



1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Policy and Operations

4 (New Administrative Regulation)

5 895 KAR 1:050. Enrollment and reimbursement for providers in the Kentucky HEALTH
6 program.

7 RELATES TO: KRS 205.520, 42 U.S.C. 1315

8 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

9 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family
10 Services, Department for Medicaid Services has responsibility to administer the Medicaid Program
11 in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet,
12 by administrative regulation, to comply with any requirement that may be imposed or opportunity
13 presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.
14 Pursuant to state and federal law, including 42 U.S.C. 1315, the Kentucky HEALTH
15 demonstration waiver has been approved and it shall, on a continuing basis, determine and
16 establish how the commonwealth provides Medicaid services and supports for certain Medicaid
17 members. This administrative regulation establishes the enrollment and reimbursement
18 requirements for providers that provide covered and non-covered services to beneficiaries
19 participating in the Kentucky HEALTH program.

1 Section 1. Provider Enrollment Requirements. (1) A provider shall be automatically eligible for
2 Kentucky HEALTH provider participation if the provider is currently enrolled as a Medicaid
3 provider or as a provider with an MCO to provide Medicaid services to Kentucky Medicaid
4 recipients.

5 (2) To enroll as a provider under Title 895 KAR, the provider shall comply with all Medicaid
6 enrollment procedures and requirements established in Title 907 KAR.

7 Section 2. Provider Reimbursement. (1) A provider shall be reimbursed at the reimbursement
8 rate established by the MCO for the MCO covered services.

9 (2) A provider shall be reimbursed for services covered by 895 KAR 1:030 Section 1, through
10 the beneficiary's MyRewards account on a fee-for-service basis. A claim for services covered by
11 the MyRewards account shall not be submitted to the beneficiary's MCO.

12 (3) A provider shall not receive reimbursement under title 895 KAR for services provided to an
13 individual if:

14 (a) The individual is not eligible for participation in the Kentucky HEALTH program pursuant
15 to 895 KAR 1:010; or

16 (b) The individual is suspended or otherwise not enrolled in Kentucky HEALTH on the date
17 the service is provided.

18 Section 3. Non-covered Services Reimbursed via MyRewards Account. (1) A provider who
19 seeks to receive reimbursement for an otherwise non-covered service that is reimbursable via a
20 beneficiary's MyRewards account established by 895 KAR 1:030 shall be at risk for the cost of
21 the service provided, if:

22 (a)1. The provider fails to place a hold on funds in the account; and

23 2. Funds are not available at the time services are billed;

1 (b) The beneficiary's MyRewards account was inactive or suspended at the time the service
2 was rendered; or

3 (c) The hold on the funds placed by the provider subsequently expired due to the provider's
4 failure to submit a claim within thirty (30) days of the date of service.

5 (2) A provider may bill a beneficiary with an inactive or suspended MyRewards account for
6 services not covered by the beneficiary's benefit plan as established in 895 KAR 1:030 or 895
7 KAR 1:025 if the services are for:

8 (a) Vision; or

9 (b) Dental.

10 Section 4. MCO Payment. (1)(a) Except as provided in paragraph (b) of this subsection, a
11 provider shall:

12 1. Accept MCO reimbursement as payment in full for services rendered; and

13 2. Not collect from a beneficiary any portion of the provider's charge for a covered service that
14 is not reimbursed by the MCO.

15 (b) A provider shall collect the copays required by the Kentucky Medicaid state plan, for
16 beneficiaries in the copay plan.

17 (2) A provider may seek beneficiary reimbursement for non-covered services, including
18 services received by the beneficiary during a suspension or other penalty period, if the following
19 four (4) conditions are met:

20 (a) The provider has an established policy for billing all patients for services not covered by a
21 third party and does not bill only Medicaid or Kentucky HEALTH patients;

22 (b) The patient is advised prior to receiving a non-covered service that Kentucky HEALTH will
23 not pay for the service;

1 (c) The patient agrees to be personally responsible for the payment; and

2 (d) The agreement is made in writing between the provider and the patient, detailing both the
3 service and the amount to be paid by the patient.

4 Section 5. Third party liability. A provider shall comply with KRS 205.622.

5 Section 6. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use
6 of electronic signatures and documents shall comply with the requirements established in KRS
7 369.101 to 369.120.

8 (2) A provider that chooses to use electronic signatures shall:

9 (a) Develop and implement a written security policy that shall:

10 1. Be adhered to by each of the provider's employees, officers, agents, or contractors;

11 2. Identify each electronic signature for which a beneficiary has access; and

12 3. Ensure that each electronic signature is created, transmitted, and stored in a secure fashion;

13 (b) Develop a consent form that shall:

14 1. Be completed and executed by each beneficiary using an electronic signature;

15 2. Attest to the signature's authenticity; and

16 3. Include a statement indicating that the beneficiary has been notified of his or her
17 responsibility in allowing the use of the electronic signature; and

18 (c) Provide the department, immediately upon request, with:

19 1. A copy of the provider's electronic signature policy;

20 2. The signed consent form; and

21 3. The original filed signature.

22 Section 7. Auditing Authority. The department or MCO in which a beneficiary is enrolled shall
23 have the authority to audit any:

- 1 (1) Claim;
- 2 (2) Health record; or
- 3 (3) Documentation associated with any claim or health record, including any activity related
- 4 to a beneficiary's use of a MyRewards account.

5 Section 8. Federal Approval and Federal Financial Participation. The department's coverage
6 of services pursuant to this administrative regulation shall be contingent upon:

- 7 (1) Receipt of federal financial participation for the coverage; and
- 8 (2) Centers for Medicare and Medicaid Services' approval for the coverage.

REVIEWED:

6/22/2018

Date

Jill R. Hunter

Jill R. Hunter, Acting Commissioner

Department for Medicaid Services

APPROVED:

6-27-18

Date

Adam Meier

Adam M. Meier, Secretary

Cabinet for Health and Family Services

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall, if requested, be held on August 27, 2018, at 9:00 a.m. in Suites A & B, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621. Individuals interested in attending this hearing shall notify this agency in writing by August 20, 2018, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends 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 this proposed administrative regulation until August 31, 2018. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Laura Begin, Legislative and Regulatory Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, KY 40621, Phone: 502-564-6746, Fax: 502-564-7091; Laura.Begin@ky.gov.

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation #: 895 KAR 1:050

Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Laura Begin, (502) 564-6746, laura.begin@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the enrollment and reimbursement requirements for providers that provide covered and non-covered services to beneficiaries participating in the Kentucky HEALTH program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the requirements for providers that will provide covered and non-covered services to the beneficiaries participating in the Kentucky HEALTH program.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing the requirements and processes by which providers will be able to provide covered and non-covered services to Kentucky HEALTH beneficiaries.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing processes and requirements by which providers will be able to provide covered and non-covered services to Kentucky HEALTH beneficiaries.

(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: This is a new administrative regulation.

(b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The Department for Medicaid Services, any contracted Medicaid managed care organization that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, any enrolled provider that delivers services to individuals eligible for Medicaid through the Kentucky HEALTH program, and any

beneficiary whose eligibility for Medicaid will be governed by the Kentucky HEALTH program. Currently, more than 1.2 million individuals in Kentucky receive Medicaid.

(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: Providers will need to follow existing enrollment procedures and requirements in Title 907 KAR. For non-covered services, a provider may bill a MyRewards account via established procedures. Additional procedures outlining the step that must occur before a provider can establish additional beneficiary liability shall also be followed.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There will be no additional costs experienced.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, providers will attain the ability to receive reimbursement for covered and certain non-covered services provided to beneficiaries in the Kentucky HEALTH program.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The department anticipates no additional costs in the implementation of this administrative regulation.

(b) On a continuing basis: The department anticipates no additional costs in the continuing operation of this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Federal funds authorized under the Social Security Act, Title XIX and state matching funds from general fund and restricted fund appropriations are utilized to fund this administrative regulation.

(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: Neither an increase in fees or funding is necessary to implement this regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This new administrative regulation neither establishes or increases any fees.

(9) Tiering: Is tiering applied? Tiering was not appropriate in this administrative regulation because the requirements established herein apply to all regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 895 KAR 1:050

Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; or Laura Begin, (502) 564-6746, laura.begin@ky.gov.

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1315; 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438
2. State compliance standards. KRS 194A.010(1), 194A.025(3), 194A.030(2), 194A.050(1), 205.520(3), and 205.560

KRS 205.520(3) states, "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. To qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary's power in this respect."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1315 establishes the 1115 waiver authority. 42 U.S.C. 1396n(b) and 42 C.F.R. Part 438 establish requirements relating to managed care.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

Different responsibilities established include establishing how providers accept payment for non-covered services by a MyRewards account.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

A federal demonstration waiver has been approved pursuant to 42 U.S.C. 1315 and on an ongoing basis it shall determine and establish how Medicaid services are provided to Medicaid members who are eligible pursuant to this regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation: 895 KAR 1:050

Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; or Laura Begin, (502) 564-6746, laura.begin@ky.gov.

(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? Cabinet for Health and Family Services, Department for Medicaid Services

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.560.

(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.

(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? None

(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? None

(c) How much will it cost to administer this program for the first year? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over \$2.2 billion dollars in state and federal funding over the five year waiver period.

(d) How much will it cost to administer this program for subsequent years? Pursuant to the budget neutrality analysis in the application for the approved federal 1115 waiver, Kentucky HEALTH is projected to save taxpayers over \$2.2 billion dollars in state and federal funding over the five year waiver period.

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: