LABOR CABINET

Department of Workers' Claims

(Amended After Comments)

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 [~~Workers' Compensation Board~~] to periodically promulgate administrative regulations to adopt 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. The increased security of payment afforded by the Workers' Compensation Act may be taken into consideration in determining what fees are reasonable. KRS 342.735 requires the commissioner [~~board~~] to establish administrative regulations to expedite the payment of medical expense benefits. The function of this administrative regulation is to regulate charges for pharmaceuticals provided pursuant to KRS 342.020, and to expedite 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 source.** **[~~"Brand name" has the meaning set forth in KRS 217.814(1).~~]**

(2) "Compound" is defined in 803 KAR 25:270, Section 1(3).

(3) [~~(2)~~] "Equivalent drug product" has the meaning set forth in KRS 217.814(5).

(4) [~~(3)~~] **"Generic drug" means a drug that is not a brand drug.** [~~"Generic name" has the meaning set forth in KRS 217.814(6)[(2)].~~]

(5) [~~(4)~~] "Hospital" has the meaning set forth in 803 KAR 25:091, Section 1(1).

(6) "Medical payment obligor" is defined in 803 KAR 25:260(10).

(7) "Medical provider" is defined in 803 KAR 25:260(11).

[~~(5) "Practitioner" means any person licensed under the professional laws of Kentucky or any other state to prescribe and administer medicine and drugs.~~]

[~~(6) "Wholesale price" means the average wholesale price charged by wholesalers at a given time.~~]

(8) "NDC number" means the unique **11 [~~10~~]**-digit, 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 in 803 KAR 25:**270 [~~260~~]** (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 in 803 KAR 25:270 (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 dollars ($5.00) and the lesser of:

(a) The provider's usual and customary charge for the drug;

~~**[(b) The amount the medical payment obligor has agreed to pay under its contract with a pharmacy benefit manager or other pharmacy service provider, in which case, upon request, the medical payment obligor shall certify or otherwise disclose the applicable reimbursement provision contained in the contract;]**~~

(b) [~~(c)~~] If it is a generic drug, **eighty-five percent (85%) [~~sixty percent (60%)~~]** of the average wholesale price of the lowest priced equivalent drug product; or

(c) [~~(d)~~] If it is a brand **[~~name~~]** drug, **ninety percent (90%) [~~eighty-five percent (85%)~~]** 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 is:

(a) Medi-Span, produced by Wolters-Kluwer;

(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 must be included on each statement for services.

(4) A generic drug must be substituted for a brand **[~~name~~]** drug unless there is no equivalent drug product available or the prescribing medical provider indicates **on the prescription** that substitutions are prohibited **[~~by including the words "Dispense as Written" or "No Substitution Allowed" along with a statement that the brand name drug is medically necessary~~]**.

(5) If a claimant chooses a brand **[~~name~~]** drug when a generic drug is available and allowed by the medical provider, the claimant shall pay the difference in price between the brand **[~~name~~]** 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 must 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 provided in subsection (1) of this section 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 [~~dispensing~~]** fee **of $20 shall [~~may~~]** be reimbursed for a **[~~repackaged or~~]** compounded drug **[~~when applicable~~]**.

[~~(1) An employee entitled to receive pharmaceuticals under KRS 342.020 may request and require that a brand name drug be used in treating the employee. Unless the prescribing practitioner has indicated that an equivalent drug product should not be substituted, an employee who requests a brand name drug shall be responsible for payment of the difference between the equivalent drug product wholesale price of the lowest priced therapeutically equivalent drug the dispensing pharmacist has in stock and the brand name drug wholesale price at the time of dispensing.~~

~~(2) Any duly licensed pharmacist dispensing pharmaceuticals pursuant to KRS Chapter 342 shall be entitled to be reimbursed in the amount of the equivalent drug product wholesale price of the lowest priced therapeutically equivalent drug the dispensing pharmacist has in stock, at the time of dispensing, plus a five (5) dollar dispensing fee plus any applicable federal or state tax or assessment.~~]

[~~(8)~~ ~~(3) If an employee's prescription is marked "Do Not Substitute," the employee shall receive a brand name drug.~~]

[~~the dispensing pharmacist shall be entitled to reimbursement in an amount equal to the brand name drug wholesale price, at the time of dispensing, plus a five (5) dollar dispensing fee plus any applicable federal or state tax or assessment.~~]

Section 3. Disputes; Applicability. (1) Any dispute arising under this administrative regulation **may [~~shall~~]** be resolved pursuant to 803 KAR 25:012 **or 803 KAR 25:110 (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**, [~~or~~]** group self-insured employer**, or pharmacy benefit manager** may enter into an agreement **with any pharmacy or other provider** [~~with any pharmacy~~] to provide reimbursement at a lower amount than that required in this administrative regulation.

Section 4. Balance Billing. No pharmacy filling a prescription covered under KRS 342.020 shall 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 provided in Section 2(2)[~~(1)~~] of this administrative regulation. This prohibition is applicable to prescriptions filled pursuant to KRS 342.020 and any prescription which is denied or disputed by the medical payment obligor may be billed directly to the party presenting the prescription for filling.

This is to certify that the commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260 and 342.035.

Robert L. Swisher

Robert L. Swisher, Commissioner
Department of Workers' Claims

March 15, 2021
Date