



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 1:020. PATH requirement for the Kentucky HEALTH program.

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

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

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

18 Section 1. Beneficiaries Required to Meet the PATH Requirement. (1) A beneficiary shall
19 complete the monthly PATH requirement if the beneficiary is:

20 (a) At least nineteen (19) years of age and less than sixty-five (65) years of age;

1 (b) Eligible under one (1) of the following Medicaid assistance categories:

- 2 1. ACA Expansion Adult;
- 3 2. Parent and Caretaker Relative; or
- 4 3. Transitional Medical Assistance; and

5 (c) Not exempt from the PATH requirement pursuant to Section 4 of this administrative
6 regulation.

7 (2) A beneficiary required to meet the PATH requirement shall not receive the suspension
8 required by Section 3 of this administrative regulation if a good cause exemption is granted. A
9 good cause exemption shall be granted if:

10 (a) The beneficiary:

- 11 1. Has a protected disability; and
- 12 2. Was unable to meet the PATH requirement for the month in which the good cause exemption
13 is sought for reasons related to that disability;

14 (b) The beneficiary:

- 15 1. Has an immediate family member living in the beneficiary's home with a protected disability;
16 and
- 17 2. Was unable to meet the PATH requirement for the month in which the good cause exemption
18 is sought for reasons related to the disability of that family member;

19 (c) During the month in which the good cause exemption is sought, the beneficiary or an
20 immediate family member who was living in the home with the beneficiary experienced:

- 21 1. An inpatient hospitalization or a serious medical event involving treatment at a hospital; or
- 22 2. A serious illness;

23 (d) The beneficiary experienced the birth or death of a family member living with the

1 beneficiary during the month in which the good cause exemption is sought;

2 (e) The beneficiary experienced severe inclement weather, such as a snowstorm, an ice storm,
3 a warned winter storm, or other warned weather event, which includes a declared disaster, during
4 the month in which the good cause exemption is sought; or

5 (f) During the month in which the good cause exemption is sought, the beneficiary experienced:

6 1. A family emergency; or

7 2. A life-changing event.

8 Section 2. PATH Requirement Timeframe, Qualifying Activities, and Deemed Compliance.

9 (1)(a) A beneficiary shall be given a three (3) month notice period before being subject to the
10 PATH requirement if the beneficiary:

11 1. Was not required to meet the PATH requirement within the previous five (5) years; and

12 2. Does not qualify for an exemption established in Section 4 of this administrative regulation.

13 (b) A beneficiary shall be required to meet the PATH requirement effective on:

14 1. The first day of the month following enrollment in Kentucky HEALTH; or

15 2. The first day of the month following expiration of the three (3) month notice period required
16 by paragraph (a) of this subsection.

17 (2) A beneficiary who is required to meet the PATH requirement shall be deemed to satisfy the
18 PATH requirement with no additional PATH reporting obligations if the beneficiary:

19 (a) 1. Is enrolled in the Supplemental Nutrition Assistance Program (SNAP); and

20 2. Meets, or is exempt from meeting, the requirements of the SNAP employment initiative;

21 (b) 1. Is enrolled in Temporary Assistance for Needy Families (TANF); and

22 2. Meets, or is exempt from meeting, the requirements of the TANF employment initiative;

23 (c) Is enrolled in the Kentucky Medicaid Premium Assistance program; or

1 (d) Is employed full time.

2 (3) Except as provided by subsection (2) of this section, a beneficiary who is subject to the
3 PATH requirement shall use the Web site www.citizenconnect.ky.gov to:

4 (a) Report and track community engagement activities;

5 (b) Document completion of a re-entry course; and

6 (c) Request an exemption pursuant to Section 1(2) or 4 of this administrative regulation.

7 Section 3. Failure to Meet PATH Requirement. (1) In the month immediately following the
8 month in which a beneficiary fails to meet the PATH requirement, the beneficiary shall have the
9 opportunity to avoid a suspension from eligibility for Kentucky HEALTH for failing to comply
10 with the PATH requirement by:

11 (a) Being current on required hours for the current month; and

12 (b) Either:

13 1. Making up all deficit PATH hours not completed in the prior month; or

14 2. Completing a re-entry course.

15 (2) (a) Except as provided by paragraph (a) of this subsection, failure to comply with the PATH
16 requirement shall result in a beneficiary receiving a suspension from the Kentucky HEALTH
17 program. The suspension shall:

18 1. Not end until the beneficiary completes the requirements in paragraph (b) of this subsection
19 or until the beneficiary successfully recertifies for Kentucky HEALTH eligibility for the next
20 benefit year; and

21 2. Begin on the first day of the second month immediately following the month in which the
22 beneficiary failed to meet the PATH requirement.

23 (b) A beneficiary shall be able to reactivate eligibility on the first day of the month following

1 completion of either:

2 1. Eighty (80) hours of community engagement activities within a thirty (30) day time period;

3 or

4 2. A re-entry course.

5 (3) A beneficiary who received a suspension from Kentucky HEALTH benefits for failure to
6 comply with the PATH requirement over the twelve (12) month period between benefit year
7 certification dates shall:

8 (a) Be terminated from Kentucky HEALTH; and

9 (b) Submit a new application to receive Kentucky HEALTH benefits, following a delay of no
10 less than one (1) month.

11 Section 4. PATH exempt groups. (1) A beneficiary shall be exempt from the PATH requirement
12 if the beneficiary is:

13 (a) A former foster youth;

14 (b) A pregnant woman;

15 (c) Medically frail or temporarily vulnerable;

16 (d) A full-time student;

17 (e) Diagnosed with a serious chronic medical condition, validated by a medical professional
18 pursuant to department guidance and review that would prevent the beneficiary from complying;

19 or

20 (f) A primary caregiver of:

21 1. A minor dependent child under age nineteen (19) or

22 2. A dependent adult who is disabled.

23 (2) The exemption authorized by subsection (1)(f) of this section shall be limited to one (1)

1 exemption per household.

2 Section 5. Federal approval and federal financial participation. The department's coverage of
3 services pursuant to this administrative regulation shall be contingent upon:

4 (1) Receipt of federal financial participation for the coverage; and

5 (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 M. 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 1:020

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 PATH requirement, establishes penalties for failure to comply with the PATH requirement, and clarifies which beneficiaries are exempt from the PATH requirement.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish and implement the requirements and processes for beneficiaries subject to the PATH requirement that will allow for those beneficiaries to fully participate 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 requirements and processes relating to the PATH requirement that will allow for full participation in the Kentucky HEALTH program by a beneficiary.

(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 clear PATH requirements for a beneficiary to follow in order to fully participate in the Kentucky HEALTH program.

(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 a beneficiaries, 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: Beneficiaries will need to meet the PATH requirement and submit information as outlined in this administrative regulation.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Regulated entities should experience no additional costs as a result of compliance.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Beneficiaries who meet the PATH requirement will be able to receive healthcare benefits via participation in the Kentucky HEALTH program as outlined in Title 895 KAR.

(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 applied in that former foster youth, pregnant women, individuals who are medically frail or temporarily vulnerable, full-time students, beneficiaries diagnosed with an acute medical condition that prevents compliance, or primary caregivers of a minor dependent child or a dependent adult are exempted from the PATH requirement.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 895 KAR 1:020

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?

This administrative regulation establishes a PATH and potential co-pay requirement for certain beneficiaries that fail to comply with the PATH requirement.

This administrative additionally establishes a potential suspension if a PATH requirement is not met.

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 1:020

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: