008, reorganized the Office of Workers' Claims as the Department of Workers' Claims and established the commissioner, rather than executive director, as the head of the department.~~] This administrative regulation establishes hospital fees for services and supplies provided to workers' compensation patients pursuant to KRS 342.020.

Section 1. Definitions. (1) "Ambulatory surgery center" means a public or private institution that is:

(a) Hospital based or freestanding;

(b) Operated under the supervision of an organized medical staff; and

(c) Established, equipped, and operated primarily for the purpose of treatment of pa-

tients by surgery, whose recovery under normal circumstances will not require inpatient care.

(2) "Hospital" means a facility;[,] surgical center;[,] or psychiatric, rehabilitative, or other treatment or specialty center that[~~which~~] is licensed pursuant to KRS 216B.105.

(3) "Hospital-based practitioner" means a provider of medical services who is an employee of the hospital and who is paid by the hospital.

(4) "Independent practitioner" means a physician or other practitioner who performs services that are covered by the Workers' Compensation Medical Fee Schedule for Physicians on a contract basis and who is not a regular employee of the hospital.

(5) "New hospital" means a hospital that[~~which~~] has not completed its first fiscal year.

Section 2. Applicability. This administrative regulation shall apply to all workers' compensation patient hospital fees for each hospital for each compensable service or supply.

Section 3. Calculation of Hospital's Base and Adjusted Cost-to-charge Ratio; Reimbursement. (1)(a)The Commissioner shall calculate cost-to-charge ratios and notify each hospital of its adjusted cost-to-charge ratio on or before February 1 of each calendar year.

(b)A hospital's base cost-to-charge ratio shall be based on the latest cost report, or HCFA-2552, which has been supplied to the Cabinet for Health and Family Services, Department of Medicaid Services, pursuant to 907 KAR 1:815 and utilized in 907 KAR 1:820 and 1:825 on file as of October 31 of each calendar year.

(c) [~~(b)~~] The base cost-to-charge ratio shall be determined by dividing the net expenses for allocation as reflected on Worksheet A, Column 7, Line 95, plus the costs of

hospital-based physicians and nonphysician anesthetists reflected on lines 12[~~, 13,~~] and 35 of Worksheet A-8, by the total patient revenues as reflected on Worksheet G-2 of the HCFA-2552. The adjusted cost-to-charge ratio shall be determined as set forth in paragraph (b)[~~(c)~~] of this subsection.

(d)[~~(c)~~]1. The base cost-to-charge ratio shall be further modified to allow for a return to equity by multiplying the base cost-to-charge ratio by 132 percent except that a hospital with more than 400 licensed acute care beds as shown by the Cabinet for Health and Family Services, Office of Inspector General's Web site or a hospital that is designated as a Level I trauma center by the American College of Surgeons shall have a return to equity by multiplying its base cost-to-charge ratio by 138 percent.

2. If a hospital's base cost-to-charge ratio falls by ten (10) percent or more of the base for one (1) reporting year, the next year's return to equity shall be reduced from 132 percent to 130 percent or 138 percent to 135 percent as determined by subparagraph 1. of this paragraph.

a. This reduction shall be subject to an appeal pursuant to Section 4 of this administrative regulation.

b. Upon written request of the hospital seeking a waiver and a showing of extraordinary circumstances the commissioner shall[~~may~~] waive the reduction for no more than one (1) consecutive year.

c. The determination of the commissioner shall be made upon the written documents submitted by the requesting hospital.

(e)[~~(d)~~]1. Except as provided in subparagraph 2 of this paragraph, a hospital's adjusted cost-to-charge ratio shall not exceed fifty (50) percent, including the return to eq-

1 uity adjustment.

2 2. The adjusted cost-to-charge ratio shall not exceed sixty (60) percent for a hospital

3 that:

4 a. Has more than 400 licensed acute care beds as shown by the Cabinet for Health

5 and Family Services, Office of Inspector General's Web site;

6 b. Is designated as a Level I trauma center by the American College of Surgeons;

7 c. Services sixty-five (65) percent or more patients covered and reimbursed by Medi-

8 caid or Medicare as reflected in the records of the Cabinet for Health and Family Ser-

9 vices, Department of Medicaid Services; or

10 d. Has a base cost-to-charge ratio of fifty (50) percent or more.

11 (2)(a) Except as provided in paragraph (b) of this subsection, the reimbursement to a

12 hospital for services or supplies furnished to an employee that[~~which~~] are compensable

13 under KRS 342.020 shall be calculated by multiplying the hospital's total charges by its

14 adjusted cost-to-charge ratio after removing any duplicative charges, billing errors, or

15 charges for services or supplies not confirmed by the hospital records.

