

State of Kansas

Department of Labor

Notice of Public Hearing on Proposed Administrative Regulation

December 4, 2018

A public hearing will be conducted on Friday, February 15, 2019 at 2:00 pm in Hearing Room 3 of the Department of Labor Building, 401 SW Topeka Blvd., Topeka, Kansas to consider the adoption of proposed rules and regulations of the Division of Workers Compensation, Department of Labor on a permanent basis.

This 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rules and regulations. All interested parties may submit written comments prior to the hearing to the Division of Workers Compensation, 401 SW Topeka Blvd., Suite 2, Topeka, Kansas 66603 or by email to Jose.Castillo@ks.gov. All interested parties will be given a reasonable opportunity to present their views orally regarding the adoption of the proposed regulations during the public hearing. In order to provide all parties an opportunity to present their views, it may be necessary to request that each participant limit any oral presentation to five minutes.

An individual with a disability may request an accommodation in order to participate in the public hearing and may request the proposed regulations and economic impact statements in an accessible format. Request for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Jose Castillo at (785) 296-4000, ext. 2159 (or TYY 1-800-766-3777). The northwest entrance to the Department of Labor Building is accessible. Handicapped parking is located at the northwest side of the Department of Labor Building.

Copies of the proposed regulation and the Economic Impact Statement for the proposed regulation can be obtained by contacting Jose Castillo at (785) 296-4000 ext. 2159 or Jose.Castillo@ks.gov.

Summaries of the proposed regulations and their economic impact follow (Note: Statements indicating that a regulation is "not anticipated to have any economic impact" are intended to indicate that no economic impact on the Department of Labor, other state agencies, state employees, or the general public has been identified.)

K.A.R 51-9-7 – The purpose of this proposed regulatory change is to revise the fee schedule in K.S.A. 51-9-7 as authorized by K.S.A. 44-510i. The Director is to adjust the fees at least biennially to ensure the medical fees paid as a result of a workers compensation injury are current, reasonable and fair.

Economic Impact: Based on the analysis conducted by the National Council on Compensation Insurance (NCCI), the Kansas Division of Workers Compensation estimates the proposed changes to the medical fee schedule to have an impact of +2.6% (+11M) on the overall workers compensation system in Kansas.

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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 "2017 2019 schedule of medical fees" published by the Kansas department of labor, effective on January 1, 2017 March 29, 2019, and approved by the director of workers compensation on August 23, 2016 November 21, 2018, 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, 2017 March 29, 2019.

(Authorized by and implementing K.S.A. 2015 2018 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 Jan. 1, 2017; amended P-_____.)

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Proposed

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**Kansas Administrative Regulations
Economic Impact Statement
For the Kansas Division of the Budget**

K.A.R. 51-9-7

Submit a hard copy of the proposed rule(s) and regulation(s) and any external documents that the proposed rule(s) and regulation(s) would adopt along with the following to the Division of the Budget.

I. Brief description of the proposed rule(s) and regulation(s).

KSA 44-510i authorizes the Director of the Kansas Department of Labor Division of Workers Compensation (hereafter the Director) to prepare and adopt rules and regulations which establish a schedule of maximum fees for medical, surgical, hospital, nursing, dental, vocational 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 51-9-7As 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 fees were adjusted was in January of 2017.

II. Statement by the agency if the rule(s) and regulation(s) is mandated by the federal government and a statement if approach chosen to address the policy issue is different from that utilized by agencies of contiguous states or the federal government. (If the approach is different, then include a statement of why the Kansas rule and regulation proposed is different)

No

III. Agency analysis specifically addressing following:

A. The extent to which the rule(s) and regulation(s) will enhance or restrict business activities and growth;

The Director is charged with establishing a schedule of maximum fees that shall be reasonable and promote health care cost containment and efficiency. The Fee Schedule shall be sufficient to ensure availability of such reasonably necessary treatment, care and attendance to each injured employee to cure and relieve the employee from the effects of the injury. Therefore as a result of said fee schedule; some healthcare providers may choose not to treat workers compensation patients. Meanwhile, other healthcare providers may elect to treat workers compensation patients as payment has been clearly set by said fee schedule.

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- B. The economic effect, including a detailed quantification of implementation and compliance costs, on the specific businesses, sectors, public utility ratepayers, individuals, and local governments that would be affected by the proposed rule and regulation and on the state economy as a whole;**

The Division of Workers Compensation employees the National Council on Compensation Insurance (NCCI) an organization that gathers data, analyzed industry trends, and provides objective insurance rate and loss cost recommendations based on the data gathered from Division, NCCI estimates that the changes to the medical fee schedule in Kansas, proposed effective March 29, 2019, would result in an estimated impact of +2.6 (+11M) on the overall workers compensation system costs in Kansas.

- C. Businesses that would be directly affected by the proposed rule and regulation;**

Those affected directly by the proposed changes to the medical fee schedule would be employers, insurance carriers, healthcare providers and healthcare facilities.

- D. Benefits of the proposed rule(s) and regulation(s) compared to the costs;**

This amended regulation is being proposed for the purpose of changing fees for treatment and services ordered and provided by health care providers, and healthcare facilities to injured workers under the workers compensation act.

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

- E. Measures taken by the agency to minimize the cost and impact of the proposed rule(s) and regulation(s) on business and economic development within the State of Kansas, local government, and individuals;**

The Division sought input and guidance from the advisory panel created pursuant to K.S.A. 44-510i(d) that is tasked with providing assistance to the Director in creating and updating the Fee Schedule for medical services provided to injured workers in the State of Kansas. Furthermore, the Division sought input from the public regarding the proposed changes. Thereafter, the Division has proposed the changes to ensure there is adequate healthcare providers to meet the medical needs of injured workers in the State of Kansas while maintaining control of the costs associated with those medical services.

- F. An estimate, expressed as a total dollar figure, of the total annual implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.**

\$11M

An estimate, expressed as a total dollar figure, of the total implementation and compliance costs that are reasonably expected to be incurred by or passed along to business, local governments, or members of the public.

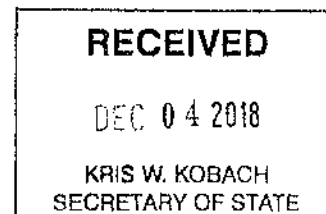
\$11M

Do the above total implementation and compliance costs exceed \$3.0 million over any two-year period?

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Give a detailed statement of the data and methodology used in estimating the above cost estimate.

In order to evaluate the impact of the proposed medical fee schedule changes, NCCI's methodology includes three major steps.

1. Calculate the percentage change in maximum reimbursements;
2. Estimate the price level change as a result of the revised fee schedule and
3. Determined the share of cost that are subject to the fee schedule. In their analysis, NCCI primarily relies on two data sources: a) Detailed medical data underlying the calculations in this analysis are based on NCCI's Medical Data Call for Kansas for Service Year 2016 b) The share benefit costs attributed to medical benefits is based on NCCI's Financial Call data for Kansas from the latest three policy years projected to the effective date of benefit changes. (For a detailed analysis please review the attached NCCI's report for the 2019 proposed changes)

Prior to the submission or resubmission of the proposed rule(s) and regulation(s), did the agency hold a public hearing if the total implementation and compliance costs exceed \$3.0 million over any two-year period to find that the estimated costs have been accurately determined and are necessary for achieving legislative intent? If applicable, document when the public hearing was held, those in attendance, and any pertinent information from the hearing.

YES NO

The Public Hearing on Economic Impact was held, Friday, September 14, 2018 at 3:00 p.m. The hearing was held at 401 SW Topeka Blvd. In attendance were Director Larry Karns, Jose Castillo, Kristi Schmidt, Secretary Lana Gordon and Jaime Whitt with the law firm of Simpson, Logback, Lynch, Norris, and P.A. There was no public comments.

- G. If the proposed rule(s) and regulation(s) increases or decreases revenues of cities, counties or school districts, or imposes functions or responsibilities on cities, counties or school districts that will increase expenditures or fiscal liability, describe how the state agency consulted with the League of Kansas Municipalities, Kansas Association of Counties, and/or the Kansas Association of School Boards.**

Not Applicable

- H. Describe how the agency consulted and solicited information from businesses, associations, local governments, state agencies, or institutions and members of the public that may be affected by the proposed rule(s) and regulation(s).**

The Division published in the Kansas Register and the Kansas Department of Labor's website notice of the public hearing that was held September 14, 2018. The purpose of the hearing was to consult and solicit information from those that would be affected by the proposed changes to the medical fee schedule.

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- I. For environmental rule(s) and regulation(s) describe the costs that would likely accrue if the proposed rule(s) and regulation(s) are not adopted, as well as the persons who would bear the costs and would be affected by the failure to adopt the rule(s) and regulation(s).

Not Applicable

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