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Emily B Caudill
REGULATIONS COMPILER

1 LABOR CABINET

2 Department of Workers' Claims

3 (Amendment)

4 803 KAR 25:240. Workers' compensation unfair claims settlement practices.

5 RELATES TO: KRS 304.12-230, 342.267

6 STATUTORY AUTHORITY: KRS 342.260(1)

7 NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 342.260(1), the
8 Commissioner [~~Executive Director~~] of the Department [~~Office~~] of Workers' Claims is authorized
9 to promulgate administrative regulations necessary to carry on the work of the Department [~~Office~~]
10 of Workers' Claims, and administrative law judges [~~and arbitrators~~]. KRS 342.267 requires the
11 Commissioner [~~Executive Director~~] to fine carriers for engaging in unfair claims settlement
12 practices under KRS Chapter 342 or 304.12-230. This administrative regulation establishes
13 standards for the Commissioner [~~executive director~~] and carriers with regard to unfair claims
14 settlement practices.

15 Section 1. Definitions. (1) "Agent" means a person or entity performing claims adjusting,
16 case management, utilization review, or other service on behalf of a carrier.

17 (2) "Carrier" is defined in KRS 342.0011(6).

18 Section 2. File and Record Documentation. (1) Each carrier's claim files and files held by
19 an agent of the carrier shall be subject to examination by the Commissioner [~~executive director~~]
20 or the Commissioner's [~~executive director's~~] designee.

1 (2) Each carrier or agent of the carrier shall maintain claim data that is readily accessible
2 and retrievable for examination.
3 (3)Documentation shall be contained in each claim file:
4 (a)Detailing the activities of each carrier and any agent of the carrier; and
5 (b)Detailing the basis [~~foundations~~] for the decision of the carrier or agent of the carrier
6 upon material matters of the claim.
7 (4) Each document within a claim file shall be noted as to date received, date processed, or
8 date mailed.
9 (5) For a carrier which does not maintain hard copy files, claim files shall be capable of
10 duplication to legible hard copy.
11 (6) A claim file shall be maintained for a period not less than five (5) years following the
12 creation of the material or the completion of the purpose for which it was created, whichever shall
13 occur last.
14 Section 3. Notice of Policy Provisions and Information. (1) A carrier shall provide
15 adequate notice with regard to policy provisions and information with regard to coverage and
16 benefits.
17 (2) Failure of a carrier to provide the notice required by KRS 342.610(7) [~~(6)~~] in the form
18 prescribed by 803 KAR 25:200 shall constitute an unfair claims settlement practice.
19 Section 4. Duty to Investigate. Upon notice of a work-related injury, a carrier shall
20 diligently investigate a claim for facts warranting the extension or denial of benefits.
21 Section 5. Standards for Prompt and Timely Actions. (1) After receipt of notice of a work-
22 related injury necessitating medical care or causing lost work days, a carrier shall as soon as
23 practicable advise an injured employee of acceptance or denial of the claim.

1 (2) A carrier shall provide to the employee in writing the specific reasons for denial of a
2 claim.
3 (3) A carrier shall inform an employee of additional information needed for the claim to be
4 accepted.
5 (4) A carrier shall meet the time constraints for accepting and paying workers'
6 compensation claims established in KRS Chapter 342 and applicable administrative regulations.

7 Section 6. Standards for Fair and Equitable Settlement. (1) A carrier shall attempt in good
8 faith to promptly pay a claim in which liability is clear;
9 (2) A carrier shall not misrepresent pertinent facts or law with regard to a claim;
10 (3) A carrier shall not compel an employee to institute formal proceedings with the
11 Department [~~Office~~] of Workers' Claims to recover benefits where liability is clear;
12 (4) A carrier shall not offer a settlement which is substantially less than the reasonable
13 value of a claim;
14 (5) A carrier shall not threaten to file or invoke a policy of filing appeals for the purpose
15 of compelling a settlement for less than a workers' compensation award [~~or benefit review~~
16 ~~determination~~]; and
17 (6) A carrier shall not require an employee to obtain information which is accessible to the
18 carrier.
19 Section 7. Acknowledgment of Communications. (1) Upon receipt of an inquiry from the
20 Department [~~Office~~] of Workers' Claims, each carrier shall furnish the Department [~~Office~~] of
21 Workers' Claims a full response within fifteen (15) days.
22 (2) Upon receipt of a communication from an injured employee which reasonably suggests
23 a response is expected, a carrier shall make a prompt and appropriate reply to the employee.

This is to certify the commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260, 342.270 and 342.285.

Robert L. Swisher

Robert L. Swisher, Commissioner
Department of Workers' Claims

July 31, 2020

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on **October 20-30**, 2020, at 10:00 a.m. (EDT) by video teleconference pursuant to KRS 61.800, et seq. In keeping with KRS 13A.270, individuals interested in attending or 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 along with contact information. Upon notification of intent to attend, individuals will be provided information necessary to attend the video teleconference. 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 October 31, 2020. 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: Scott C. Wilhoit, Special Assistant
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REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation No.: 803 KAR 25:240
Contact person: Scott C. Wilhoit

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets standards of behavior for entities providing workers' compensation coverage; the failure to meet those standards constitutes unfair claims settlement practices.

(b) The necessity of this administrative regulation: Pursuant to KRS 342.260(1), the Commissioner of the Department of Workers' Claims is authorized to promulgate administrative regulations necessary to carry on the work of the Department of Workers' Claims. KRS 342.267 requires the Commissioner to fine carriers for engaging in unfair claims settlement practices under KRS Chapter 342 or 304.12-230. This administrative regulation sets standards of behavior for entities providing workers' compensation coverage; the failure to meet those standards constitutes unfair claims settlement practices.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The authorizing statutes provide that entities providing workers' compensation coverage must meet certain standards. This administrative regulation establishes standards for entities providing workers' compensation coverage; the failure to meet those standards constitutes an unfair claims settlement practice.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation provides guidance to those providing workers' compensation coverage regarding the issuance of fines for the failure to meet certain standards.

(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: This amendment updates the language to match the current Department structure and operation.

(b) The necessity of the amendment to this administrative regulation: The amendment updates the language to match the Department's current structure and operation.

(c) How the amendment conforms to the content of the authorizing statutes: The Commissioner is required to issue fines for unfair claims settlement practices. The administrative regulation sets standards to be met by those providing workers' compensation coverage; the failure to meet those standards constitute unfair claims settlement practices.

(d) How the amendment will assist in the effective administration of the statutes: The Commissioner is required to issue fines for unfair claims settlement practices; the amendment clarifies the standards to be met in order to avoid committing an unfair claims settlement practice..

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All insurance carriers, self-insurance groups, self-insured employers and third party administrators, administrating workers' compensation claims.

(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, and third party administrators will have to ensure they meet the standards set forth in the administrative regulation so as to avoid committing an unfair claims settlement practices.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no associated cost if those entities comply with the standards set forth in administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The entities will avoid fines by complying with standards set forth in the regulation and injured employees will be treated fairly.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:
(a) Initially: There is no cost.
(b) On a continuing basis: There is no continuing 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 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 but specifies behavior that constitutes unfair claims settlement practices.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering is not applied, the amendment and regulation apply to all parties equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation No. 803 KAR 25:240
Contact Person: Scott C. Wilhoit
Phone number: (502) 782-4532

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 304.12-230, 342.260(1), 342.267

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. This administrative regulation will have no effect on the expenditures and revenues of state and local governmental agencies.

(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 is generated for use by state or local government.

(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? There will be no administrative costs.

(d) How much will it cost to administer this program for subsequent years? There will be no subsequent 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:

There is no fiscal impact on state or local government; the administrative regulation sets standards of behavior for entities with workers' compensation obligations.