

1 LABOR CABINET

2 Department of Workers' Claims

3 (New Regulation)

4 803 KAR 25:300. Mediation Program.

5 RELATES TO: KRS Chapter 342

6 STATUTORY AUTHORITY: KRS 342.276

7 NECESSITY, FUNCTION, AND CONFORMITY: KRS 342.276(2) provides that the
8 Commissioner of the Department of Workers' Claims shall promulgate administrative regulations
9 necessary to establish and implement a mediation program, which shall prescribe the qualifications
10 and duties of mediators; a process for the designation of mediators; procedures for the conduct of
11 mediation proceedings; and the issues which shall be subject to mediation. This administrative
12 regulation establishes a mediation program for mediation of disputes as to the entitlement to
13 compensation under KRS Chapter 342.

14 Section 1. Definitions.

15 (1) "Administrative law judge" or "ALJ" is defined in 803 KAR 25:010 Section 1(1).

16 (2) "Calendar day" means all days in a month, including Saturday, Sunday and any day
17 which is a legal holiday.

18 (3) "Mediation" as used in this regulation means a process where a third party facilitates
19 discussion among the parties in an effort to resolve disputes regarding entitlement to the
20 compensation provided in KRS Chapter 342.

21 Section 2. Qualifications and Duties of Mediators.

1 (1) A mediator shall be an administrative law judge.

2 (2) A mediator shall not conduct the mediation of a claim, or any of the issues involving a
3 claim, presently assigned to him or her as an administrative law judge.

4 (3) The mediator shall:

5 (a) explain the mediation process to the parties at the beginning of the session;

6 (b) conduct the mediation in a fair and unbiased manner; and

7 (c) maintain the confidentiality of the mediation.

8 Section 3. Process for Designation of Mediators. The chief administrative law judge shall
9 designate one or more administrative law judges to serve as a mediator on a rotating basis
10 consistent with this regulation.

11 Section 4. Procedures for Conduct of Mediation Proceedings.

12 (1) At any time after the claim has been initiated with the Department of Workers' Claims,
13 any party may file a motion with the administrative law judge to have the claim, or any part of the
14 claim, referred to mediation under the program outlined in this regulation. The motion shall
15 identify the issues to be mediated.

16 (2) An opposing party shall have seven (7) calendar days to file a response to the motion
17 seeking mediation.

18 (3) The administrative law judge shall either grant or deny the motion within ten (10)
19 calendar days of the filing of the motion to refer to mediation.

20 (4) The parties may file a joint motion to refer to mediation. The administrative law judge
21 shall order that the claim or parts of the claim be referred to mediation within seven (7) calendar
22 days of the filing of the joint motion.

1 (5) The administrative law judge may refer a claim or part of a claim to mediation sua
2 sponte at any time after being assigned the claim.

3 (6) Upon the referral, the administrative law judge or the mediator shall confer with the
4 parties for the purpose of scheduling the mediation. The mediator shall issue a mediation order
5 within seven (7) calendar days of the referral which shall include:

6 (a) the date, time, allotted time, location of the mediation and whether the mediation shall
7 be conducted in person, by telephone, or by video conferencing technology;

8 (b) the required attendees of the mediation; and

9 (c) the issue(s) to be mediated.

10 (7) Except by agreement of the parties or by order of the mediator, all counsel of record
11 and all parties shall attend the mediation.

12 (a) An insured party shall be deemed to have appeared by the physical presence of a
13 representative of the insurance carrier, other than defense counsel, with full settlement
14 authority.

15 (b) A public entity shall be deemed to have appeared by the physical presence of a
16 representative with full authority to negotiate on behalf of the entity and to recommend
17 settlement to the appropriate decision-making body of the entity.

18 (c) An entity other than a public entity or an insurance carrier for an insured party shall be
19 deemed to appear by the physical presence of a representative, other than the party's
20 counsel of record, who has full authority to settle without further consultation or approval.

21 (d) The requirement to physically attend the mediation may be modified to telephonic
22 attendance or attendance by video conference technology by stipulation of the parties or
23 by order of the mediator.

1 (8) Parties entering into mediation shall be prepared to mediate the disputed issues listed
2 in the mediation order and shall mediate all issues listed in good faith.

3 (9) Mediation shall be confidential and considered as settlement negotiations for purposes
4 of KRE 408.

5 (10) The mediator shall conduct the mediation in accordance with Section 2(3) of this
6 regulation.

7 (11) If the parties are able to reach a settlement of all disputed issues, the mediator shall
8 issue a "Notice of Settlement at Mediation" within seven (7) calendar days after the mediation
9 stating that all claims have been resolved. The "Notice of Settlement at Mediation" shall be filed
10 with the Department of Workers' Claims and served on all parties.

11 (12) If the parties are unable to reach a settlement of any disputed issues, the mediator shall
12 issue a written "Notice of No Settlement at Mediation" within seven (7) calendar days after the
13 mediation stating that no disputes have been resolved. The "Notice of No Settlement at Mediation"
14 shall be filed with the Department of Workers' Claims and served on all parties.

15 (13) If the parties are able to reach a partial settlement of the disputed issues, the mediator
16 shall issue a written "Notice of Partial Settlement at Mediation" setting forth all the resolved issues
17 and unresolved issues within seven (7) calendar days after the mediation. The "Notice of Partial
18 Settlement at Mediation" shall be filed with the Department of Workers' Claims and served on all
19 parties.

20 Section 5. Issues Subject to Mediation.

21 (1) All issues arising from disputes as to the entitlement to benefits under KRS Chapter
22 342 shall be subject to mediation under this regulation if so ordered by an administrative law judge.

1 (2) Nothing in this regulation shall prevent the parties from using a private mediator at their
2 own cost to resolve disputes as to the entitlement to benefits under KRS Chapter 342.

This is to certify that the commissioner has reviewed and recommended this administrative regulation prior to its adoption, as required by KRS 342.260 and 342.035.

Robert L. Swisher

**Robert L. Swisher, Commissioner
Department of Workers' Claims**

December 9, 2020

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held at the Department of Workers' Claims on February 23, 2021 at 10:00 a.m. (ET) to receive comment regarding the proposed new regulation, Mediation Program, 803 KAR 25:300. The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b, (2020) and the continuing state of emergency. 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 February 28, 2021. 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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REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation No.: 803 KAR 25:300

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 establishes a program to mediate disputes as to the entitlement to compensation under KRS Chapter 342.

 (b) The necessity of this administrative regulation: KRS 342.276(2) mandates that the Commissioner of the Department of Workers' Claims promulgate administrative regulations necessary to establish and implement a mediation program, which shall prescribe the qualifications and duties of mediators; a process for the designation of mediators; procedures for the conduct of mediation proceedings; and the issues which shall be subject to mediation.

 (c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 342.276(2) mandates that the Commissioner of the Department of Workers' Claims promulgate administrative regulations necessary to establish and implement a mediation program, which shall prescribe the qualifications and duties of mediators; a process for the designation of mediators; procedures for the conduct of mediation proceedings; and the issues which shall be subject to mediation. This regulation establishes a mediation program as prescribed by KRS 342.276(2).

 (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation adopts a program for mediation of disputes as to the entitlement to compensation under KRS Chapter 342. The mediation program will provide 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 an opportunity for a quickly negotiated resolution of claims under this chapter.

(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: When the administrative law judge refers the parties to mediation by order, the parties will participate in a mediation session in an effort to resolve all or part of their claims.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): No additional cost is assessed to any party to participate in a mediation session ordered by an ALJ.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The mediation program will provide 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 an opportunity for a quickly negotiated resolution of claims under this chapter.

(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: None.

(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 is needed 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 25:300

Contact Person: B. Dale Hamblin, Jr.
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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 agencies or departments 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 342.276(2).

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. There should be no direct effect on expenditures.

(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? None.

(d) How much will it cost to administer this program for subsequent years? None.

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: None.