



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 1:015. Premium payments within the Kentucky HEALTH program.

6 RELATES TO: KRS 205.520, 42 U.S.C. 1315, 42 C.F.R. 447.56(f)

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

8 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family  
9 Services, Department for Medicaid Services has responsibility to administer the Medicaid Program  
10 in accordance with Title XIX of the Social Security Act. KRS 205.520(3) authorizes the cabinet,  
11 by 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 premium payment requirements and  
17 processes for beneficiaries and MCOs participating in the Kentucky HEALTH program.

18 Section 1. Required Premium Payments. (1) Notwithstanding any provision of Title 907 KAR  
19 to the contrary, including 907 KAR 1:604, any premium payments or copay plan requirements  
20 established pursuant to this administrative regulation are mandatory for beneficiaries and shall be

1 remitted as established pursuant to Section 3 of this administrative regulation.

2 (2) A beneficiary that makes monthly premium payments shall:

3 (a) Not incur any other cost sharing for their healthcare coverage; and

4 (b) Have access to a MyRewards account.

5 (2)(a) Except as provided in Section 2 of this administrative regulation, a beneficiary with  
6 income above 100 percent FPL shall make required monthly premium payments to retain  
7 eligibility for Kentucky HEALTH.

8 (b) A beneficiary with income that is less than 100 percent FPL shall be exempt from the  
9 requirement to make a premium payment as a condition of Kentucky HEALTH eligibility.

10 (3)(a) Except as provided by paragraph (b) of this subsection, a beneficiary, regardless of FPL,  
11 shall make premium payments as a condition to access the beneficiary's MyRewards account.

12 (b) A beneficiary that is eligible for Kentucky HEALTH on the basis of being a pregnant woman  
13 shall be exempt from the requirement to make premium payments as a condition of accessing the  
14 beneficiary's MyRewards account.

15 Section 2. Premium Amount, Calculations, and Changes. (1)(a) Each household's monthly  
16 premium amount shall be an amount determined by the department and made available pursuant  
17 to a formula and a chart posted prominently on the department's Web site.

18 (b) If the adults within a household are members of different MCOs, a separate premium shall  
19 be charged to each adult member.

20 (2) A beneficiary's monthly premium shall not exceed four (4) percent of the aggregate  
21 household income, except that a beneficiary subject to the premium payment requirement shall  
22 be required to contribute a one dollar (\$1.00) monthly premium, at minimum, to access the  
23 beneficiary's MyRewards account.

1 (3)(a) In accordance with 42 C.F.R. 447.56(f), a household's combined premium and cost  
2 sharing requirements shall not exceed five (5) percent of the aggregate household income within  
3 a calendar quarter.

4 (b) Each beneficiary who is a member of a household that reaches the five (5) percent  
5 maximum cost sharing in a calendar quarter shall have their monthly premium reduced to one  
6 dollar (\$1.00) for the remainder of the calendar quarter to avoid non-payment penalties as  
7 established in Section 4 of this administrative regulation.

8 (4) After twenty-four (24) months of enrollment in Kentucky HEALTH, the monthly  
9 premium amount paid by a beneficiary whose income is above 100 percent of the FPL shall  
10 increase.

11 (5) The department shall notify each beneficiary of that beneficiary's premium payment  
12 requirements upon determination of eligibility for Kentucky HEALTH.

13 (6) As directed by the department, an MCO shall aggregate, accurately track, and forward all  
14 premium payments remitted by or on behalf of its members who are:

15 (a) Beneficiaries with a cost-sharing requirement; and

16 (b) Who are eligible on the basis of the MAGI.

17 (7) The department:

18 (a) Shall evaluate premium rates and amounts annually; and

19 (b) May change published rates on an annual basis.

20 (8) The department, or an MCO on behalf of the department, shall notify each beneficiary of  
21 any Kentucky HEALTH premium changes at least sixty (60) days prior to the effective date of  
22 the change.

23 (9) The department shall determine necessary adjustments to a beneficiary's premium amount

1 in the following circumstances:

2 (a) At the beneficiary's annual recertification; or

3 (b) If made aware that the beneficiary's household income, household composition, or other  
4 eligibility factor has changed during the eligibility period.

5 (10) If an adjustment is necessary pursuant to subsection (9) of this section, the new premium  
6 payment amount shall be effective the first day of the next administratively feasible month  
7 following the calculation of the new premium amount.

8 Section 3. Entities Allowed to Make Premium Payment. (1) A monthly premium payment  
9 may be made by:

10 (a) A beneficiary; or

11 (b) Any third party on the beneficiary's behalf, except any MCO.

12 (2) (a) A third-party payment submitted pursuant to this section shall be used for a  
13 beneficiary's premium obligations only.

14 (b) Any payment in excess of the required premium obligation for the remainder of the  
15 beneficiary's benefit year shall be refunded to the source of the payment.

16 (3) A provider or a provider-related entity making a premium payment on a beneficiary's  
17 behalf shall have criteria for providing premium payment assistance that does not distinguish  
18 between beneficiaries based on whether or not they receive or will receive services from the  
19 contributing provider or class of providers.

20 (4) A provider shall not include the cost of a payment established pursuant to this  
21 administrative regulation in the cost of care for purposes of Medicare and Medicaid cost  
22 reporting.

23 (5) A payment made pursuant to this section shall not be included as part of a Medicaid

1 shortfall or uncompensated care.

2 Section 4. Non-payment Penalties. (1) A conditionally eligible beneficiary who fails to make  
3 the first premium payment within sixty (60) days from the date of the first invoice shall be  
4 subject to the penalties established in this subsection.

5 (a) A beneficiary with a household income above 100 percent of the FPL shall:

- 6 1. Not be enrolled in Kentucky HEALTH; and
- 7 2. Reapply for Kentucky HEALTH coverage, if the beneficiary elects to attempt to reenroll.

8 (b) A beneficiary with a household income at or below 100 percent of the FPL shall be:

- 9 1. Enrolled in Kentucky HEALTH in a copay plan; and
- 10 2. Subject to the non-payment penalty provisions established in subsection (2)(b) of this  
11 section.

12 (2) A beneficiary who fails to make an ongoing premium payment within sixty (60) days from  
13 the date of the premium invoice or who voluntarily withdraws from Kentucky HEALTH to avoid  
14 making a premium payment or incurring debt as a result of non-payment shall be subject to the  
15 penalties established in this subsection.

16 (a) If the beneficiary's household income is above 100 percent of the FPL, the beneficiary  
17 shall:

- 18 1. Be disenrolled from Kentucky HEALTH;
- 19 2. Not be able to reenroll in Kentucky HEALTH for a period of six (6) months, unless the  
20 beneficiary completes all requirements for early re-entry as established in 895 KAR 1:020;
- 21 3. Receive a one-time balance deduction from the beneficiary's MyRewards account as  
22 established in 895 KAR 1:030; and
- 23 4. Have a suspension of the beneficiary's MyRewards account until the beneficiary is re-

1 enrolled in Kentucky HEALTH, unless the beneficiary meets the requirements for re-entry or  
2 reactivation of MyRewards account as established in 895 KAR 1:030.

3 (b) A beneficiary with a household income at or below 100 percent of the FPL, in accordance  
4 with subsection(1)(b) of this section, shall:

5 1.a. Be enrolled in the copay plan; and

6 b. Make copays for all covered services equal to the copays established in the Kentucky  
7 Medicaid state plan in Title 907 KAR;

8 2. Receive a one-time balance deduction from the beneficiary's MyRewards account as  
9 established in 895 KAR 1:030; and

10 3. Have a suspension of the beneficiary's MyRewards account, until either of the following  
11 occurs:

12 a. The beneficiary completes the requirements for re-entry or reactivation of a MyRewards  
13 account as set forth at 895 KAR 1:030 to reactivate the beneficiary's MyRewards account prior  
14 to the expiration of the six (6) month penalty period, or

15 b. After the expiration of the six (6) month penalty period, the beneficiary makes one (1)  
16 premium payment to reactivate coverage in the premium plan.

17 (c) A beneficiary in a penalty period shall be permitted to end or avoid the non-payment  
18 penalty prior to the expiration of the six (6) month penalty period without completing the early  
19 re-entry requirements established in 895 KAR 1:020 by providing verification of any of the  
20 following:

21 1. The beneficiary was hospitalized, otherwise incapacitated, or has a protected disability,  
22 and, as a result, was unable to make a premium payment during the sixty (60) day payment  
23 period;

- 1        2. a. The beneficiary has a protected disability; and
- 2        b. The beneficiary requested but was not provided reasonable modifications needed to make a
- 3 premium payment;
- 4        3.a. The beneficiary has a protected disability; and
- 5        b. There were no reasonable modifications that would have enabled the beneficiary to make a
- 6 premium payment;
- 7        4. A member of the beneficiary's immediate family who was living in the home with the
- 8 beneficiary who failed to make a premium payment:
- 9        a. Was institutionalized during the reporting period; or
- 10       b. Died during the reporting period;
- 11       5.a. A member of the beneficiary's immediate family who was living in the home with the
- 12 beneficiary who failed to make a premium payment has a protected disability; and
- 13       b. Caretaking or other responsibilities related to the disability resulted in the beneficiary's
- 14 inability to make the premium payment;
- 15       6. The beneficiary either obtained or lost private insurance coverage during the reporting
- 16 period;
- 17       7. The beneficiary was evicted from a home or experienced homelessness during the sixty
- 18 (60) day payment period;
- 19       8. The beneficiary was a victim of domestic violence during the sixty (60) day payment
- 20 period; or
- 21       9. The beneficiary was the victim of a declared disaster that occurred during the sixty (60) day
- 22 payment period.
- 23       Section 5. Groups with Premium Payment as Optional. (1) A beneficiary in the following

1 eligibility groups shall have the option to make monthly premium payments to access a  
2 MyRewards account as established in 895 KAR 1:030:

3 (a) A beneficiary who is a former foster youth; or

4 (b) A beneficiary who is medically frail or temporarily vulnerable.

5 (2)(a) A beneficiary who, under this section or section 1 of this administrative regulation, has  
6 the option of making premium payments shall not be subject to

7 1. Disenrollment for non-payment; or

8 2. Copayments for services.

9 (b) A beneficiary who, under this section or Section 1 of this administrative regulation, has  
10 the option of making premium payments who fails to make an ongoing premium payment within  
11 sixty (60) days from the date of the premium invoice shall have the beneficiary's MyRewards  
12 account suspended for six (6) months, with the option to reactivate the MyRewards account prior  
13 to the expiration of the six (6) month penalty period by taking a re-entry course.

14 Section 6. Federal approval and federal financial participation. The department's coverage of  
15 services pursuant to this administrative regulation shall be contingent upon:

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

17 (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. Beneficiaries 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](mailto:Laura.Begin@ky.gov).

REGULATORY IMPACT ANALYSIS  
AND TIERING STATEMENT

Administrative Regulation #: 895 KAR 1:015

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

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes premium payment requirements and processes to be followed by beneficiaries and MCOs participating in the Kentucky HEALTH program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to outline premium payment requirements and processes for beneficiaries and MCOs participating in the Kentucky HEALTH program pursuant to an approved federal 1115 waiver.

(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 premium payment requirements that will allow for full participation in the Kentucky HEALTH program by beneficiaries and MCOs pursuant to an approved federal 1115 waiver.

(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 premium payment requirements for beneficiaries and MCOs.

(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 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 follow the premium payment requirements and submit premium payments 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): Beneficiaries will pay a varying premium payment based on income relative to the FPL.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Beneficiaries who meet premium payment requirements 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 administrative 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 to beneficiaries who make more than 100% FPL and less than 100% FPL in relation to a requirement to make a premium as a condition of eligibility. In addition, pregnant women are not required to make a premium payment. Former foster youth and individuals who are medically frail or otherwise temporarily vulnerable will have an option to make premium payments to access a MyRewards account.

## FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 895 KAR 1:015

Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, [jonathant.scott@ky.gov](mailto:jonathant.scott@ky.gov); or Laura Begin, (502) 564-6746, [laura.begin@ky.gov](mailto: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 premium and potential co-pay requirement and other penalties for certain beneficiaries that fail to comply with the premium requirement.

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 1:015

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