

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION

OFFICE OF THE SECRETARY

HF No. 1D, 2011/12

DECLARATORY RULING

Re: ARSD § 47:03:05:05, ARSD § 47:03:05:10, ARSD § 47:03:05:11, and ARSD § 47:03:05:12

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This matter comes before Pamela Roberts, the Secretary of the South Dakota Department of Labor and Regulation as a petition for declaratory ruling pursuant to SDCL § 1-26-15 and ARSD § 47:01:01:04. The Secretary has determined this is matter of widespread impact. A statewide public hearing was held on February 28, 2012 before the Department, Administrative Law Judge Catherine Duenwald presiding. Testifying at the hearing were witnesses Larry Kucker, James Marsh, and Chris VandenBos. The Hearing was also open to public testimony via the Digital Dakota Network at public sites in Aberdeen, Rapid City, and Sioux Falls. Written public comments were also received.

Appearing before the Department are Petitioners, Stanley County School and Associated School Boards of South Dakota Worker's Compensation Trust Fund, by through their attorney of record, Naomi R. Cromwell; Respondent, St. Mary's Healthcare Center, by and through its attorney of record, Talbot J. Wiczorek; Intervenors, City of Pierre, Children's Castle, Pierre School District, Gettysburg School, SDML Worker's Compensation Fund, First Dakota Indemnity and Dakota Truck Underwriters, by and through their attorney of record, Michael S. McKnight; and Intervenors, State of South Dakota – Bureau of Personnel, Workers' Compensation Administrator's Office, by and through their attorney of record, Robert B. Anderson.

The Petition for Declaratory Ruling seeks an interpretation of the South Dakota Administrative Rules addressing Workers' Compensation medical reimbursement. The Parties have stipulated that the questions raised only apply to the services of radiology and physical therapy (this includes occupational and speech therapies).

**Issue #1** (regarding ARSD §§ 47:03:05:10, 47:03:05:11, and 47:03:05:12): Whether prior to December 12, 2011, payment for radiology or physical therapy services or procedures provided at a hospital facility were to be paid according to the workers' compensation physician fee schedule set forth in Appendix A, as provided by ARSD §§ 47:03:05:10 and 47:03:05:11, or at 80% of billed usual and customary charges under ARSD § 47:03:05:12?

**Issue #2** (regarding ARSD §§ 47:03:05:05 and 47:03:05:12): Whether on or after December 12, 2011, payment for radiology or physical therapy services or procedures provided at a hospital facility are to be paid pursuant to the methodology set forth in ARSD § 47:03:05:05, or at 80% of billed usual and customary charges under ARSD § 47:03:05:12?

### Rules

ARSD §47:03:05:01(8) defines “Medical services” or “treatment” as “any procedure, operation, consultation, supply, or product provided for the purposes of curing or relieving an employee of the effects of a compensable injury or disability.”

ARSD §47:03:05:05 (prior to December 12, 2011). To be reimbursed, the charge must be for reasonable and necessary services for the cure or relief of the effects of a compensable injury or disability. A health care provider is not entitled to payment from an insurer or employee for fees in excess of the maximum reimbursement allowed under this chapter.

ARSD §47:03:05:05 (effective December 12, 2011).

To be reimbursed, the charge must be for reasonable and necessary services for the cure or relief of the effects of a compensable injury or disability. A health care provider is not entitled to payment from an insurer or employee for fees in excess of the maximum reimbursement allowed under this chapter.

Except as otherwise provided in this chapter, to determine the maximum reimbursement for services, the base unit value for a procedure code is multiplied by the following factors:

<b>Procedure Code</b>	<b>Factor</b>
10000-69999	\$98.24
70000-79999	\$18.60
80000-89999	\$14.90
90000-99499	\$ 6.40

If a code is properly submitted for one of these services, but is not listed in **Relative Values for Physicians**, or the base unit value is RNE or BR, the reimbursement is 80% of the provider's charge.