



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 1:035. Covered services within the Kentucky HEALTH program.

6 RELATES TO: KRS 205.520, 205.622, 369.101 - 369.120, 42 U.S.C. 1396a, 42 C.F.R.

7 parts 447, 489

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. 1115(b), 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 covered benefits that shall be afforded to
18 beneficiaries participating in the Kentucky HEALTH program.

19 Section 1. Alternative Benefit Plan (ABP). (1)(a) An ACA expansion adult not eligible
20 under paragraph (b) of this section shall receive benefits:

1 1. As established in the Kentucky HEALTH alternative benefit plan approved by the
2 Centers for Medicare and Medicaid Services; and

3 2. In accordance with the essential health benefit requirements under 42 C.F.R. 440.347
4 for alternative benefit plans.

5 (b) An ACA expansion adult shall receive benefits in accordance with the Kentucky
6 Medicaid state plan, as established by title 907 KAR, if the ACA expansion adult:

7 1. Is pregnant;

8 2. Is a former foster youth; or

9 3. Is determined to be, or otherwise deemed, medically frail or temporarily vulnerable
10 pursuant to 895 KAR 1:055.

11 (2) The Kentucky HEALTH ABP shall include covered services in each of the following
12 categories:

13 (a) Ambulatory patient services;

14 (b) Emergency services;

15 (c) Hospitalization;

16 (d) Maternity services;

17 (e) Mental health and substance abuse services;

18 (f) Prescription drugs;

19 (g) Rehabilitative and habilitative services and devices;

20 (h) Laboratory services;

21 (i) Preventive care services;

22 (j) Early and periodic screening, diagnostic, and treatment services for beneficiaries

23 nineteen (19) and twenty (20) years of age; and

1 (k) Any other services approved by the Centers for Medicare and Medicaid Services in
2 the Kentucky HEALTH alternative benefit plan.

3 (3) The following services shall not be covered under the Kentucky HEALTH alternative
4 benefit plan:

5 (a) Services that are not medically necessary;

6 (b) Dental services;

7 (c) Vision services;

8 (d) Nonemergency medical transportation; and

9 (e) Any other services not approved by the Centers for Medicare and Medicaid Services
10 in the alternative benefit plan.

11 Section 2. State plan benefits. (1) A beneficiary in one (1) of the following groups shall
12 receive covered services as established by the Kentucky Medicaid state plan, subject to the
13 coverage criteria, limitations, and procedures specified in the Kentucky Medicaid state plan, as
14 established by title 907 KAR and this title:

15 (a) Parents and caretaker relatives;

16 (b) Transitional medical assistance;

17 (c) Pregnant women;

18 (d) Former foster youth; and

19 (e) Medically frail, or temporarily vulnerable.

20 (2) The following services shall not be covered for beneficiaries under this section:

21 (a) Services that are not medically necessary;

22 (b) Nonemergency medical transportation for methadone treatment services, except for
23 the following groups:

- 1 1. Pregnant women;
- 2 2. Former foster youth; or
- 3 3. Nineteen (19) and twenty (20) year-olds in accordance with EPSDT requirements; and
- 4 (c) Any other services not covered by the Kentucky Medicaid state plan.

5 Section 3. Coverage of Preventive Care Services. (1) For a beneficiary with a deductible
6 account as established in 895 KAR 1:040, any preventive care service shall not be tracked
7 against a beneficiary's deductible.

8 (2) Preventive care service shall include:

9 (a) The preventive services assigned a grade of A or B by the United States Preventive
10 Services Task Force (USPSTF);

11 (b) The approved adult vaccines, including their administration, recommended by the
12 Advisory Committee on Immunization Practices;

13 (c) Preventive care and screening recommended by the Health Resources and Services
14 Administration Bright Future Program Project; or

15 (d) Preventive services recommended by the Institute of Medicine.

16 Section 4. Federal approval and federal financial participation. The department's coverage of
17 services pursuant to this administrative regulation shall be contingent upon:

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

19 (2) Centers for Medicare and Medicaid Services' approval for the coverage.

REVIEWED:

6/27/2018
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 1:035

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 covered benefits that will be provided to beneficiaries participating in the Kentucky HEALTH program.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish those covered benefits that beneficiaries participating in the Kentucky HEALTH program shall receive.

(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 covered benefits that will apply to beneficiaries participating in the Kentucky HEALTH program.

(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 the covered benefits that will apply to the beneficiaries participating in the Kentucky HEALTH program pursuant to an approved federal 1115(b) waiver.

(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: Regulated entities will have to ensure that the benefits offered pursuant to the Kentucky HEALTH program are consistent with 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 with this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): As a result of compliance, the covered benefits established in federal law shall be provided to qualifying beneficiaries.

(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 ACA expansion adults receive the Kentucky HEALTH Alternative Benefit Plan. While parents and caretaker relatives, transitional medical assistance, pregnant women, former foster youth, and individuals who are medically frail or temporarily vulnerable receive services established under the Kentucky Medicaid state plan. In addition, nonemergency medical transportation for methadone treatment is only available to pregnant women, former foster youth, and 19-20 year olds in accordance with EPSDT requirements.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 895 KAR 1:035

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 an alternative benefit plan to the Kentucky Medicaid state plan for certain ACA expansion adults.

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 administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation: 895 KAR 1:035

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: