



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 1:055. Designation or determination of medically frail status or accommodation due  
6 to temporary vulnerability in the Kentucky HEALTH program.

7 RELATES TO: KRS 205.520, 42 U.S.C. 1315, 42 C.F.R. part 447

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 those beneficiaries who shall qualify as  
18 medically frail or temporarily vulnerable and establishes the requirements for determination of that  
19 status.

1 Section 1. Designation as Medically Frail at Time of Application. A beneficiary shall be  
2 designated as medically frail at the time of application if the beneficiary is:

- 3 (1) A beneficiary with HIV or AIDS as identified by the Ryan White Program;
- 4 (2) Receiving retirement, survivors, disability insurance (RSDI) income based on disability; or
- 5 (3) Chronically homeless.

6 Section 2. Medically Frail Screenings. (1) A beneficiary who is not designated as medically  
7 frail at the time of application shall be reviewed for medically frail status at any of the following  
8 times:

- 9 (a) Upon beneficiary request;
- 10 (b) During the benefit year if documentation demonstrates that the beneficiary may have a  
11 medically frail condition; or
- 12 (c) If claims history or provider documentation demonstrates that the beneficiary may no longer  
13 have a medically frail condition.

14 (2) A medically frail beneficiary shall be reviewed at least annually by the managed care  
15 organization to determine if the beneficiary is eligible for continued designation as medically frail.

16 (3) In order to verify a beneficiary's medically frail condition, the managed care organization  
17 shall consider:

- 18 (a) The beneficiary's medical records;
- 19 (b) The beneficiary's medical claim data;
- 20 (c) Any other information relevant to the beneficiary's health condition; or
- 21 (d) Physician attestation of medically frail status.

22 Section 3. Accommodation due to Temporary Vulnerability. (1) A beneficiary shall be  
23 designated as temporarily vulnerable by the department if the beneficiary is:

1 (a) A refugee, as defined by KRS 186.010(13)(c), during the first twelve (12) months after the  
2 refugee entered the United States; or

3 (b) A victim of domestic violence.

4 (2) An individual who is designated as temporarily vulnerable shall:

5 (a) Pay premiums for access to a MyRewards account; and

6 (b) Be exempt from the following Kentucky HEALTH requirements:

7 1. Payment of premiums for medical services;

8 2. Copays for medical services;

9 3. Completion of the PATH requirement during the entire period of temporary vulnerability.

10 Section 4. Auditing authority. The department or MCO in which a beneficiary is enrolled shall  
11 have the authority to audit any:

12 (1) Claim;

13 (2) Health record; or

14 (3) Documentation associated with any claim or health record, including any activity related  
15 to a beneficiary's use of a MyRewards account.

16 Section 5. 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.

20 Section 6. Appeal rights. (1) An appeal of an adverse action by the department regarding a  
21 service and a recipient who is not enrolled with a managed care organization shall be in accordance  
22 with 907 KAR 1:563 and 895 KAR 1:045.

- 1 (2) An appeal of an adverse action by a managed care organization regarding a service and an
- 2 enrollee shall be in accordance with 907 KAR 17:010 and 895 KAR 1:045.

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

REGULATORY IMPACT ANALYSIS  
AND TIERING STATEMENT

Administrative Regulation #: 895 KAR 1:055

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 those beneficiaries of the Kentucky HEALTH program who shall qualify as medically frail or temporarily vulnerable and establishes the requirements for determination of that status.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish certain beneficiaries of the Kentucky HEALTH program as medically frail or temporarily vulnerable, and therefore not subject to certain PATH requirements, and establish a process by which other beneficiaries may be screened and verified to be medically frail or temporarily vulnerable, and therefore not subject to certain PATH requirements, by an MCO.

(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 which beneficiaries are automatically deemed to be medically frail, and how other beneficiaries may be deemed medically frail or temporarily vulnerable by an MCO, which will assist with the effective implementation of the Kentucky HEALTH program 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 certain beneficiaries as medically frail, and establishing a screening process for other beneficiaries who may qualify as medically frail or temporarily vulnerable. A process for designation of medically frail or temporarily vulnerable status will assist with the effective implementation of the Kentucky HEALTH program pursuant to an approved federal 1115 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 need to claim, verify, or submit to screening to determine medically frail or temporarily vulnerable status. MCOs will need to establish processes to determine which beneficiaries are medically frail or temporarily vulnerable.

(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, beneficiaries may claim or qualify as medically frail or temporarily vulnerable and thus may be exempt from PATH requirements.

(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 nor increases any fees.

(9) Tiering: Is tiering applied? Tiering is applied in the sense that certain beneficiaries are automatically designated as medically frail and all other beneficiaries who are determined medically frail or temporarily vulnerable are determined to be medically frail or temporarily vulnerable via screenings and documentation.



## FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 895 KAR 1:055

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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 a closer analysis of which beneficiaries are designated or determined to be medically frail or temporarily vulnerable.

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 1:055

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(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: