STATEMENT OF EMERGENCY

907 KAR 1:645E

(1) This emergency administrative regulation is being promulgated to amend Medicaid eligibility in order to allow individuals to work and maintain, rather than forfeit, Medicaid eligibility. It is amended in conjunction with four (4) other administrative regulations accomplishing the same goal: 907 KAR 1:011E, Technical eligibility requirements; 907 KAR 1:604E, Recipient cost sharing; 907 KAR 1:640E, Income standards for Medicaid and 907 KAR 1:900E, KYHealth Choices benefit plans

(2) This action must be taken on an emergency basis to protect the health, safety and welfare of recipients by ensuring access to necessary care.

(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.

_____
Ernie Fletcher
Governor

_____
Mark D. Birdwhistell, Secretary
Cabinet for Health and Family Services

CABINET FOR HEALTH AND FAMILY SERIVCES

Department for Medicaid Services

Division of Administration and Financial Management

907 KAR 1:645E. Resource standards for Medicaid.

(Emergency Amendment)

RELATES TO: KRS 205.520, 42 C.F.R. Part 435, 38 U.S.C. 5503, 42 U.S.C. 1396a, b, d, 1397jj(b), p, Pub. L. 109-171

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 CFR 435.840, 435.843, and 42 USC 1396a(l)(3), d and Pub. L. 106-170

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the resource standards for determining eligibility for Medicaid.

Section 1. Definitions. (1) "ABD" means an individual who is aged, blind, or has a disability.

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

(3) "Homestead" means property which an individual:

(a) Has an ownership interest in; and

(b) Uses as his or her principal place of residence.

(4) "Individual development account" means an account containing funds for the purpose of continuing education, purchasing a first home, business capitalization, or other purposes allowed by federal regulations or clarifications which meets the criteria established in 921 KAR 2:016, Standards for need and amount for the Kentucky Transitional Assistance Program (K-TAP).

(5) "K-TAP" means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF), a money payment program for children who are deprived of parental support or care due to:

(a) Death;

(b) Continued voluntary or involuntary absence;

(c) Physical or mental incapacity of one (1) parent or stepparent if two (2) parents are in the home; or

(d) Unemployment of one (1) parent if both parents are in the home.

(6) "Liquid resource" means cash, savings accounts, checking accounts, money market accounts, certificates of deposit, bonds and stocks.

(7) “Medicaid works individual” means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B) would be considered to be receiving supplement security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets income standards established in 907 KAR 1:640, Income standards for Medicaid; and

(e) Meets resource standards established in this administrative regulation.

(8)"Permanent institutionalization" means residing in a nursing facility or intermediate care facility for the mentally retarded and developmentally disabled for six (6) months or more.

(9)[~~(8)~~] "Poverty level guidelines" means the poverty income guidelines updated annually in the Federal Register by the United States Department of Health and Human Services, under authority of 42 U.S.C. 9902(2).

(10)[~~(9)~~] "Real property" means land or an interest in land with an improvement, permanent fixture, mineral, or appurtenance considered to be a permanent part of the land, and a building with an improvement or permanent fixture attached.

(11)[~~(10)~~] "Resources" mean cash money and other personal property or real property that an individual:

(a) Owns;

(b) Has the right, authority, or power to convert to cash; and

(c) Is not legally restricted for support and maintenance.

(12)[~~(11)~~] "SSI" means the Social Security Administration Program called supplemental security income.

Section 2. Resource Limitations. (1) For the medically needy, as established in 907 KAR 1:011, Technical eligibility requirements, the upper limit for resources for a family

size of one (1) and for a family size of two (2) shall be $2,000 and $4,000 respectively, with fifty (50) dollars for each additional member.

(2) For a pregnant woman or a child meeting the following criteria, resources shall be disregarded for:

(a) A child under age one (1);

(b) A child who is at least age one (1) but under age six (6);

(c) A child who is at least age six (6) but under age nineteen (19) who is eligible under federal poverty level guidelines; or

(d) A targeted low income child, as defined in 42 U.S.C. 1397jj(b), from birth to age nineteen (19).

(3) For a qualified Medicare beneficiary, specified low-income Medicare beneficiary, qualified working disabled individual, or a Medicare qualified individual, resources shall be limited to twice the allowable amount for the SSI Program.

(4) For a pass-through recipient, as established in 907 KAR 1:640, a person with hemophilia who received a settlement in a class action lawsuit as described in 907 KAR 1:011, or a child who lost supplemental security income eligibility due to the change in definition of childhood disability as established in 907 KAR 1:011, Technical eligibility requirements, resources shall be limited to the allowable amounts for the SSI Program.

(5) For an AFDC-related Medicaid case, the resource limit shall be $1,000.

(6) In accordance with 42 U.S.C. 1396p, an individual shall not be eligible for Medicaid nursing facility services or other Medicaid long-term care services if the individual's equity interest in his or her home exceeds $500,000 unless:

(a) The individual has a spouse who is lawfully residing in the individual's home;

(b) The individual has a child under the age of twenty-one (21) who is lawfully residing in the individual's home; or

(c) The individual has a child of any age who is blind or permanently and totally disabled who is lawfully residing in the individual's home.

(7) Resources for a Medicaid works individual shall not exceed $5,000 per individual or $10,000 per couple.

Section 3. Resource Exclusions. (1)(a) A homestead, household or personal effects, and farm equipment shall be excluded from consideration without limitation on value.

(b) After permanent institutionalization, property shall cease to be a homestead unless:

1. A spouse or other dependent family member continues to reside there; or

2. A signed statement verifies that the permanently-institutionalized individual intends to return to the homestead.

The statement shall:

a. Be signed by:

(i) The permanently-institutionalized individual;

(ii) A representative payee;

(iii) A person who has power of attorney for the individual;

(iv) The individual's guardian; or

(v) Another legal representative; and

b. Require annual renewal.

(2) For an adult Medicaid case or a Medicaid works individual:

(a)1. Equity of $6,000 in income-producing, nonhomestead real property, business or

nonbusiness, essential for self-support, shall be excluded from consideration.

2. The value of property, including the tools of a tradesperson or the machinery or livestock of a farmer, shall be excluded from consideration as a resource if the property:

a. Is essential for self-support for the individual or spouse, or family group in the instance of a family with a child; and

b. Is used in a trade or business or by the individual or member of the family group as an employee.

(b) Except as provided in paragraph (c) of this subsection, equity of $4,500 in automobiles shall be excluded from consideration.

(c) If an automobile is used as a home, for employment, to obtain medical treatment of a specific or regular medical problem, or is specially equipped for use by an individual with a disability, the total value of the automobile shall be excluded.

(d) A payment or benefit from a federal statutory program, other than an SSI benefit, shall be excluded from consideration as a resource if precluded from consideration in an SSI determination of eligibility by the specific terms of the statute.

(3) For an ABD Medicaid case:

(a) Real property or nonreal property shall be excluded from consideration if it can be demonstrated the individual is making a reasonable effort to sell the property at fair market value or for other valuable consideration.

(b)1. Nonhome property, which was previously the homestead property of a permanently-institutionalized individual, shall be excluded for six (6) months if there is a verified effort to sell the property at fair market value.

2. Additional time to sell the property may be allowed, on a case-by-case basis, if it

can be demonstrated that a reasonable effort to sell the property at fair market value within the specified time frame has failed.

3. Reasonable effort to sell the property shall consist of:

a. Listing the property with a real estate agent if the agent:

1. Places a "For Sale" sign on the property which is clearly visible from the nearest public road; and

2. Advertises the property in the local newspaper or on local television or radio stations; or

b. A combination of at least two of the following actions:

1. Advertising the property in the local newspaper or on local television or radio stations;

2. Placing a "For Sale" sign on the property which is clearly visible from the nearest public road;

3. Distributing fliers advertising the property for sale;

4. Posting notices regarding availability of the property on community bulletin boards; or

5. Showing the property to interested parties on a continuing basis.

(c) Proceeds from the sale of a home shall be excluded from consideration for three (3) months from the date of receipt if used to purchase another home.

(4) For an AFDC-related Medicaid case, $1,000 in resources shall be excluded from consideration.

(5) A burial reserve of up to $1,500 per individual, which may be in the form of a burial agreement, prepaid burial or similar arrangement, trust fund, life insurance policy,

savings account, checking account, or other identifiable fund, shall be excluded from consideration.

(a) For an adult Medicaid case, the cash surrender value of life insurance shall be considered if determining the total value of burial reserves.

(b) If a burial fund is commingled with another fund, the applicant shall have thirty (30) days to separately identify the burial reserve amount.

(c) Interest or other appreciation of value of an excluded burial reserve or space shall be excluded as a resource if the amount is left to accumulate as a part of the burial reserve or space.

(6) A burial trust, burial space, plot, vault, crypt, mausoleum, urn, casket, or other repository which is customarily and traditionally used for the remains of a deceased person shall be excluded from consideration as a countable resource without regard to value.

(7) For a family-related or an AFDC-related Medicaid case, proceeds from the sale of a home shall be excluded from consideration for six (6) months from the date of receipt if used to purchase another home.

(8) Resources of an individual who is blind or has a disability shall be excluded if the resources are included in an approved plan for achieving self-support (PASS).

(9) An individual development account up to a total of $5,000, excluding interest accruing, shall be excluded from consideration as a resource for an AFDC-related Medicaid case.

(10) Disaster relief assistance shall be excluded from consideration.

(11) Cash or in-kind replacement for repair or replacement of an excluded resource

shall be excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(12) A life interest that a Medicaid applicant or recipient has in real estate or other property shall be excluded from consideration as an available resource.

(13) Real property other than the homestead shall be excluded from consideration if:

(a) The property is jointly owned and its sale would cause loss of housing for the other owner or owners;

(b) Its sale is barred by a legal impediment; or

(c) The owner's reasonable efforts to sell by informing the public of his intention to sell the property at fair market value have been unsuccessful.

(14) A cash payment intended specifically to enable an applicant or recipient to pay for a medical or social service shall not be considered as a resource in the month of receipt or for one (1) calendar month following the month of receipt. If the cash is still being held at the beginning of the second month following its receipt, it shall be considered a resource.

(15) An amount received which is a result of an underpayment or a retroactive payment of benefits from retirement, survivors, and disability insurance (RSDI) benefits or SSI shall be excluded as a resource for the first six (6) months following the month in which the amount is received.

(16) A federal Republic of Germany reparation payment shall not be considered as an available resource.

(17) An amount received from a victim's compensation fund established by a state to aid victims of crime shall be:

(a) Completely excluded as a resource if the individual can show that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime; or

(b) Excluded as a resource for nine (9) months if the individual can show that the amount was paid for pain and suffering.

(18) An Austrian social insurance payment based on a wage credit granted under Sections 500-506 of the Austrian General Social Insurance Act shall be excluded from resource consideration.

(19) An individual retirement account, Keogh plan, or other tax deferred asset shall be excluded as a resource until withdrawn.

(20) A payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded from consideration as an available resource.

(21) A payment received from a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded from consideration as an available resource.

(22) An annuity that is irrevocable and cannot be sold or transferred shall be excluded from consideration as a resource.

Section 4. Resource Exemptions. (1) A resource which is exempted from consideration for purposes of computing eligibility for the SSI Program shall be exempted from consideration by the department.

(2) For an AFDC-related or a family-related Medicaid case, all nonliquid resources shall be exempted.

907 KAR 1:645E

REVIEWED:

Date	Shawn M. Crouch, Commissioner Department for Medicaid Services

APPROVED:

Date	Mark D. Birdwhistell, Secretary Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:645E
Cabinet for Health and Family Services
Department for Medicaid Services
Agency Contact Person: Stuart Owen (502) 564-6204 or Lisa Lee (502) 564-6890

(1) Provide a brief summary of:
(a) What this administrative regulation does: This administrative regulation establishes provisions related to Medicaid eligibility resource standards.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish provisions related to Medicaid eligibility resource standards.
(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 provisions related to Medicaid eligibility resource standards.
(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 provisions related to Medicaid eligibility resource standards.

(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 amendment results from a congressional initiative to encourage states to adopt the option of allowing individuals with disabilities to purchase Medicaid coverage that is necessary to enable such individuals to maintain employment. The initiative creates a new Medicaid eligibility group known as Medicaid works individuals. Currently, individuals receiving Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) who choose to work, lose Medicaid health benefits because their income exceeds the allowable limit. This initiative will allow individuals with disabilities who choose to work and whose income is less than or equal to 250% of the federal poverty level the opportunity to purchase Medicaid coverage by paying a premium. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits. The resource standards established in this administrative regulation for Medicaid works individuals exceed those established for other recipients and result from a

review of other states' standards as well as feedback from the advocate community.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to extend Medicaid coverage to individuals with disabilities who work. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits. The resource standards established in this administrative regulation for Medicaid works individuals exceed those established for other recipients and result from a review of other states' standards as well as feedback from the advocate community.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes by ensuring that provisions relating to eligibility requirements are within the limits established in 42 USC 1396a(r)(2) and 42 USC 1396a(a)(10), 42 USC 1396b(f), 42 USC 1396d(q)(2)(B) and Public Law 106-170.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will assist in the effective administration of the authorizing statutes by ensuring that provisions relating to eligibility requirements are within the limits established in 42 USC 1396a(r)(2) and 42 USC 1396a(a)(10), 42 USC 1396b(f), 42 USC 1396d(q)(2)(B) and Public Law 106-170.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: This administrative regulation will affect individuals with disabilities between the ages of sixteen (16) and sixty-five (65) who choose to work and whose income is less than or equal to 250% of the federal poverty level.

(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. Individuals choosing Medicaid coverage via this option must pay a monthly premium in order to receive benefits under this program. In addition, recipients must pay nominal co-payments for specified services.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). Members eligible via the Medicaid works option will be subject to pharmacy and medical co-payments that are capped at $225 each per year per recipient. Therefore, recipients the maximum amount of co-payments per recipient will be $450 per year. In addition, recipients will be responsible for a monthly premium based on income

levels. Premiums range from thirty-five (35) dollars to fifty-five (55) dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals eligible via the Medicaid works option will receive pharmacy and medical benefits through the Medicaid program. Currently individuals who qualify via a spend down option receive benefits for three (3) months and then have to return to a local office and re-apply each time they desire a spend down eligibility card. If these individuals elect to be covered via the Medicaid works option they will simply pay a monthly premium and not have to continue returning to a local office to qualify via spend down. Additionally, this option allows individuals to increase their expendable income by working and maintaining Medicaid eligibility rather than having to choose between working and preserving Medicaid benefits. The resource standards established in this administrative regulation for Medicaid works individuals exceed those established for other recipients and result from a review of other states' standards as well as feedback from the advocate community.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: The Department for Medicaid Services (DMS) anticipates that the system modifications will cost $36,275.

(b) On a continuing basis: DMS anticipates medical and pharmaceutical costs to be approximately $912,000 during the first year; however, this amount will be offset by cost sharing in the form of premiums totaling $108,000. Additionally, DMS anticipates that sixty-five (65) percent of recipients expected to enroll for coverage via the Medicaid works option will already be enrolled in another Medicaid program. Considering all factors, DMS projects total annual costs to be $211,200, of which $147,840 would be federal funds.

(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, matching funds from general fund appropriations, and monthly premium payments made by recipients participating in the program.

(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: No increase in funding will be necessary as DMS anticipates any increased cost will be absorbed within the existing Medicaid budget.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This amendment establishes monthly premium fees for recipients eligible via the Medicaid works option.

(9) Tiering: Is tiering applied? (Explain why tiering was or was not used)
Tiering is applied to monthly premium amounts. The monthly premium is based

on income brackets in order to make the program affordable to individuals in the lower income brackets. Recipients whose monthly income is below 100% of the federal poverty level will pay no premium while recipients above this level will vary with each increase of fifty (50) percent or more.

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 907 KAR 1:645E Agency Contact: Stuart Owen (502) 564-6204 or Lisa Lee (502) 564-6890

1. Federal statute or regulation constituting the federal mandate.
The Centers for Medicare and Medicaid Services (CMS) does not mandate that state Medicaid programs cover working individuals who are disabled; however, relevant provisions for states who choose to offer this coverage are established in 42 USC 1396a(r)(2) and 42 USC 1396a(a)(10), 42 USC 1396b(f), 42 USC 1396d(q)(2)(B) and Public Law 106-170.

2. State compliance standards.

KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

3. Minimum or uniform standards contained in the federal mandate.

CMS does not mandate that state Medicaid programs cover working individuals who are disabled; however, relevant provisions for states who choose to offer this coverage are established in 42 USC 1396a(r)(2) and 42 USC 1396a(a)(10), 42 USC 1396b(f) and 42 USC 1396d(q)(2)(B) and Public Law 106-170. Provisions established in this administrative regulation conform to the federal requirements.

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 impose stricter, than federal, requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

This administrative regulation does not impose stricter, than federal, requirements.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Reg NO: 907 KAR 1:645E Contact Person: Stuart Owen (502) 564-6204 or Lisa Lee (502) 564-6890

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? This amendment will affect an organization that chooses to hire an individual with a disability.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Relevant provisions for states who choose to offer this coverage are established in 42 USC 1396a(r)(2) and 42 USC 1396a(a)(10), 42 USC 1396b(f) and 42 USC d(q)(2)(B) and Public Law 106-170. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry.

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 amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce, increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

   (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 amount of revenue this administrative regulation will generate for state or local government is contingent upon the number of individuals who enroll via the Medicaid works option. Individuals who meet criteria established by this amendment will be allowed to enter the workforce,

increase their earnings and remain eligible to receive benefits. State revenue is contingent upon the number of hours of worked per individual and the rate of pay each receives.

(c) How much will it cost to administer this program for the first year? The Department for Medicaid Services (DMS) anticipates that the Medicaid Management Information System (MMIS) modifications associated with this initiative will cost approximately $36,275.

(d) How much will it cost to administer this program for subsequent years? DMS anticipates the enhanced coverage may result in additional cost; however, the measures are necessary to enhance access to health services. DMS anticipates medical and pharmaceutical costs to be approximately $912,000 during the first year. However, this amount will be offset by cost sharing in the form of premiums totaling $108,000. In addition, research shows that sixty-five (65) percent of individuals expected to participate in this option were already enrolled in another Medicaid program. DMS anticipates offsets in premiums and, due to the fact that approximately sixty-five (65) percent of recipients in this program would move from another Medicaid program, total annual costs are expected to be $211,200, of which $147,840 would be federal funds.

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: