



1 LABOR CABINET

2 DEPARTMENT OF WORKERS' CLAIMS

3 (Amended After Comments)

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

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

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

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) requires the com-
8 missioner of the Department of Workers' Claims to promulgate administrative regula-
9 tions to ensure that all fees, charges and reimbursements for medical services under
10 KRS Chapter 342 are limited to charges that are fair, current, and reasonable for similar
11 treatment of injured persons in the same community for like services, where treatment is
12 paid for by general health insurers. KRS 342.035(4) requires the commissioner to
13 promulgate an administrative regulation establishing the workers' compensation medical
14 fee schedule for physicians. Pursuant to KRS 342.035, a schedule of fees is to be re-
15 viewed and updated, if appropriate, every two (2) years on July 1. This administrative
16 regulation establishes the medical fee schedule for physicians.

17 Section 1. Definitions. (1) "Medical fee schedule" means the 2013 Kentucky Workers'
18 Compensation Schedule of Fees [~~Kentucky Workers' Compensation Medical Fee~~
19 ~~Schedule~~] for Physicians.

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

21 Section 2. Services Covered. (1) The medical fee schedule shall govern all medi-

1 cal services provided to injured employees by physicians under KRS Chapter 342.

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

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

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

7 (c) An insurance carrier, self-insured group, or self-insured employer has an agree-
8 ment with a physician, medical bill vendor, or other medical provider to provide reim-
9 bursement of a medical bill at an amount lower than the medical fee schedule.

10 Section 3. Fee Computation. (1) The appropriate fee for a procedure covered by the
11 medical fee schedule shall be obtained by multiplying a relative value unit for the medi-
12 cal procedure by the applicable conversion factor; and

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

14 Section 4. (1) A physician or healthcare or medical services provider located outside
15 the boundaries of Kentucky shall be deemed to have agreed to be subject to this admin-
16 istrative regulation if it accepts a patient for treatment who is covered under KRS Chap-
17 ter 342.

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

21 Section 5. Incorporation by Reference. (1) "2013 Kentucky Workers' Compensation
22 Schedule of Fees for Physicians", December 1, 2013 [~~The Kentucky Workers' Compensa-~~
23 ~~tion Medical Fee Schedule for Physicians, November, 2010~~] edition, is incorporated

1 by reference.

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



Dwight T. Lovan, Commissioner
Department of Workers' Claims

3-12-2014

Date

803 KAR 25:089

**WORKERS' COMPENSATION MEDICAL FEE SCHEDULE FOR PHYSICIANS
SUMMARY OF INCORPORATED MATERIAL
FILED WITH LRC JANUARY 14, 2014**

1.2013 Kentucky Workers' Compensation Schedule of Fees for Physicians

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 CPT codes were updated to 2013 standards. The relative values (RV) used to create the Fee Schedule are based on historic data, Fair Health Commercial Database Values and comparisons to Centers for Medicare & Medicaid Services (CMS). New relative values were created for those codes added to the schedule using Fair Health, Inc. benchmark values. Changes 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 fair, current and reasonable taking into consideration treatment paid for by general health insurers. Reimbursement amounts were increased to meet commercial levels. There are currently nine service areas in the fee schedule due to the inclusion of dentistry codes.

The dental procedure codes were added to the Fee Schedule. The codes were obtained from the Code on Dental Procedures and Nomenclature 2012 which is published in Current Dental Terminology (CDT), American Dental Association (ADA).

Conversion factors for eight service areas were created by the aggregation of relative values and billed charge data (capped at 150%) provided by Fair Health (FH). Conversion factors increased to \$60.88 for the following six services areas: Evaluation and Management, Surgery, Radiology, Pathology/Lab, General Medicine and Physical Medicine. The conversion factor for Anesthesia changed to \$77.00 and Healthcare Common Procedure Coding System (HCPCS) changed to \$64.22. Accordingly, in comparison to the 2010 Fee Schedule, the most significant increases were to Pathology/Lab at 30%; Physical Medicine at 39% and Evaluation/Management at 29%. The dental codes are currently at the 40th percentile of Fair Health Commercial Database Values as are the Anesthesia Codes.

Also, based on the recommendation of Fair Health, there has been an addition of 38 temporary codes 0019T – 0309T. These codes are located in the surgery section and descriptions include treatment for disc arthroplasty, injections, implants and etc.

All of the 10,086 CPT codes from the 2010 Workers' Compensation Medical Fee Schedule were reviewed to determine if they were related to a workers' compensation injury or illness. Codes that were unrelated/outdated were deleted and new codes added. There are currently 6,111 codes in the 2013 Kentucky Workers' Compensation Schedule of Fees for Physicians.

Clarification has been included to address repackaging of medications and drug screening in a physician's office.

Other significant changes include updates to the transportation fees. The Ground Transportation Fee Schedule is calculated at 145% of Centers for Medicare Services (CMS) and Air Transportation Fee Schedule is at 180% of CMS. A reference chart has been designed and included in the fee schedule for easier review. It includes each Kentucky Zip Code along with geographic regions designated as either rural, urban, or super rural, and the procedure codes.

Definitions and clarifications HCPCS, usual and customary charges, billing of custom made equipment were addressed. The 2013 Fee Schedule provides values appropriate for new, used and rented Durable Medical Equipment (DME). The costs for sales tax, shipping and handling were addressed. Additionally, patient instruction booklets, pamphlets, videos and/or tapes are separately reimbursable in the 2013 Fee Schedule.

These are the significant changes to the fee schedule completed in 2013.

The form is 319 pages.

**STATEMENT OF CONSIDERATION
Relating to 803 KAR 25:089
(Amended After Comments)**

(1) The public hearing on 803 KAR 25:089 scheduled for February 25, 2014, at 10:30 a.m. (EDT), at the Department of Workers' Claims, 657 Chamberlin Avenue, Frankfort, Kentucky, was held by Commissioner Dwight T. Lovan. Written comments were received and comments were made at the hearing.

(2) The following persons were attendees or offered comment:

- (a) Cory Wedding, Healthcare Solutions;**
- (b) Judy Zeigler, Public Policy Association;**
- (c) Bridget McGovern, Concentra;**
- (d) Gretchen Copley, KEMI;**
- (e) Gary Gilmour, US&C;**
- (f) Daniel Slaton, Southern Strategy Group;**
- (g) Morgan Kirkland, KEMI;**
- (h) Angela Sexton, KEMI; and**
- (i) Sandy Shtab, Healthsystems.**

(3) The following persons from the administrative body were present or responded to comments:

- (a) Dwight T. Lovan, Commissioner;**
- (b) Charles E. Lowther, General Counsel;**
- (c) Lucretia Johnson, Division Director, Ombudsman/Workers' Compensation Specialists Services;**
- (d) Pam Knight, Supervisor, Medical Services & Cost Containment;**

SUMMARY OF COMMENTS AND RESPONSES

(1) SUBJECT MATTER: Reimbursement for Nerve Conduction Studies

- (a) Comment: Steven Davis, One Call Care Management (One Call), submitted a written comment on behalf of One Call. Mr. Davis submitted that changes under American Medical Association CPT codes likely will result in substantial decreases in reimbursements for nerve conduction studies. He further suggested such decreases likely will result in refusal by neurologists and physiatrists to treat workers' compensation patients.
- (b) Response: The Department of Workers' Claims always considers it important for qualified physicians to afford care to injured workers pursuant to the Kentucky Workers' Compensation Act, and the Department further believes it is incumbent upon them to see that physicians are paid based upon what is fair, current and reasonable. When as here the American Medical Association changes the CPT codes, using the most current codes and their designations is important. Fair Health has provided the Department with the data necessary to place dollar figures upon each CPT code. Occasionally, the impact will be a reduction in the payment to the physicians as is asserted here. However, such reduction is not in and of itself unreasonable. In determining what is fair, current and reasonable, the Department must rely upon the most current data coupled with the recommended billing techniques from the American Medical Association. It appears that the concerns of One Call Care Management should be better addressed to the American Medical Association and how they recommend the use of CPT codes.

(2) SUBJECT MATTER: Air Ambulance Rates

- (a) Comment: Eric J. Thomas, Air Evac Lifeteam (Air Evac), submitted a written comment on behalf of Air Evac. Mr. Thomas submitted a "compromise rate" of 210% of the Medicare rural rate, which is \$10,157.49 base rate and \$70.67/mile. The rate proposed by the Department in its currently proposed fee schedule is 180% of the Medicare rate. Mr. Thomas contended that air ambulance services are unique and that rates governing payment are preempted under the Airline Deregulation Act.
- (b) Response: Finding a reasonable level for reimbursement of air ambulances has been a challenge since the Department began including transportation/ambulance rates as part of the physician fee schedule. Numerous discussions have taken place with air ambulance services and after considering the most recent comments, the Department believes it is appropriate to modify the air ambulance rates to reflect payment of 210% of the Medicare rate for the appropriate locale. This is an increase from the 180% of the Medicare rate as originally set forth in the physician fee schedule. According to NCCI data, transportation accounts for 2% of all costs in workers' compensation. One-third of the transportation costs relates to Air Ambulance Services. NCCI further has found increases in transportation allowances to have a negligible impact overall.

(3) SUBJECT MATTER: Clarification for Reimbursement of Repackaged Drugs

- (a) Comment: Kevin C. Tribout, PMSI , submitted a written comment on behalf of PMSI. Mr. Tribout requested clarification and guidance concerning billing of the original manufacturer NDC. He suggests adoption and use of the Workers' Compensation/Property &

Casualty Claim Form (WC/PC/ UCF) developed by the National Council for Prescription Drug Programs (NCPDP).

- (b) Response: The subject matter raised in this comment is more appropriately addressed when there is a modification and update to the pharmacy fee schedule. The Department felt it appropriate to identify methodology for reimbursing physician dispensing and repackaging as part of the physician fee schedule. The details of the original manufacturer NDC is not appropriate for the physician fee schedule. It is anticipated that the Department of Workers' Claims will provide an update to the pharmacy fee schedule in the near future.

(4) SUBJECT MATTER: Clarification on billing for Repackaged Drugs and Limitations on Use of Repackaged Drugs

- (a) Comment: Sandy Shtab, Healthsystems, presented spoken comments at the hearing held at the Department of Workers' Claims on February 25, 2014, on behalf of Healthsystems. Ms. Shtab suggested additional guidance for payees on how to reimburse for repackaged drugs, including use of rates for a comparable drug. She also suggested that time limits be considered and placed on a physician's dispensing of repackaged drugs. She stated that other states have done so because data is said to suggest costs are higher for such drugs dispensed by physicians.
- (b) Response: The subject matter raised in this comment is more appropriately addressed when there is a modification and update to the pharmacy fee schedule. The Department felt it appropriate to identify methodology for reimbursing physician dispensing and repackaging as part of the physician fee schedule. Additional guidance for payees on how to reimburse for repackaged drugs,

including use of rates for comparable drugs, is more appropriately a subject for the pharmacy fee schedule. The Department does not believe that it is appropriate at this time to use its regulatory process with the physician fee schedule to identify a time limit on physician dispensing. It is anticipated that the Department of Workers' Claims will provide an update to the pharmacy fee schedule in the near future.

**SUMMARY OF STATEMENT OF CONSIDERATION AND ACTION TAKEN BY
THE PROMULGATING ADMINISTRATIVE BODY**

The public hearing was held and comments were solicited. One (1) comment was given at the hearing and three (3) written comments were received. The Department of Workers' Claims responded to the comments and will be amending the 2013 Kentucky Workers' Compensation Schedule of Fees for Physicians, which is incorporated by reference in Section 5 of this regulation. The specific amendment pertains to air ambulance rates, which will be increased to 210% of the Medicare rate for the appropriate locale where such service is rendered. The codes for air transportation are A0430, A0431, A0435, and A0436. The grids that were recalculated to reflect the change from 180% to 210% are contained on pages 297 through 315 of the fee schedule.

Section 5(1)

On page 2 of the regulation, after "December" insert "1,".

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 803 KAR 25:089
Contact Person: Charles E. Lowther
Phone number: (502) 782-4464

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 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

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