

1 LABOR CABINET

2 Department of Workers' Claims

3 (Amendment)

4 803 KAR 25:091. Workers' compensation hospital fee schedule.

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

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

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.035(1) and 342.260(1)

8 require the Commissioner of the Department of Workers' Claims to promulgate administrative
9 regulations to adopt a medical fee schedule for fees, charges and reimbursements under KRS
10 342.020. KRS 342.020 requires the employer to pay for hospital treatment, including nursing,
11 medical, and surgical supplies and appliances. This administrative regulation establishes hospital
12 fees for services and supplies provided to workers' compensation patients pursuant to KRS
13 342.020.

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

16 (a) Hospital based or freestanding;

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

18 (c) Established, equipped, and operated primarily for the purpose of treatment of patients
19 by surgery, whose recovery under normal circumstances will not require inpatient care.

1 (2) "Hospital" means a facility; surgical center; [~~or~~] psychiatric, [~~rehabilitative,~~] or other
2 treatment or specialty center that is licensed pursuant to KRS 216B.105 or, if located in another
3 state, is licensed pursuant to the laws of such other state; and shall include a facility that is
4 approved as a rehabilitation agency under the Medicare or Medicaid programs.

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

7 (4) "Independent practitioner" means a physician or other practitioner who performs
8 services that are covered by the Kentucky Workers' Compensation Medical Fee Schedule for
9 Physicians, incorporated by reference in 803 KAR 25:089, on a contract basis and who is not a
10 regular employee of the hospital.

11 (5) "New hospital" means a hospital that has not completed its first fiscal year.

12 (6) “Surgical hardware” means any object that provides internal fixation but is not
13 intended to replace or alter the part of an internal body organ and is not intended to replace all or
14 part of the function of a permanently inoperative or malfunctioning internal body organ. Surgical
15 hardware can be removed after a healing period.”

16 (7) “Surgical implant” means any single-use item/object/device which replaces all or
17 part of an internal body organ, or replaces all or part of the function of a permanently inoperative
18 or malfunctioning internal body organ.

19 Section 2. Applicability. This administrative regulation shall apply to all workers'
20 compensation patient hospital and ambulatory surgery center fees for each hospital and ambulatory
21 surgery center for each compensable service or supply.

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

4 (b) A hospital's base cost-to-charge ratio shall be based on the latest cost report, or HCFA-
5 2552, which has been supplied to the Cabinet for Health and Family Services, Department of
6 Medicaid Services, pursuant to 907 KAR 1:815 and utilized in 907 KAR 1:820 and 1:825 on file
7 as of October 31 of each calendar year.

8 (c) The base cost-to-charge ratio shall be determined by dividing the net expenses for
9 allocation as reflected on Worksheet A, Column 7, Line 118 [~~95~~] plus the costs of hospital-based
10 physicians and nonphysician anesthetists reflected on lines 10 [~~12~~] and 28 [~~35~~] of Worksheet A-8,
11 by the total patient revenues as reflected on line 28 of Worksheet G-2 of the HCFA-2552. The
12 adjusted cost-to-charge ratio shall be determined as set forth in paragraph (d) of this subsection.

13 (d) 1. The base cost-to-charge ratio shall be further modified to allow for a return to equity
14 by multiplying the base cost-to-charge ratio by 132 percent except that a hospital with more than
15 400 licensed acute care beds as shown by the Cabinet for Health and Family Services, Office of
16 Inspector General's website [~~Web-site~~] or a hospital that is designated as a Level I trauma center
17 by the American College of Surgeons shall have a return to equity by multiplying its base cost-to-
18 charge ratio by 138 percent.

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

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

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

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

6 (e)1. Except as provided in subparagraph 2 of this paragraph, a hospital's adjusted cost-to-
7 charge ratio shall not exceed fifty (50) percent, including the return to equity adjustment.

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

9 a. Has more than 400 licensed acute care beds as shown by the Cabinet for Health and Family
10 Services, Office of Inspector General's Web site;

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

12 c. Services sixty-five (65) percent or more patients covered and reimbursed by Medicaid
13 or Medicare as reflected in the records of the Cabinet for Health and Family Services, Department
14 of Medicaid Services; or

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

16 (2)(a) Except as provided in paragraph (b) and (c) of this subsection, the reimbursement
17 to a hospital for services or supplies furnished to an employee that are compensable under KRS
18 342.020 shall be calculated by multiplying the hospital's [~~total~~] charges by its adjusted cost-to-
19 charge ratio after removing any duplicative charges, billing errors, charges for services or supplies
20 not confirmed by the hospital records, and charges for surgical implants and surgical hardware.

21 (b) If part of a bill for services or supplies is alleged to be noncompensable under KRS
22 342.020 and that part of the bill is challenged by the timely filing of a medical fee dispute or motion

1 to reopen, the noncontested portion of the bill shall be paid in accordance with paragraph (a) of
2 this subsection.

3 (c) Charges for surgical implants and surgical hardware shall be reimbursed at invoice cost
4 plus fifteen (15) percent. Invoice cost shall not include shipping, handling, and taxes. Shipping,
5 handling and taxes shall be reimbursed at the amount for those charges listed on the invoice. The
6 hospital shall provide a copy of the invoice and shall certify the actual cost of the item or items.

7 Section 4. Appeal of Assigned Ratio. (1) A hospital may request a review of its assigned
8 ratio. A written appeal to request a review shall be filed with the commissioner no later than thirty
9 (30) calendar days after the ratio has been assigned and the hospital notified of its proposed cost-
10 to-charge ratio.

11 (2) The determination of the commissioner shall be made upon the written documents sub-
12 mitted by the requesting hospital.

13 Section 5. Calculations of New Hospitals, Hospitals that do not file Worksheets A and G-
14 2 of HCFA-2552 and ASC's within the Commonwealth of Kentucky.

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

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

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

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

2 a. 120 percent of the average adjusted cost-to-charge ratio of all acute care hospitals located
3 in the same county as the ambulatory surgery center;

4 b. 120 percent of the average adjusted cost-to-charge ratio of all acute care hospitals located
5 in counties contiguous to the county in which the ambulatory surgery center is located, if an acute
6 care hospital is not located in the county of the ambulatory surgery center; or

7 c. The adjusted cost-to-charge ratio of the base hospital if:

8 (i) The center is hospital based;

9 (ii) It is a licensed ambulatory surgery center pursuant to 902 KAR 20:106; and

10 (iii) It is a Medicare provider based entity;

11 d. Except as provided in subparagraph c, an ambulatory surgical center's adjusted cost-to-
12 charge ratio shall not exceed fifty (50) percent; and

13 3. All other hospitals not specifically mentioned in subparagraphs 1 or 2 of this paragraph
14 shall be assigned a cost-to-charge ratio equal to:

15 a. The average adjusted cost-to-charge ratio of all acute care hospitals located in the same
16 county as the facility; or

17 b. If there are no hospitals in the county, the average of all acute care hospitals located in
18 contiguous counties.

19 (2) An assigned cost-to-charge ratio shall remain in full force and effect until a new cost-
20 to-charge ratio is assigned by the commissioner.

1 (3)(a) Reimbursement to an ambulatory surgical center for services or supplies furnished
2 to an employee that are compensable under KRS 342.020 shall be calculated by multiplying the
3 ambulatory surgical center's charges by its assigned cost-to-charge ratio after removing any
4 duplicative charges, billing errors, charges for services or supplies not confirmed by ambulatory
5 surgical center records, and charges for surgical implants and surgical hardware.

6 (b) If part of a bill for services or supplies is alleged to be noncompensable under KRS
7 342.020 and that part of the bill is challenged by the timely filing of a medical fee dispute or motion
8 to reopen, the noncontested portion of the bill shall be paid in accordance with paragraph (a) of
9 this subsection.

10 (c) Charges for surgical implants and surgical hardware shall be reimbursed at invoice cost
11 plus fifteen (15) percent. Invoice cost shall not include shipping, handling, and taxes. Shipping,
12 handling and taxes shall be reimbursed at the amount for those charges listed on the invoice. The
13 ambulatory service center shall provide a copy of the invoice and shall certify the actual cost of
14 the item or items.

15 Section 6. Calculation for Hospitals and Ambulatory Surgery Centers Located Outside the
16 Commonwealth of Kentucky. (1) A hospital or ambulatory surgery center located outside the
17 boundaries of Kentucky shall be deemed to have agreed to be subject to this administrative
18 regulation if it accepts a patient for treatment who is covered under KRS Chapter 342.

19 (2) The base cost-to-charge ratio for an out-of-state hospital shall be calculated in the same
20 manner as for an in-state hospital, using Worksheets A and G-2 of the HCFA 2552.

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

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

4 (5) An out-of-state ambulatory surgical center's assigned cost-to-charge ratio shall not
5 exceed fifty (50) percent.

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

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

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

13 (b) An independent practitioner billing for the professional component shall submit the bill
14 to the insurer on the appropriate statement for services, HCFA 1500, as required by 803 KAR
15 25:096.

16 (3) An Ambulatory Surgical Center may charge only one facility fee for one surgical
17 session even though the surgical session may involve multiple procedures and CPT codes; more
18 than one facility charge shall constitute a duplicate charge. The physician may submit charges on
19 form HCFA 1500 using appropriate CPT codes.

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

1 (2)(a) An independent practitioner who does not receive direct compensation from the
2 contracting hospital shall use the statement for services defined by 803 KAR 25:096 if billing for
3 professional services and shall be compensated pursuant to the Kentucky Workers' Compensation
4 Medical Fee Schedule for Physicians, incorporated by reference in 803 KAR 25:089.

5 (b) An independent practitioner who is directly compensated for services by the contracting
6 hospital shall not bill for the service, but shall be compensated pursuant to the practitioner's
7 agreement with the hospital.

8 (c) The hospital may bill for the professional component of the service under the Kentucky
9 Workers' Compensation Medical Fee Schedule for Physicians if the independent practitioner is
10 directly compensated for services by the contracting hospital.

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

14 ~~[Section 10. Incorporation by Reference. (1) The following material is incorporated by~~
15 ~~reference:~~

16 ~~(a) Form UB-04, 10-23-06; and~~

17 ~~(b) HCFA 1500, 12-90.~~

18 ~~(2) This material may be inspected, copied, or obtained, subject to applicable copyright~~
19 ~~law, at the Department of Workers' Claims, Prevention Park, 657 Chamberlin Avenue, Frankfort,~~
20 ~~Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

21

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, Commissioner
Department of Workers' Claims

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on November 24, 2020, at 1:00 p.m. (prevailing local time) 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 November 30, 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: B. Dale Hamblin, Jr., Assistant General Counsel
Department of Workers' Claims
Mayo-Underwood Building, 3rd Floor
500 Mero Street
Frankfort, Kentucky 40601
Telephone Number: (502) 782-4404
Fax Number: (502) 564-0681
Dale.Hamblin@ky.gov