



1 LABOR CABINET
2 Department of Workers' Claims
3 (New Administrative Regulation)
4 803 KAR 025:290 Continuation of Medical Benefits.
5 RELATES TO: KRS 342.0011(13), 342.020.
6 STATUTORY AUTHORITY: KRS 342.020, 342.260, 342.265, 342.270, 342.275.
7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.260(1) requires the
8 commissioner to promulgate administrative regulations necessary to carry on the work of the
9 department and the work of administrative law judges so long as those administrative
10 regulations are consistent with KRS Chapter 342 or KRS Chapter 13A. KRS 342.020(1)
11 provides an employer shall pay for the cure and relief from the effects of an injury or
12 occupational disease as required at the time of injury and thereafter for the length of time set
13 forth in KRS 342.020. KRS 342.020(3) sets forth the length of time for which the employer
14 is responsible for payment and provides an employee shall receive a continuation of the
15 benefits provided in KRS 342.020 beyond the stated length of time if certain criteria are met.
16 KRS 342.020(3) further provides the department shall, 754 weeks from the date of injury or
17 last exposure, notify the employee of the right to file an application for continuation of the
18 benefits provided in KRS 342.020. This administrative regulation applies to the benefits
19 provided in KRS 342.020 and for which the employer's responsibility for payment is limited
20 to 780 weeks. This administrative regulation establishes the process by which the department
21 will notify the employee of the right to file an application to continue the benefits provided by

1 KRS 342.020, the method by which the employee is to make application, and the process by
2 which an administrative law judge will determine and order a continuation of benefits for an
3 additional time beyond the original period.

4 Section 1. Definitions. (1) "Benefit Review Conference" means a benefit review conference
5 as described in Section 13 of 803 KAR 25:010.

6 (2) "Commissioner" means the commissioner charged in KRS 342.228 to administer the
7 department and whose duties are stated in KRS 342.230.

8 (3) "Department" means the governmental entity whose responsibilities are provided in
9 KRS 342.228.

10 (4) "Notice" means a communication from the commissioner or his designee advising a
11 claimant of the right to file an application to extend the employer's liability for payment of
12 benefits beyond the 780-week limitation provided in KRS 342.020(3).

13 (5) "Notice of Filing of Application" means a document that alerts the parties to a claim
14 that an application to extend the employer's obligation for payment of benefits beyond the 780-
15 week period has been filed, assigns the matter to an administrative law judge, and provides a
16 Litigation Management System access number to those parties.

17 (6) "Week" means seven (7) consecutive days; the day of injury or date of last exposure
18 shall not be included when computing the 780-week period for which the employer has the
19 obligation to pay the benefits specified in KRS 342.020.

20 Section 2. Notice: Duty To Inform The Department Of Workers' Claims Of Change Of
21 Address. (1) 754 weeks from the date of injury or last exposure, the commissioner shall advise
22 the claimant in writing of the right to file an application for the continuation of medical
23 benefits. Notice shall be mailed by first class mail to the claimant's last known address as

1 reflected in the department's Litigation Management System. Notice shall also be sent
2 electronically to the last email address provided by the claimant to the department. The day of
3 injury or date of last exposure shall not be included when computing the 754-week period;
4 when the last day of the 754-week period falls on a Saturday, Sunday, or state holiday, the
5 notice shall be generated the next day which is not a Saturday, Sunday, or state holiday.

6 (2) Subsequent to the entry of an award or approval of a settlement agreement in which
7 medical benefits are either awarded or not waived, the claimant shall notify the department in
8 writing in a format prescribed by the commissioner of any change in physical mailing address
9 and email address within thirty (30) days of such change of address.

10 (3) Subsequent to the entry of an award or approval of a settlement agreement in which
11 medical benefits are either awarded or not waived, the employer and medical payment obligor
12 shall notify the department in writing in a format prescribed by the commissioner of any change
13 in the claimant's physical mailing address or email address of which it, or its agents, become
14 aware. Such notice shall be given within thirty (30) days of the date the employer, medical
15 payment obligor or any agent thereof becomes aware of a change in the claimant's address.

16 Section 3. Procedure for filing and resolution of applications for continuation of medical
17 benefits. (1) The claimant shall file an application for continuation of medical benefits on the
18 form prescribed by the commissioner no sooner than seventy-five (75) days prior to the last
19 day of the 780-week period from the date of injury or last exposure and no later than the last
20 day of the 780-week period from the date of injury or last exposure.

21 (2) (a) With the application for continuation of medical benefits the claimant shall file a
22 medical report on the form prescribed by the commissioner. The medical report shall include:

1 1. A description of the injury or occupational disease for which medical benefits were
2 awarded or approved and for which an application for continuation of medical benefits is being
3 filed;

4 2. A medical opinion that asserts continued medical treatment is reasonably necessary,
5 related to the work injury or occupational disease, and explains the basis for that opinion; and

6 3. A general description of the medical treatment that may reasonably be expected.

7 (b) With the application for continuation of medical benefits and the medical report the
8 claimant shall file a newly executed Form 106.

9 (3) A medical provider shall be entitled to charge a fee not to exceed \$100 for preparing
10 the report described in subsection (2). The fee shall be paid by the claimant.

11 (4) Filing an application for continuation of medical benefits shall stay termination of the
12 employer's obligation to pay the benefits pursuant to KRS 342.020(3)(a) pending resolution
13 of the application.

14 (5) Following the filing of an application for continuation of medical benefits, the
15 commissioner shall issue a Notice of Filing of Application that shall:

16 (a) Be mailed to the claimant and employer, and, when applicable, one (1) of the following
17 payment obligors: the employer's insurance carrier, self-insured group, uninsured employers fund,
18 guaranty fund, or other payment obligor;

19 (b) Provide the parties a Litigation Management System access code; and

20 (c) Assign the matter to an administrative law judge.

21 (6)(a) Within sixty (60) days of the date of the Notice of Filing Application, the defendant
22 shall file a Notice of denial or acceptance of the application.

1 (b) If the defendant accepts the application for continuation of medical benefits, the
2 administrative law judge shall issue an order granting the extension of medical benefits beyond
3 780 weeks from the date of injury or last exposure. Acceptance of the application for
4 continuation of medical benefits shall not be deemed an admission of compensability as to any
5 specific medical treatment beyond 780 weeks from the date of injury or last exposure. The
6 defendant retains the right to file a motion to reopen pursuant to 803 KAR 25:010, Section 6(5)
7 and 803 KAR 25:012, Section 1(6) in order to assert a medical dispute to challenge
8 compensability of specific medical treatment:

9 (c) If the defendant denies the application for continuation of medical benefits, it may file
10 a medical report with the denial. The medical report shall include the following:

11 1. A description of the injury that is the basis of the claim; and

12 2. A medical opinion asserting continued medical treatment is not reasonably necessary,
13 not related to the work injury or occupational disease, and explaining the basis for that opinion.

14 (d) At the conclusion of the sixty (60) day period provided in (6)(a) in which the defendant
15 is to file its denial or acceptance of the application, the claimant shall have fifteen (15) days in
16 which to file additional medical evidence in rebuttal to the evidence filed by the defendant:

17 (e) If the defendant fails to timely file its denial of the application, the administrative law
18 judge shall issue an order granting the extension of medical benefits beyond 780 weeks from
19 the date of injury or last exposure.

20 (7)(a) If the defendant files a denial of the application, the administrative law judge shall
21 schedule a telephonic Benefit Review Conference to be held within twenty (20) days of the
22 conclusion of the claimant's rebuttal period provided in Paragraph (6)(d) of this administrative
23 regulation.

1 (b) The telephonic Benefit Review Conference shall be an informal proceeding.

2 (c) A transcript of the telephonic Benefit Review Conference shall not be made.

3 (d) All parties and representatives participating in the telephonic Benefit Review
4 Conference shall have authority to immediately resolve disputed issues and enter into a binding
5 settlement agreement with respect to the application.

6 (e) If at the conclusion of the Benefit Review Conference the parties have not reached an
7 agreement on all issues, the administrative law judge shall:

8 1. Prepare a final Benefit Review Conference memorandum and order, which identifies all
9 contested issues; and

10 2. Schedule a formal hearing unless the formal hearing is waived by the parties.

11 (8) The claimant shall have the burden of proof to demonstrate continued medical treatment
12 is reasonably necessary and related to the work injury or occupational disease.

13 (9) Within sixty (60) days following conclusion of the formal hearing or order waiving the
14 formal hearing, the administrative law judge shall issue an award, order or decision, which
15 shall include a statement of findings of fact and conclusions of law.

16 (10) An order granting a continuation of benefits beyond 780 weeks shall not include an
17 award of any specific medical treatment identified in the medical report submitted in support
18 of the application.

19 (11) If applicable, a party shall file a petition for reconsideration within fourteen (14) days
20 of the filing of the decision, order or award of the administrative law judge in accordance with
21 the procedures set out in 803 KAR 25:010 Section 20.

1 (12) Pursuant to KRS 342.285(1), the decision of the administrative law judge shall be
2 subject to review by the Workers' Compensation Board in accordance with the procedures set
3 out in 803 KAR 25:010 Section 22.

4 Section 4. Incorporation by Reference. (1) The following material is incorporated by
5 reference:

6 (a) "Application for Continuation of Medical Benefits, Form CMB-APP-1", 8/18:

7 (b) "Medical Report in Support of Continuation of Medical Benefits, Form CMB-APP-2",
8 8/18;

9 (c) "Change of Address, Form CMB-ADD-3", 8/18.

10 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
11 law, at the Department of Workers' Claims, 657 Chamberlin Avenue, Frankfort, KY 40601,
12 Monday through Friday, 8:00 a.m. to 4:30 p.m.

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

Robert L. Swisher

Robert L. Swisher, Commissioner
Department of Workers' Claims

11/20/18

Date

CONTACT PERSON: B. Dale Hamblin, Jr., Assistant General Counsel
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Prevention Park
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PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on January 22, 2019, at 1:00 p.m. (EDT) 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 of their intent to attend no later than five (5) workdays prior to the hearing. 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 through January 31, 2019. 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: B. Dale Hamblin, Jr., Assistant General Counsel
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Prevention Park
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Frankfort, Kentucky 40601
Telephone Number: (502) 782-4404
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REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation No.: 803 KAR 25:290

Contact person: B. Dale Hamblin, Jr.
dale.hamblin@ky.gov

Phone number: (502) 782-4404

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation provides the process by which a claimant will be notified of the right to apply for continuation of benefits beyond a 780-week period and the steps required to make that application.

(b) The necessity of this administrative regulation: Pursuant to KRS 342.020, the commissioner is required to notify a claimant of his right to apply for continuation of benefits beyond a 780-week period and the steps required to make that application.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.020 requires the commissioner to notify a claimant of his right to apply for continuation of benefits beyond a 780-week period and the steps required to make that application; this administrative regulation provides that process.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: KRS 342.020 provides an employer is responsible for payment of the benefits provided in that statute for a period of 780 weeks; however, an injured employee may apply to extend the employer's period of payment responsibility beyond that period. Upon demonstrating that treatment beyond the 780-week period is reasonably necessary and related to the work injury, the employee is entitled to payment of benefits beyond the 780-week period. This administrative regulation provides guidance to the employee and employer with respect to that process.

(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: N/A

- (b) The necessity of the amendment to this administrative regulation: N/A
- (c) How the amendment conforms to the content of the authorizing statutes:
N/A
- (d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All injured employees, physicians and medical providers providing services to injured workers pursuant to KRS Chapter 342, insurance carriers, self-insurance groups, self-insured employers, insured employers, 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: Employees desiring to extend the employer's responsibility for payment beyond 780 weeks from the date of injury or last exposure will have to properly apply to extend those benefits; employers will have to either accept or challenge the extension of their period of payment responsibility. The other parties will not have to take affirmative steps to comply with this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The cost of completing the medical report cannot exceed \$100. The cost to the payment obligors cannot be ascertained until treatment is sought and provided to the injured employee.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Employers will be able to identify those claims for which they no longer have a payment obligation and those claims for which they retain payment responsibility after 780 weeks. Injured employees will be able to receive benefits for work related injuries for longer than 780 weeks if it appears additional benefits are reasonably necessary.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: None

(b) On a continuing basis: The cost associated with this administrative regulation is the cost of printing and mailing a written notice to each injured employee who was awarded the benefits provided in KRS 342.020, or who entered into an approved agreement which included those benefits, on or after July 14, 2018. This cost will first be incurred 754 weeks after July 14, 2018.

(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 does not establish or increase any fees.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied; the regulation applies to all parties equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation No.: 803 KAR 25:290

Contact Person: B. Dale Hamblin, Jr.
dale.hamblin@ky.gov

Phone number: (502) 782-4404

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 342.020, 342.260, 342.265, 342.270, 342.275.

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 without knowing the specific medical services that will be required by injured employees after 780 weeks of benefits.

(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 will be 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 will be generated.

(c) How much will it cost to administer this program for the first year? The cost associated with this administrative regulation is the cost of printing and mailing a written notice to each injured employee who was awarded the benefits provided in KRS 342.020 or who entered into an approved agreement which included those benefits on or after July 14, 2018. It is not possible to estimate the cost associated with administering this regulation for the first year until July 14, 2019.

(d) How much will it cost to administer this program for subsequent years? It is not possible to estimate the costs at this time because the first of those costs will not be incurred until 754 weeks after July 14, 2018.

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: The cost associated with this administrative regulation is the cost of printing and mailing a written notice to each injured employee who was awarded the benefits provided in KRS 342.020 or who entered into an approved agreement which included those benefits on or after July 14, 2018. The first of those written notices will not be generated until 754 weeks after July 14, 2018.

SUMMARY OF MATERIAL INCORPORATED BY REFERENCE
803 KAR 25:290

The “Application for Continuation of Medical Benefits”, Form CMB-APP-1, 8/18, is a one (1) page application an injured employee completes and files with the commissioner of the Department of Workers’ Claims within seventy-five (75) days before the termination of the seven hundred eighty (780) week period in which the employee asserts continued medical treatment is reasonably necessary and related to the work injury or occupational disease.

The “Medical Report in Support of Continuation of Medical Benefits”, Form CMB-APP-2, 8/18, is a one (1) page form completed by a physician and filed by the employee with the Application for Continuation of Medical Benefits to demonstrate that continued medical treatment is reasonably necessary and related to the work injury or occupational disease.

The “Change of Address”, Form CMB-ADD-3, 8/18, is a one (1) page form used by the employee or others to report address changes for the employee during the seven hundred eighty (780) week period.



KENTUCKY LABOR CABINET
Department of Workers' Claims
657 Chamberlin Avenue
Frankfort, KY 40601

APPLICATION FOR CONTINUATION OF MEDICAL BENEFITS

WORKERS' COMPENSATION CLAIM NUMBER: _____

NAME: _____

SSN: _____

ADDRESS: _____

DATE OF BIRTH: _____

DATE OF INJURY/LAST EXPOSURE: _____

NATURE OF INJURY/OCCUPATIONAL DISEASE: _____

EMPLOYER: _____

I apply for a continuation of medical benefits for my work injury or occupational disease.
I need a continuation of medical benefits because:

CLAIMANT: _____

DATE: _____



KENTUCKY LABOR CABINET
Department of Workers' Claims
657 Chamberlin Avenue
Frankfort, KY 40601

MEDICAL REPORT IN SUPPORT OF CONTINUATION OF MEDICAL BENEFITS

WORKERS' COMPENSATION CLAIM NUMBER: _____

PATIENT NAME: _____

DATE OF BIRTH: _____

DATE OF INJURY/LAST EXPOSURE: _____

NATURE OF INJURY/OCCUPATIONAL DISEASE: _____

NAME OF PHYSICIAN ISSUING REPORT: _____

ADDRESS: _____

MEDICAL SPECIALTY: _____

Is it your opinion that continued medical treatment is reasonably necessary for the work injury or occupational disease?

YES _____ NO _____

Explain:

If you answered the previous question "yes" provide a general description of reasonably necessary treatment related to the work injury or disease:

PHYSICIAN: _____

DATE: _____



KENTUCKY LABOR CABINET

Department of Workers' Claims
657 Chamberlin Avenue
Frankfort, KY 40601

CHANGE OF ADDRESS

WORKERS' COMPENSATION CLAIM NUMBER: _____

CLAIMANT NAME: _____

DATE OF BIRTH: _____

SOCIAL SECURITY NUMBER/GREEN CARD NUMBER: _____

CURRENT MAILING ADDRESS: _____

EMAIL ADDRESS (IF APPLICABLE): _____

TELEPHONE NUMBER (OPTIONAL): _____

I certify under penalty of perjury that the foregoing information is true and accurate.

CLAIMANT SIGNATURE: _____

DATE: _____

IF SUBMITTED BY EMPLOYER, MEDICAL PAYMENT OBIGOR OR ANY
PERSON OTHER THAN CLAIMANT:

SUBMITTING ENTITY NAME: _____

NAME AND TITLE OF PERSON COMPLETING FORM:

SIGNATURE: _____

DATE: _____