

State of Kansas

Department of Labor

Division of Workers Compensation

Notice of Hearing on Proposed Administrative Regulation

The Kansas Department of Labor, Division of Workers Compensation will conduct a public hearing at 3:00pm on Friday, November 18, 2016 in the Appeals Board Hearing Room at 401 SW Topeka Blvd., Topeka, to consider the adoption of proposed amended regulation K.A.R. 51-9-7 regarding the Schedule of Medical Fees for Workers Compensation.

A summary of the proposed regulation and the estimated economic impact follows:

Summary of Regulation:

K.A.R. 51-9-7. Fees for medical and hospital services. Updates the workers compensation schedule of medical fees by increasing the reimbursement for most physician services 3%, changes the outpatient and ambulatory surgical center's reimbursement to a prospective payment system from billed charges, and revises fees for independent medical exams, depositions and testimony and trauma activation levels.

Economic Impact:

Costs to the agency: No additional costs will be incurred by KDOL Department of Workers Compensation for these regulatory changes.

Costs to the regulated community and consumers: The total estimated impact on Kansas Workers compensation is an overall savings of 0.4% or \$2 million.

Costs to other governmental agencies or units: Kansas State Self Insurance Fund that covers state employees under the Kansas Workers Compensation Act will also see an overall cost savings of 0.4% or \$2 million.

The time period between publication of this notice and the scheduled hearing serves as the required public comment period of at least 60 days for the purpose of receiving written public comments on the proposed amended regulations. At any time during the public comment period any interested party may submit written comments to Katy Lenahan, Kansas Department of Labor, Division of Workers Compensation, Medical Services, 401 SW Topeka Blvd., Suite 2, Topeka, 66603, by fax at 785-296-0025, or by e-mail to katy.lenahan@ks.dol.gov.

During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulation as well as an opportunity to submit their written comments. In order to give each individual an opportunity to present their views, it may be necessary for the hearing officer to request that each presenter limit any oral presentation to an appropriate time frame.

Complete copies of the proposed regulations and the corresponding regulatory impact statement may be obtained by contacting Katy Lenahan at 401 SW Topeka Blvd., Suite 2, Topeka, 66603, 785-296-4000 ext. 2143 or fax 785-296-0025.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and regulatory impact statement in an accessible format. Request for accommodation should be made at least five working days in advance of the hearing by contacting Katy Lenahan at 785-296-4000 ext. 2143 or katy.lenahan@dol.ks.gov.

51-9-7. Fees for medical and hospital services. Fees for medical, surgical, hospital, dental, and nursing services, medical equipment, medical supplies, prescriptions, medical records, and medical testimony rendered pursuant to the Kansas workers compensation act shall be the lesser of the following:

(a) The usual and customary charge of the health care provider, hospital, or other entity providing the health care services; or

(b) the amount allowed by the “~~2015~~ 2017 schedule of medical fees” published by the Kansas department of labor, effective on January 1, ~~2015-2017~~, and approved by the director of workers compensation on ~~November 21, 2014~~ August 23, 2016, including the ground rules for each type of medical treatment or service within the schedule and the appendix, which is hereby adopted by reference.

This regulation shall be effective on and after January 1, ~~2015-2017~~. (Authorized by and implementing K.S.A. ~~2014~~ 2015 Supp. 44-510i, as amended by L. 2016, ch. 98, sec. 1; effective Jan. 1, 1966; amended Jan. 1, 1969; amended Jan. 1, 1973; amended May 1, 1976; amended May 1, 1978; amended, T-88-20, July 1, 1987; amended May 1, 1988; amended Nov. 1, 1993; amended April 5, 1996; amended Aug. 29, 1997; amended Oct. 1, 1999; amended Dec. 1, 2001; amended Dec. 1, 2003; amended Dec. 2, 2005; amended Jan. 1, 2008; amended Jan. 1, 2010; amended Jan. 1, 2011; amended Jan. 1, 2012; amended Jan. 1, 2014; amended Jan. 1, 2015; amended P-_____.)

Kansas Department of Labor

Division of Workers Compensation

Regulatory Impact Statement

Pursuant to KSA 2015 Supp. 77-416

Proposed Amended Regulation KAR 51-9-7

August 25, 2016

Executive summary of Proposed Regulation

KSA 44-510i authorizes the Director of the Kansas Department of Labor Division of Workers Compensation to prepare and adopt rules and regulations which establish a schedule of maximum fees for medical, surgical, hospital, nursing, vocation rehabilitation or any other treatment or services provided or ordered by health care providers and rendered to employees under the workers compensation act. As such, the Director is required to revise the maximum fees as necessary at least every two years to assure the schedule is current, reasonable and fair.

The purpose of this proposed regulatory change is to revise the fee schedule in KAR 51-9-7. As authorized by KSA 44-510i, the Director is to adjust the fees at least biennially to assure that they are current, reasonable and fair. The last time the fees were adjusted was in January of 2015.

Summary of Substantive Changes

The Division of Workers Compensation has decided to increase the fees paid for most physician services by 3% in order to maintain the current level of service. The Division has also decided to go to a prospective payment system for outpatient surgeries. The proposed new fees for this system were determined based upon the input from the workers compensation medical community that included providers, facilities and payers and will provide consistency of payment between facilities. Other minor changes to the fees are an increase in the hourly rate for Independent Medical Exams, testimony and review of medical records, trauma activation fees were also increased. Fees for inpatient services will be based on the 33rd edition of the Multiple Severity Diagnosis Related Groupings but the multiplier will

remain unchanged. The National Council on Compensation Insurance estimates that these changes will be an overall savings of \$2 million to the workers compensation system costs.

Environmental Benefit Statement

1) Need for proposed amendments and environmental benefit likely to accrue

a. Need

This amended regulation is being proposed for the purpose of changing fees for treatment and services provided or ordered by health care providers and rendered to employees under the workers compensation act.

The purpose of the proposed fee changes is to ensure that fees being paid are current, reasonable and fair. The proposed fee changes are consistent with this purpose.

b. Environmental benefit

The proposed changes to the workers compensation schedule of medical fees do not provide direct environmental benefits.

2) When applicable, a summary of the research or data including the level of risk to the public health or the environment being removed or controlled by the proposed regulation or amendments.

There is no risk to the public health or the environment being removed or controlled by the proposed regulation.

3) Is specific contaminants are to be controlled by the proposed regulation or amendment, a description indicating the level at which the contaminants are considered harmful according to current available research.

Not applicable.

Economic Impact Statement

1) Is the proposed regulation or amendment mandated by federal law as a requirement of participating in or implementing a federally subsidized or assisted program?

No.

2) Do the proposed regulations or amendments exceed the requirements of applicable federal law?

No.

3) Description of costs to agencies, to the general public and to persons who are affected by or are subject to, the regulation:

a. Capital and annual costs of compliance with the proposed regulations or amendments and the persons who will bear those costs.

There is no cost to the agency or the general public unless they are an employer or insurance carrier covering a workers compensation claim. The total estimated cost impact on Kansas Workers compensation is an overall savings of 0.4% or \$2 million. This is based on the analysis by the National Council on Compensation Insurance of the proposed 2017 Schedule of Medical Fees for Workers Compensation.

b. Initial and annual costs of implementing and enforcing the proposed regulations or amendments, including the estimated amount of paperwork, and the state agencies, other governmental agencies or other persons or entities who will bear the costs.

There will be no initial or annual costs to implement or enforce the proposed fee schedule.

c. Costs which would likely accrue if the proposed regulations or amendments are not adopted, the persons who will bear the costs, and those who will be affected by the failure to adopt the regulations.

The employers and insurance carriers will bear the costs of the medical payments for their workers compensation claims and will benefit from the overall savings by adopting the proposed 2017 schedule of medical fees. A failure to implement the proposed fee schedule would likely cause complaints to the Division of Workers Compensation.

d. A detailed statement of the data and methodology used in estimating the costs used in the statement.

The estimated cost savings of implementing the proposed fee schedule was calculated by the National Council on Compensation Insurance.

e. Description of any less costly or less intrusive methods that were considered by the agency and why such methods were rejected in favor of the proposed regulation.

The fee schedule was developed to ensure that rates for medical care to treat workers compensation clients is current, fair, and reasonable while maintaining the level of medical professional participation. No less intrusive or costly methods were identified based upon existing statutory authority.

f. Consultation with League of Kansas Municipalities, Kansas Association of Counties and Kansas Association of School Boards.

Copies of the draft regulations and regulatory impact statement will be forwarded electronically to the Kansas League of Municipalities, Kansas Associate of Counties and Kansas Association of School Boards at the time of publication of the Notice of Hearing in the Kansas Register.