16 (b) If part of a bill for services or supplies is alleged to be non-compensable under

17 KRS 342.020 and that part of the bill is challenged by the timely filing of a medical fee

18 dispute or motion to reopen, the non-contested portion of the bill shall be paid in accor-

19 dance with paragraph (a) of this subsection.

20 Section 4. Appeal of Assigned Ratio. (1) Each hospital subject to the provisions of

21 this administrative regulation shall be notified of its proposed base cost-to-charge ratio

22 by the commissioner by U.S. mail within thirty (30) days of the date the base cost-to-

23 charge ratio is assigned by the Commissioner of the Department of Workers' Claims.

(2)(a) A hospital may request a review of its assigned ratio. A written appeal to request a review shall be filed with the commissioner[~~by filing a written appeal with the commissioner~~] no later than thirty (30) calendar days after the ratio has been assigned and hospital notified of its proposed cost-to-charge ratio.

(b) The determination of the commissioner shall be made upon the written documents submitted by the requesting hospital.

Section 5. Calculations of New Hospitals, Hospitals that do not file Worksheets A and G-2 of HCFA-2552 and ASC's within the Commonwealth of Kentucky.[~~Revision of Hospital Cost-to-charge Ratio.~~ (1)(a) [~~The commissioner shall calculate cost-to-charge ratios and notify each hospital of its adjusted cost-to-charge ratio on or before February 1 of each calendar year.~~]

[~~(b)~~] A new hospital shall be assigned a cost-to-charge ratio equal to the average adjusted cost-to-charge ratio of all existing in-state acute care hospitals until it has been in operation for one (1) full fiscal year.

(b) [~~(c)~~] A hospital that does not file Worksheets A and G-2 of HCFA 2552 shall be assigned a cost-to-charge ratio as follows:

1. A psychiatric, rehabilitation, or long-term acute care hospital shall be assigned a cost-to-charge ratio equal to 125 percent of the average adjusted cost-to-charge ratio of all in-state acute care hospitals;

2. An ambulatory surgery center shall be assigned a cost-to-charge ratio equal to:

a. 120[~~Seventy (70)~~] percent of the average adjusted cost-to-charge ratio of all acute care hospitals located in the same county as the ambulatory surgery center; [~~or~~]

b. If no acute care hospital is located in the county of the ambulatory surgery center,

1 120 [~~seventy (70)~~] percent of the average adjusted cost-to-charge ratio of all acute care
2 hospitals located in counties contiguous to the county in which the ambulatory surgery
3 center is located; or
4 c. The adjusted cost-to-charge ratio of the base hospital if:
5 i. The center is hospital based;
6 ii. It is a licensed ambulatory surgery center pursuant to 902 KAR 20:105; and
7 iii. It is a Medicare provider based entity; and
8 3. All other hospitals not specifically mentioned in subparagraphs 1 or 2 of this para-
9 graph shall be assigned a cost-to-charge ratio equal to:
10 a. The average adjusted cost-to-charge ratio of all acute care hospitals located in the
11 same county as the facility; or
12 b. If there are no hospitals in the county, the average of all acute care hospitals lo-
13 cated in contiguous counties.
14 (2) An assigned cost-to-charge ratio shall remain in full force and effect until a new
15 cost-to-charge ratio is assigned by the commissioner.
16 Section 6. Calculation for Hospitals and Ambulatory Surgery Centers Located Out-
17 side the Commonwealth of Kentucky. (1) A hospital or ambulatory surgery center lo-
18 cated outside the boundaries of Kentucky shall be deemed to have agreed to be subject
19 to this administrative regulation if it accepts a patient for treatment who is covered under
20 KRS Chapter 342.
21 (2) The base cost-to-charge ratio for an out-of-state hospital shall be calculated in the
22 same manner as for an in-state hospital, using Worksheets A and G-2 of the HCFA
23 2552.

(3) An out-of-state ambulatory surgery center having no contiguous Kentucky counties shall be assigned a cost-to-charge ratio equal to 120[~~seventy (70)~~] percent of the average adjusted cost-to-charge ratio of all existing in-state acute care hospitals.

(4) An out-of-state ambulatory surgery center having one (1) or more contiguous Kentucky counties shall be assigned a cost-to-charge ratio in accordance with Section 5(1)(b)[~~(c)~~]2.b. of this administrative regulation.

Section 7. Reports to be Filed by Hospitals. Each bill submitted by a hospital pursuant to this administrative regulation shall be submitted on a statement for services, Form UB-04 (Formerly UB-92), as required by 803 KAR 25:096.

Section 8. Billing and Audit Procedures. (1) A hospital providing the technical component of a procedure shall bill and be paid for the technical component.

(2)(a) An independent practitioner providing the professional component shall bill for and be paid for the professional component.

(b) An independent practitioner billing for the professional component shall submit the bill to the insurer on the appropriate statement for services, HCFA 1500, as required by 803 KAR 25:096.

Section 9. Miscellaneous. (1) A new hospital shall be required to file a letter with the commissioner setting forth the start and end of its fiscal year within ninety (90) days of the date it commences operation.

(2)(a) An independent practitioner who does not receive direct compensation from the contracting hospital shall use the statement for services defined by 803 KAR 25:096 if[~~when~~] billing for professional services and shall be compensated pursuant to the Kentucky Workers' Compensation Medical Fee Schedule for Physicians incorporated by

1 reference in 803 KAR 25:089.

2 (b) An independent practitioner who is directly compensated for services by the con-
3 tracting hospital shall not bill for the service, but shall be compensated pursuant to the
4 practitioner's agreement with the hospital.

5 (c) The hospital may bill for the professional component of the service under the Ken-
6 tucky Workers' Compensation Medical Fee Schedule for Physicians if the independent
7 practitioner is directly compensated for services by the contracting hospital.

8 (3) A hospital-based practitioner shall not bill for a service he performs in a hospital if
9 the service is regulated by 803 KAR 25:089, but he shall receive payment or salary di-
10 rectly from the employing hospital.

11 Section 10. Incorporation by Reference. (1)The following material is incorporated by
12 reference:

13 (a) Form UB-40, "Universal Billing Form", 10-23-06; and

14 (b) HCFA 1500, "Health Care Financing Administration", 12-90.

15 (2) This material may be inspected, copied, or obtained, subject to applicable copy-
16 right law, at the Department of Workers' Claims, Prevention Park, 657 Chamberlin Ave-
17 nue, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m

Dwight T. Lovan, Commissioner
Department of Workers' Claims

9-5-2010
Date

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 25:091E
Contact persons: Charles E. Lowther, General Counsel

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation sets forth the hospital fee schedule and regulates hospital fees and supplies provided to workers' compensation patients.

(b) The necessity of this administrative regulation: Pursuant to KRS 342.035, the Department of Workers' Claims is charged with the duty of setting fee schedules, and KRS 342.020 requires that hospital treatment be reimbursed on behalf of injured workers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The administrative regulation sets forth how hospital fees and supplies are reimbursed.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets forth requirements for charging and reimbursing for hospital treatment of injured employees.

(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 Department of Workers' Claims will recalculate the cost-to-charge ratios to keep all charges at certain levels and avoid the impact of enormous markups for individual services. This approach should protect claimants, insurance carriers, and avoid a huge administrative burden on hospitals.

(b) The necessity of the amendment to this administrative regulation: When last changed percentages applied to Hospitals and other entities such as ambulatory surgery centers and stand alone rehabilitation facilities that are within the hospital definition but do not file the HCFA 2552 were inequitably impacted. This change is intended to correct any inequity.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments make the fees fair, current, and reasonable for similar treatment as paid by health insurers.

(d) How the amendment will assist in the effective administration of the statutes: The certainty of these hospital charges should reduce medical fee dispute

issues in this area. Hospitals will avoid administrative costs. Claimants and insurance carriers will get more consistent charges from hospitals.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Injured employees, hospitals, medical providers, insurance carriers, self-insurance groups, individual self-insurers and 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: The Department of Workers' Claims will calculate the hospital cost-to-charge ratio pursuant to the new calculation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Some hospitals will receive a different cost-to-charge ratio which is designed to provide fair and consistent charges.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Insurance carriers, self-insured groups and individual self-insured employers will receive consistent prices for hospital services. Anytime medical costs are reduced, employers could benefit on workers' compensation insurance policies.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: The Department of Workers' Claims will use normal budget to implement administrative regulation. There would be no cost.
(b) On a continuing basis: 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' budget will be used which is restricted funds.

(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 fees or funding will be increased. Payments to hospitals may be reduced and for some they may be increased.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Hospitals and other facilities within the definitions of this regulation which do not file HCFA Form 2552 cost-to-charge ratios are

adjusted by new calculation. This should result in more consistent and fair charges.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied because it applies to all hospitals and other parties in an equal manner to a workers' compensation claim.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 803 KAR 25:091E Contact Persons: 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. Pursuant to KRS 342.035, the fee schedule is designed to be similar to commercial costs for similar procedures.

(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