

STATEMENT OF EMERGENCY

907 KAR 1:595E

(1) This emergency administrative regulation is being promulgated to authorize private duty nursing agencies to provide Model Waiver II services to Medicaid recipients.

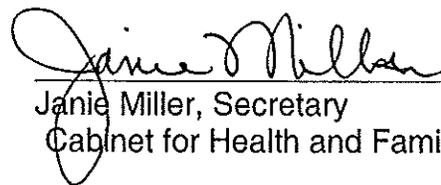
(2) This action must be implemented on an emergency basis to ensure that an adequate base of providers is available to serve Medicaid Model Waiver II service recipients in order to ensure the health, safety, and welfare of Medicaid recipients eligible for Model Waiver II services.

(3) This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

(4) The ordinary administrative regulation is identical to this emergency administrative regulation.



Steven L. Beshear
Governor



Janie Miller, Secretary
Cabinet for Health and Family Services

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Community Alternatives

4 (Emergency Amendment)

5 907 KAR 1:595E. Model Waiver II service coverage and reimbursement~~[services and~~
6 ~~payments]~~.

7 RELATES TO: KRS 314.011, 42 CFR 440.70, 440.185, 42 USC 1396

8 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 USC
9 1315[, ~~EO 2004-726]~~

10 NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9,~~
11 ~~2004, reorganized the Cabinet for Health Services and placed the Department for~~
12 ~~Medicaid Services and the Medicaid Program under the Cabinet for Health and Family~~
13 ~~Services.]The Cabinet for Health and Family Services, Department for Medicaid
14 Services, has responsibility to administer the Medicaid Program. KRS 205.520(3)
15 authorizes the cabinet, by administrative regulation, to comply with any requirement that
16 may be imposed or opportunity presented, by federal law for the provision of medical
17 assistance to Kentucky's indigent citizenry. This administrative regulation establishes
18 the coverage provisions relating to Model Waiver II services provided to a Medicaid-
19 eligible recipient. These services are provided pursuant to a waiver granted by the U. S.
20 Department for Health and Human Services in accordance with 42 USC 1396n(c).~~

21 Section 1. Definitions. (1) "1915(c) home and community based waiver program"

1 means a Kentucky Medicaid program established pursuant to and in accordance with
2 42 USC 1396n(c).

3 (2) "Department" means the Department for Medicaid Services or its designee.

4 (3)[and its designated agent or representative.

5 (2)] "Home health agency" means an agency that is:

6 (a) Licensed in accordance with 902 KAR 20:081;

7 (b) Medicare certified; and

8 (c) Medicaid certified.

9 (4) "Licensed practical nurse" is defined by KRS 314.011(9).

10 (5)[a facility licensed by the Office of the Inspector General to provide home health
11 services.

12 (3)]"Model Waiver II services" means 1915(c) home and community based waiver
13 program[community based waiver] in-home ventilator services provided to a Medicaid-
14 eligible recipient who:

15 (a) Is dependent on a ventilator; and

16 (b) Would otherwise require a nursing facility (NF) level of care in a hospital based
17 NF which will accept a recipient who is dependent on a ventilator.

18 (6) "Private duty nursing agency" means a facility licensed to provide private duty
19 nursing services:

20 (a) By the Cabinet for Health and Family Services Office of Inspector General; and

21 (b) Pursuant to 902 KAR 20:370.

22 (7) "Recipient" is defined by KRS 205.8451(9).

23 (8)[(4)] "Registered nurse" [(RN)] is defined by [in]KRS 314.011(5).

1 (9) "Registered respiratory therapist" is defined by KRS 31A.010(3).

2 (10) "Ventilator" means a respiration stimulating mechanism.

3 (11)~~(5)~~ "Licensed practical nurse" (LPN) is defined in KRS 314.011.

4 (6) "Respiratory therapist" (RT) is defined by KRS 314A.010(3)(a).

5 (7) "Ventilator dependent" means the condition or state of an individual who requires
6 the aid of a ventilator [~~(respiration stimulating mechanism)~~]for respiratory function and
7 meets the high intensity nursing facility patient status criteria established in 907 KAR
8 1:022, Section 4.

9 Section 2. Model Waiver II Recipient Eligibility and Related Policies. (1) To be eligible
10 to receive Model Waiver II services, an individual shall:

11 (a) Be eligible for Medicaid pursuant to 907 KAR 1:605;

12 (b) Require ventilator support for at least twelve (12) hours per day;

13 (c) Meet ventilator dependent patient status requirements established in 907 KAR
14 1:022;

15 (d) Submit an application packet to the department which shall contain:

16 1. A MAP 350, Long Term Care Facilities and Home and Community Based Program
17 Certification Form;

18 2. A MAP-351A, Medicaid Waiver Assessment Form; and

19 3. A MAP109 -MWII, Plan of Care/Prior Authorization for Model Waiver II Services,
20 which shall be signed and dated by a physician; and

21 (e) Receive notification of an admission packet approval from the department.

22 (2) To remain eligible for Model Waiver II services:

23 (a) An individual shall:

1 1. Maintain Medicaid eligibility requirements established in 907 KAR 1:605; and

2 2. Remain ventilator dependent pursuant to 907 KAR 1:022;

3 (b) A Model Waiver II level of care determination confirming that the individual
4 qualifies shall be performed and submitted to the department every six (6) months; and

5 (c) A MAP 109, Plan of Care/Prior Authorization for Model Waiver II Services shall
6 be:

7 1. Signed and dated by a physician every sixty (60) days on behalf of the individual;

8 and

9 2. Submitted to the department, after being signed and dated in accordance with
10 subparagraph 1 of this paragraph, every sixty (60) days.

11 (4) A Model Waiver II service shall not be provided to a recipient who is:

12 (a) Receiving a service in another 1915(c) home and community based waiver
13 program; or

14 (b) Is an inpatient of a:

15 1. Nursing facility;

16 2. Intermediate care facility for individuals with mental retardation or a developmental
17 disability; or

18 3. Other facility.

19 (5) The department shall not authorize a Model Waiver II service unless it has
20 ensured that:

21 (a) Ventilator-dependent status has been met;

22 (b) The service is:

23 1. Available to the recipient; and

1 2. Will meet the need of the recipient; and

2 3. Does not exceed the cost of traditional institutional ventilator care.

3 Section 3. Provider Participation Requirements. To participate in the Model Waiver II

4 program, a:

5 (1) Home health agency shall:

6 (a) Be:

7 1. Licensed in accordance with 902 KAR 20:081;

8 2. Medicare and Medicaid certified;

9 3. A currently participating Medicaid provider in accordance with 907 KAR 1:671;

10 4. Currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and

11 (b) Meet the home and community based waiver service provider requirements

12 established in 907 KAR 1:160;

13 (2) Private duty nursing agency shall:

14 (a) Be:

15 1. Licensed in accordance with 902 KAR 20:370;

16 2. Medicare and Medicaid certified;

17 3. A currently participating Medicaid provider in accordance with 907 KAR 1:671; and

18 4. Currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and

19 (b) Meet the home and community based waiver service provider requirements

20 established in 907 KAR 1:160.

21 ~~General Coverage Provisions. (1) A service shall be provided to a Medicaid eligible~~

22 ~~recipient:~~

23 ~~(a) Who meets the NF level of care determination for ventilator dependency; and~~

1 ~~(b) For whom the cost of Model Waiver II services does not exceed the cost of~~
2 ~~traditional institutional ventilator care.~~

3 ~~(2) The department shall make the level of care determination.~~

4 ~~(3) A Medicaid eligible recipient may choose Model Waiver II services as an~~
5 ~~alternative to traditional institutional services. (4) A Medicaid eligible recipient~~

6 ~~Requesting to receive Model Waiver II services shall choose a qualified home health~~
7 ~~agency which has obtained a valid provider number for provision of services pursuant to~~
8 ~~907 KAR 1:672.~~

9 ~~Section 3. Provider Participation. a home health agency participating in the Model~~
10 ~~Waiver II program shall~~
11 ~~meet the applicable certification requirements for providing home and community-~~
12 ~~based waiver services in accordance with 907 KAR 1:671, 907 KAR 1:672, 907 KAR~~
13 ~~1:675 and 907 KAR 1:030.]~~

14 ~~Section 4. Covered Services. (1) The following shall be covered Model Waiver II~~
15 ~~services:~~

16 ~~(a) Skilled nursing provided by:~~

17 ~~1. A registered nurse[-(RN)]; or~~

18 ~~2. A licensed practical nurse[-(LPN)]; or~~

19 ~~(b) Respiratory therapy[-(RT)].~~

20 ~~(2) Model Waiver II services shall be provided by an [a qualified] individual employed~~
21 ~~by or under contract through a private duty nursing agency or [the] home health agency~~
22 ~~as a:~~

23 ~~(a) A registered nurse[-(RN)]; or~~

1 (b) A licensed practical nurse ~~[(LPN)]~~; or

2 (c) Registered respiratory therapist.

3 ~~[Section 5. Prior Authorization for a Service. (1) Prior to authorizing a Model Waiver II~~
4 ~~service, the department shall ensure that:~~

5 ~~(a) Client ventilator dependent status is met;~~

6 ~~(b) Service is available to meet the need of a recipient; and~~

7 ~~(c) The service does not exceed the cost of traditional institutional ventilator care.~~

8 ~~(2) A physician shall:~~

9 ~~(a) Evaluate the need for continuation of service; and~~

10 ~~(b) Submit a completed MAP-9, Prior Authorization for Health Services, and a signed~~
11 ~~plan of treatment at least once every sixty (60) days.]~~

12 Section 6. Payment for Services. The department shall reimburse a participating
13 home health agency or private duty nursing agency for the provision of covered Model
14 Waiver II services as follows:

15 (1) Reimbursement shall be based on a fixed fee for a unit of service provided for
16 each covered service referenced~~[defined]~~ in Section 4 of this administrative regulation
17 with one (1) hour equal to one (1) unit of service.

18 (2) The fixed fee for skilled nursing services provided by:

19 (a) A registered nurse ~~[(RN)]~~ shall be thirty-one (31) dollars and ninety-eight (98)
20 cents for each unit of service.

21 (b) A licensed practical nurse ~~[(LPN)]~~ shall be twenty-nine ~~(29)~~~~[(20)]~~ dollars and ten
22 (10) cents for each unit of service.

23 (c) A registered respiratory therapist ~~[(RT)]~~ shall be twenty-seven (27) dollars and

1 forty-two (42) cents for each unit of service.

2 (3) Reimbursement shall not exceed sixteen (16) units of service per day.

3 (4) Payment shall not be made for a service to an individual for whom it can
4 reasonably be expected that the cost of the 1915(c) home and community based waiver
5 program[home and community based] service furnished under this administrative
6 regulation would exceed the cost of the service if provided in a hospital-based NF.

7 Section 7. Maintenance of Records. (1) A Model Waiver II service provider shall
8 maintain:

9 (a) A clinical record for each HCB recipient which contain the following:

10 1. Pertinent medical, nursing, and social history;

11 2. A comprehensive assessment entered on a MAP-351A, Medicaid Waiver

12 Assessment Form and signed by the:

13 a. Assessment team; and

14 b. Department;

15 3. A completed MAP109 -MWII, Plan of Care/Prior Authorization for Model Waiver II

16 Services;

17 4. A copy of the MAP 350, Long Term Care Facilities and Home and Community

18 Based Program Certification Form signed by the recipient or his legal representative at
19 the time of application or reapplication and each recertification thereafter;

20 5. Documentation of all level of care determinations;

21 6. All documentation related to prior authorizations including requests, approvals, and
22 denials;

23 7. Documentation that the recipient or legal representative was informed of the

1 procedure for reporting complaints; and

2 8. Documentation of each service provided that shall include:

3 a. The date the service was provided;

4 b. The duration of the service;

5 c. The arrival and departure time of the provider, excluding travel time, if the service
6 was provided at the recipient's home;

7 d. Progress notes which shall include documentation of changes, responses, and
8 treatments utilized to evaluate the recipient's needs; and

9 e. The signature of the service provider; and

10 (b) Service records or incident reports regarding services provided.

11 (2) A service record or incident report shall be retained:

12 (a) For at least six (6) years from the date that a covered service is provided; or

13 (b) For a minor, at least for three (3) years after the recipient reaches the age of
14 majority under state law, whichever is longest.

15 (2) Upon request, an HCB provider shall make information regarding service and
16 financial records available to the:

17 (a) Department;

18 (b) Cabinet for Health and Family Services, Office of Inspector General or its
19 designee;

20 (c) United States Department for Health and Human Services or its designee;

21 (d) General Accounting Office or its designee;

22 (e) Office of the Auditor of Public Accounts or its designee; or

23 (f) Office of the Attorney General or its designee.

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Section 8. Incident Reporting. A Model Waiver II service provider shall:

(1) Implement a procedure or procedures to ensure that the following is reported:

(a) Abuse, neglect, or exploitation of a Model Waiver II recipient in accordance with KRS Chapters 209 or 620;

(b) A slip or fall;

(c) A transportation incident;

(d) Improper administration of medication;

(e) A medical complication; or

(f) An incident caused by the recipient, including:

1. Verbal or physical abuse of staff or other recipients;

2. Destruction or damage of property; or

3. Recipient self-abuse.

(2) Ensure that a copy of each incident reported in this subsection is maintained in a central file subject to review by the department; and

(3) Implement a process for communicating the incident, the outcome, and the prevention plan to:

1. The Model Waiver II service recipient involved, his or her family member, or his or her responsible party; and

2. The attending physician, physician assistant, or advanced practice registered nurse.

Section 9. Use of Electronic Signatures. (1) The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements

1 established in KRS 369.101 to 369.120.

2 (2) A Model Waiver II service provider that chooses to use electronic signatures shall:

3 (a) Develop and implement a written security policy that shall:

4 1. Be adhered to by each of the provider's employees, officers, agents, and

5 contractors;

6 2. Identify each electronic signature for which an individual has access; and

7 3. Ensure that each electronic signature is created, transmitted, and stored in a

8 secure fashion;

9 (b) Develop a consent form that shall:

10 1. Be completed and executed by each individual using an electronic signature;

11 2. Attest to the signature's authenticity; and

12 3. Include a statement indicating that the individual has been notified of his

13 responsibility in allowing the use of the electronic signature; and

14 (c) Provide the department with:

15 1. A copy of the provider's electronic signature policy;

16 2. The signed consent form; and

17 3. The original filed signature immediately upon request.

18 Section 10.[Section 7.] Appeal Rights. (1) An appeal of a negative action regarding a
19 Medicaid recipient shall be appealed in accordance with 907 KAR 1:563.

20 (2) An appeal of a negative action regarding a Medicaid beneficiary's eligibility shall
21 be appealed in accordance with 907 KAR 1:560.

22 (3) An appeal of a negative action regarding a Medicaid provider shall be appealed in
23 accordance with 907 KAR 1:671.

1 Section 11.[8.] Incorporation by Reference. (1) The following material is incorporated
2 by reference into this administrative regulation:

3 (a) A "MAP109 -MWII, Plan of Care/Prior Authorization for Model Waiver II Services",
4 April 2004 edition;

5 (b) A "MAP 350, Long Term Care Facilities and Home and Community Based
6 Program Certification Form", January 2000 edition; and

7 (c) A "MAP-351A, Medicaid Waiver Assessment Form", June 15, 2002 edition.

8 (2) The material referenced in subsection (1) of this section["MAP-9, Prior
9 Authorization for Health Services", December 1995-edition, is incorporated by
10 reference.

11 (2) It] may be inspected, copied, or obtained at the Department for Medicaid
12 Services, 275 East Main Street, Frankfort, Kentucky, 40621, Monday through Friday, 8
13 a.m. to 4:30 p.m. (24 Ky.R. 2788; Am. 25 Ky.R. 585; 863; eff. 9-16-98.)

907 KAR 1:595E

REVIEWED:

6 JUL 11
Date

Neville J Wise
Neville Wise, Acting Commissioner
Department for Medicaid Services

APPROVED:

7/18/11
Date

Janie Miller
Janie Miller, Secretary
Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:595E

Cabinet for Health and Family Services

Department for Medicaid Services

Agency Contact Person: Karen Martin (502) 564-7540, Ellenore Callan (502) 564-5560
or Stuart Owen (502) 564-4321.

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes the service coverage and reimbursement policies for the Medicaid Model Waiver II services.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the service coverage and reimbursement policies for the Medicaid Model Waiver II services.
 - (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 the service coverage and reimbursement policies for the Medicaid Model Waiver II services.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the statutes by establishing the service coverage and reimbursement policies for the Medicaid Model Waiver II services.

- (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: The primary amendment authorizes private duty nursing agencies to provide Model Waiver II services. Additional amendments establish maintenance record requirements, incident reporting requirements and electronic signature usage requirements.
 - (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to ensure that an adequate base of providers of Model Waiver II services exists and to ensure that the regulation is consistent with the version of the corresponding "waiver" approved by the Centers for Medicare and Medicaid Services.
 - (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by expanding the type of providers authorized to provide Model Waiver II services in order to ensure that recipients have adequate access to the services.
 - (d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by expanding the type of providers authorized to provide Model Waiver II services in order to ensure that recipients have adequate access to the services.

- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Model Waiver II service recipients will be affected by the amendment and private duty nursing agencies who wish to provide Model Waiver II services will be affected by the amendment. The Department for Medicaid Services (DMS) anticipates that approximately ten (10) private duty nursing agencies may qualify to provide Model Waiver II services to Medicaid recipients.
- (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: A private duty nursing agency which wishes to become a Model Waiver II service provider will have to enroll as a Medicaid provider and meet the home and community based waiver provider requirements.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Private duty nursing agencies wishing to provide Model Waiver II services may experience some administrative cost associated with becoming a provider.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Private duty nursing agencies who become Model Waiver II service providers will be able to be reimbursed by DMS for providing services. Model Waiver II service recipients will be expected to benefit by the increased number of Model Waiver II service providers available to provide services.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: DMS anticipates the net result will no increase in cost because individuals who might be unable to receive Model Waiver II services, due to lack of access to providers, could have to be admitted to a nursing facility or intermediate care facility for individuals with mental retardation or a developmental disability (ICF MR DD.) Model Waiver II services cost less than institutional care; thus, authorizing private duty nursing agencies to provide Model Waiver II services helps prevent DMS from experiencing more institutional care cost.
 - (b) On a continuing basis: DMS anticipates the net result will no increase in cost because individuals who might be unable to receive Model Waiver II services, due to lack of access to providers, could have to be admitted to a nursing facility or intermediate care facility for individuals with mental retardation or a developmental disability (ICF MR DD.) Model Waiver II services cost less than institutional care; thus, authorizing private duty nursing agencies to provide Model Waiver II services helps prevent DMS from experiencing more institutional care cost.

- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The sources of revenue to be used for implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX of the Social Security Act and state matching funds of general fund appropriations.
- (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 nor funding is necessary.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used) Tiering is not applied as the requirements apply equally to the regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 907 KAR 1:595E

Agency Contact Person: Karen Martin (502) 564-7540, Ellenore Callan (502) 564-5560
or Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. Model Waiver II services are not federally mandated.
2. State compliance standards. 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. Model Waiver II services are not federally mandated.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The administrative regulation does not impose stricter than federal requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter than federal requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 907 KAR 1:595E

Agency Contact Person: Karen Martin (502) 564-7540, Ellenore Callan (502) 564-5560
or Stuart Owen (502) 564-4321

1. Does this administrative regulation relate to any program, service, or requirements of a state or local government (including cities, counties, fire departments or school districts)?

Yes X No _____
If yes, complete 2-4.

2. 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? The Department for Medicaid Services will be affected by this administrative regulation.
3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.
4. 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? The amendment is not expected to generate revenue for state or local government.
 - (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? The amendment is not expected to generate revenue for state or local government.
 - (c) How much will it cost to administer this program for the first year? DMS anticipates no increased cost will result from the amendment.
 - (d) How much will it cost to administer this program for subsequent years? DMS anticipates no increased cost will result from the amendment.

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
DEPARTMENT FOR MEDICAID SERVICES

907 KAR 1:595E, Model Waiver II Service Coverage and Reimbursement

Summary of Material Incorporated by Reference

The following material is incorporated by reference into this administrative regulation:

- (1) The "MAP109 - MWII, Plan of Care/Prior Authorization for Model Waiver II Services", April 2004 edition. This three (3)-page form serves as the plan of care for waiver recipients and as the prior authorization request for Model Waiver II services.
- (2) The "MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form", January 2000 edition. This two (2)-page form is used to document that a Model Waiver II recipient was given the choice of receiving waiver services or institutional services.
- (3) The "MAP-351A, Medicaid Waiver Assessment Form", June 15, 2002 edition. This ten (10)-page document is used by Model Waiver II service providers to assess Model Waiver II recipients.

A total of fifteen (15) pages are incorporated by reference into this administrative regulation.