

Administrative Rule Review – ARR21-091
Legislative Service Office

AGENCY Department of Workforce Services

DATE SUBMITTED: December 7, 2021

SUBJECT: Workers' Compensation - Chapter 9 - Fee Schedules

NATURE OF RULES: Legislative, Procedural

STATUTORY AUTHORITY: W.S. 27-14-401(b), (e) and (g), 27-14-802(a) and the Wyoming Administrative Procedure Act

DETERMINATION OF PROCEDURAL COMPLIANCE BASED UPON INFORMATION SUBMITTED BY SECRETARY OF STATE TO LSO: Apparently complete to date.

SUMMARY OF RULES: The Department of Workforce Services is updating chapter 9 of its rules related to workers compensation fee schedules. These rules adopt the 2022 fee schedule based on recent codes published by the American Medical Association and references published by Optum360. These rules remove the year of publication for the reference materials in favor of using language that specifies the most recent edition of those resources, along with other formatting and grammatical updates. These rules also add a new section to chapter 9, specifically, section 10 regarding fees for home infusion therapy. This new section explains how fees will be paid for home infusion therapy in line with the rest of the fee schedules contained in chapter 9. These rules were published for public comment, but none were received by the Department.

FINDINGS: Except as noted below, the rules appear to be within the scope and statutory authority and legislative intent.

- W.S. 16-3-103(h)(ii) provides that, “an agency may incorporate by reference in its rules and without publishing the incorporated matter in full, all or any part of a code, standard, rule or regulation that has been adopted by an agency of the United States or of this state, another state or by a nationally recognized organization or association, provided...the reference in the rules of the incorporating agency fully identifies the incorporated matter by location, date and otherwise, and states that the rule does not include any later amendments or editions of the incorporated matter.” (Emphasis added)
- The rules in chapter 9 use language that, “the Division shall use accepted medical resources and publications to aid in adjudicating bills.” The rules provide a non-inclusive list of accepted reference materials and the primary amendments to be adopted is to include language that the Division shall use the most recent edition or version of the published materials at the time of service to a person seeking workers’ compensation when adjudicating bills.
- The Agency and the Attorney General’s Office have determined that the use of the wording, “the most recent edition of the following sources are the time services are rendered” or as stated similarly in the rules does comport with the requirements of W.S. 16-3-103(h)(ii) by specifying that only the most recent edition or published version shall be used for purposes of adjudication.
- LSO notes that it is possible these rules exceed statutory authority because that material is not identified by date and because future editions or publications of the mentioned reference materials

may be updated and revised which could incorporate later amendments or editions into these rules contrary to W.S. 16-3-103(h)(ii).

STAFF RECOMMENDATION: That the rules be approved by the Council as the Department submitted them, but that the Council also recommend that the Governor direct the Department to review and, if necessary, amend the rules to address the concern raised in this rule review.

/s/ Luke Plumb

Lucas Plumb
Staff Attorney

/s/ Josh Anderson

Josh Anderson
Senior Staff Attorney