



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 1:045. Accommodations, modifications, and appeals for beneficiaries participating
6 in the Kentucky HEALTH 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 a requirement for reasonable modifications
18 and accommodations for Kentucky HEALTH beneficiaries, a random control group, and an
19 eligibility and covered services appeals process.

1 Section 1. Reasonable Accommodations. (1) The department shall provide reasonable
2 accommodations or modifications, in accordance with subsection (2) of this section, to Kentucky
3 HEALTH requirements and processes as necessary to support and assist each beneficiary with a
4 protected disability or disabilities to meet the requirements of this title.

5 (2) Reasonable accommodations and modifications shall include the following actions if
6 requested by a beneficiary with a protected disability or disabilities:

7 (a) An exemption or exemptions from PATH participation if a beneficiary is unable to
8 participate for reasons related to a protected disability;

9 (b) A modification in the number of hours of PATH participation required if a beneficiary is
10 unable to participate for the required number of hours;

11 (c) Provision of support services necessary to comply with requirements, if compliance is
12 possible with supports;

13 (d) Assistance with demonstrating eligibility for a good cause exemption to the Kentucky
14 HEALTH requirements, in accordance with 895 KAR 1:020, Section 1;

15 (e) Assistance with appealing a suspension for failure to meet requirements;

16 (f) Assistance with complying with any documentation requirements of Kentucky HEALTH,
17 including for community engagement activities; or

18 (g) Assistance with understanding notices and program rules related to Kentucky HEALTH
19 requirements.

20 Section 2. Random Control Group. (1) Except as otherwise provided in this section, all policies,
21 requirements, procedures, and timeframes established for Kentucky Medicaid in Title 907 KAR
22 shall apply to the Kentucky HEALTH random control group.

23 (2) An individual assigned to the Kentucky HEALTH random control group shall not be:

1 (a) Subject to the requirements for Kentucky HEALTH eligibility established in 895 KAR
2 1:010; or

3 (b) Eligible for coverage prior to the first day of the month of application.

4 Section 3. Eligibility Appeals. An appeal by an applicant, conditionally eligible beneficiary, or
5 beneficiary regarding an eligibility determination shall be governed by KRS Chapter 13B and 907
6 KAR 1:560.

7 Section 4. Covered Services Appeals and Hearings. Except as otherwise provided in Title 895
8 KAR, a beneficiary appeal regarding a benefit determination by a managed care organization shall
9 be governed by KRS Chapter 13B and 907 KAR 17:010.

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

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

13 (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 1:045

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 a requirement for reasonable modifications and accommodations for Kentucky HEALTH beneficiaries, a random control group, and establishes an eligibility and covered services appeals process.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish certain rights and responsibilities for beneficiaries receiving services pursuant to 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 rights, responsibilities, and additional processes for the benefit of individuals receiving services pursuant to 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 rights, responsibilities, and processes for the benefit of individuals and for the efficient administration of 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 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: The department commits to provide certain reasonable accommodations and modifications to beneficiaries with a protected disability including exemption from PATH requirements, modification in hours of PATH requirements, provision of support services, assistance with demonstration of eligibility for good cause exemptions, assistance with appealing of suspensions, assistance with compliance with documentation requirements, and assistance with understanding notices and program rules. The department will also establish a random control group, and an eligibility and covered services appeals process.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Beneficiaries 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): As a result of compliance, beneficiaries will experience a program that has incorporated reasonable accommodations and modifications for beneficiaries with a protected disability, and an eligibility and covered services appeals process.

(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 is applied in that a random control group that is not subject to the Kentucky HEALTH requirements is established and is used for data tracking purposes.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 895 KAR 1:045

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 does not establish stricter requirements, or additional or different responsibilities or requirements than those required by the federal mandate.

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 1:045

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: