

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Healthcare Facilities Management

4 (Amended After Comments)

5 907 KAR 9:010. Reimbursement for Level I and II~~[Payments for]~~ psychiatric residential  
6 treatment facility services.

7 RELATES TO: KRS 205.520, 216B.450, 216B.455, 216B.459

8 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 CFR  
9 440.160, 42 USC 1396a-d~~[, EO 2004-726]~~

10 NECESSITY, FUNCTION, AND CONFORMITY: ~~[EO 2004-726, effective July 9, 2004,~~  
11 ~~reorganized the Cabinet for Health Services and placed the Department for Medicaid~~  
12 ~~Services and the Medicaid Program under the Cabinet for Health and Family Services.]~~

13 The Cabinet for Health and Family Services, Department for Medicaid Services has re-  
14 sponsibility to administer the Medicaid Program. KRS 205.520(3) empowers the cabinet,  
15 by administrative regulation, to comply with any requirement that may be imposed or op-  
16 portunity presented by federal law to qualify for federal Medicaid funds~~[for the provision of~~  
17 ~~medical assistance to Kentucky's indigent citizenry]~~. This administrative regulation estab-  
18 lishes Medicaid reimbursement policies for Level I and Level II psychiatric residential  
19 treatment facility services provided to a Medicaid recipient who is not enrolled in a man-  
20 aged care organization. A managed care organization may elect to reimburse for  
21 Level I and II psychiatric residential treatment facility services in accordance with

1 this administrative regulation if the managed care organization so chooses. The  
2 reimbursement policies established in this administrative regulation shall not ap-  
3 ply to a managed care organization, except the requirement that a Level I or II  
4 PRTF service shall be in accordance with 907 KAR 9:005 in order to be reimburs-  
5 able under the Medicaid program~~[sets forth provisions relating to payments for psychi-~~  
6 ~~atric residential treatment facility services].~~

7 Section 1. Definition. (1) "Department" means the Department for Medicaid Services  
8 or its designee.

9 (2) "Federal financial participation" is defined by 42 CFR 400.203.

10 (3) "Level I PRTF" means a psychiatric residential treatment facility that meets the  
11 criteria established in KRS 216B.450(5)(a).

12 (4) "Level II PRTF" means a psychiatric residential treatment facility that meets the  
13 criteria established in KRS 216B.450(5)(b).

14 (5) "Managed care organization" means an entity for which the department has con-  
15 tracted to serve as a managed care organization as defined in 42 CFR 438.2.

16 (6) "Per diem rate" means a Level I or II PRTF's total~~[, all-inclusive, ]~~daily reim-  
17 bursement as calculated by the department.

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

19 Section 2. Reimbursement for Level I PRTF Services and Costs. (1) To be reimburs-  
20 able under the Medicaid program, Level I PRTF services and associated costs, respec-  
21 tively, shall be provided to or associated, respectively, with a recipient receiving Level I  
22 PRTF services in accordance with 907 KAR 9:005.

23 (2) The department shall reimburse for Level I PRTF services and costs referenced in

1 subsection (4) of this section for a recipient not enrolled in a managed care organiza-  
2 tion:

3 (a) At the lesser of:

4 1. A per diem rate of \$274.01; or

5 2. The usual and customary charge; and

6 (b) An amount not to exceed the prevailing charges, in the locality where the Level I  
7 PRTF is located, for comparable services provided under comparable circumstances.

8 (3) The per diem rate referenced in subsection (2) of this section shall be increased  
9 each biennium by 2.22 percent.

10 (4) The per diem rate referenced in subsection (2) of this section, or usual and cus-  
11 tomary charge if less than the per diem rate, shall represent total Medicaid reimburse-  
12 ment for Level I PRTF services and costs:

13 (a) Including all care and treatment costs;

14 (b) Including costs for all ancillary services;

15 (c) Including capital costs;

16 (d) Including room and board costs; and

17 (e) Excluding the costs of drugs as drugs shall be:

18 1. Covered in accordance with 907 KAR 1:019; and

19 2. Reimbursed via the department's pharmacy program in accordance with 907 KAR  
20 1:018.

21 Section 3. Reimbursement for Level II PRTF Services and Costs. (1) To be reim-  
22 bursable under the Medicaid program, Level II PRTF services and associated costs, re-  
23 spectively, shall be provided to or associated, respectively, with a recipient receiving

1 Level II PRTF services in accordance with 907 KAR 9:005.

2 (2) The department shall reimburse a per diem rate as follows for Level II PRTF ser-  
3 vices and costs for a recipient not enrolled in a managed care organization:

4 (a) \$345 for Level II PRTF services to a recipient who meets the rate group one  
5 (1) criteria established in subsection (3)(a) of this section[a rate group one (1)  
6 Level II PRTF];

7 (b) \$365 for Level II PRTF services to a recipient who meets the rate group two  
8 (2) criteria established in subsection (3)(b) of this section[a rate group two (2)  
9 Level II PRTF];

10 (c) \$385 for Level II PRTF services to a recipient who meets the rate group three  
11 (3) criteria established in subsection (3)(c) of this section[a rate group three (3)  
12 Level II PRTF]; or

13 (d) \$405 for Level II PRTF services to a recipient who meets the rate group four  
14 (4) criteria established in subsection (3)(d) or (e) of this section[a rate group four  
15 (4) Level II PRTF].

16 (3)(a) Rate group one (1) criteria shall be[A rate group one (1) Level II PRTF  
17 shall be a Level II PRTF that serves recipients who are not enrolled in a managed  
18 care organization and are]:

19 1. Aged twelve (12) years or younger;

20 2. Male or female; and

21 3.a. Sexually reactive; or

22 b. Who:

23 (i) Have a severe and persistent aggressive behavior;

1 (ii) Do not have mental retardation or a developmental disability; and

2 (iii) Have an intelligence quotient higher than seventy (70).

3 (b) Rate group two (2) criteria shall be [A rate group two (2) Level II PRTF shall  
4 be a Level II PRTF which serves recipients who are not enrolled in a managed  
5 care organization and are]:

6 1. Aged twelve (12) years or younger;

7 2. Male or female; and

8 3.a. Sexually reactive; and

9 b. Who:

10 (i) Have a severe and persistent aggressive behavior;

11 (ii) Do not have mental retardation or a developmental disability; and

12 (iii) Have an intelligence quotient higher than seventy (70).

13 (c) Rate group three (3) criteria shall be [A rate group three (3) Level II PRTF  
14 shall be a Level II PRTF which serves recipients who are not enrolled in a man-  
15 aged care organization and are]:

16 1. Aged thirteen (13) years or older;

17 2. Male or female; and

18 3.a. Sexually reactive; or

19 b. Who:

20 (i) Have a severe and persistent aggressive behavior;

21 (ii) Do not have mental retardation or a developmental disability; and

22 (iii) Have an intelligence quotient higher than seventy (70).

23 (d) Rate group four (4) criteria shall be [A rate group three (3) Level II PRTF shall

1 ~~be a Level II PRTF which serves recipients who are not enrolled in a managed~~  
2 ~~care organization and are]:~~

3 1. Aged thirteen (13) years or older;

4 2. Male or female; and

5 3.a. Sexually reactive; and

6 b. Who:

7 (i) Have a severe and persistent aggressive behavior;

8 (ii) Do not have mental retardation or a developmental disability; and

9 (iii) Have an intelligence quotient higher than seventy (70).

10 ~~(e) Rate group four (4) criteria shall be [A rate group four (4) Level II PRTF shall~~

11 ~~be a Level II PRTF which serves recipients who are not enrolled in a managed~~  
12 ~~care organization and are]:~~

13 1. Under twenty-two (22) years of age;

14 2. Male or female; and

15 3.a. Sexually reactive; or

16 b. Who:

17 (i) Have a severe and persistent aggressive behavior;

18 (ii) Have mental retardation or a developmental disability; and

19 (iii) Have an intelligence quotient lower than seventy (70).

20 (4) The per diem rates referenced in subsection (2) of this section, or usual and cus-  
21 tomary charge if less than the per diem rate, shall represent total Medicaid reimburse-  
22 ment for Level II PRTF services and costs:

23 (a) Including all care and treatment costs;

1 (b) Including costs for all ancillary services;

2 (c) Including capital costs;

3 (d) Including room and board costs; and

4 (e) Excluding the costs of drugs as drugs shall be:

5 1. Covered in accordance with 907 KAR 1:019; and

6 2. Reimbursed via the department's pharmacy program in accordance with 907 KAR  
7 1:018;

8 (5)(a) The department shall annually evaluate a per diem rate for Level II PRTF ser-  
9 vices and costs by reviewing the most recent, reliable claims' data and cost report data  
10 to analyze treatment patterns, technology, and other factors that may alter the cost of  
11 efficiently providing Level II PRTF services.

12 **(b) The department shall use the evaluation, review, and analysis referenced in**  
13 **paragraph (a) of this subsection, to determine if an adjustment to Level II PRTF**  
14 **reimbursement would be appropriate.**

15 Section 4. Cost Reports and Audits. (1)(a) A Level I or II PRTF shall annually submit  
16 to the department, within ninety (90) days of the closing date of the facility's fiscal year  
17 end, a legible and completed Form CMS 2552-96.

18 **(b) The department shall grant a thirty (30)-day extension for submitting a legi-**  
19 **ble and completed Form CMS 2552-96 to the department if an extension is re-**  
20 **quested by a Level I or II PRTF.**

21 (2)(a) A Form CMS 2552-96 shall be subject to review and audit by the department.

22 **(b) The review and audit referenced in paragraph (a) of this subsection shall be**  
23 **to determine if the information provided is accurate.**

1 Section 5. Access to Level I and II PRTF Fiscal and Services Records. A Level I or II  
2 PRTF shall provide, upon request, all fiscal and service records **relating to services**  
3 **provided to a Kentucky recipient, to the:**

4 (1) Department;

5 (2) Cabinet for Health and Family Services, Office of Inspector General;

6 (3) Commonwealth of Kentucky, Office of the Attorney General;

7 (4) Commonwealth of Kentucky, Auditor of Public Accounts;

8 (5) Secretary of the United States Department of Health and Human Services; or

9 (6) United States Office of the Attorney General.

10 Section 6. Bed Reserve **and Therapeutic Pass** Reimbursement. (1) The depart-  
11 ment's reimbursement for a bed reserve day which qualifies as a bed reserve day pur-  
12 suant to 907 KAR 9:005 for a recipient not enrolled in a managed care organization **or a**  
13 **therapeutic pass day which qualifies as a therapeutic pass day pursuant to 907**  
14 **KAR 9:005 for a recipient not enrolled in a managed care organization** shall be:

15 (a) Fifty (50) percent of the rate established in Section 2 or 3 of this administrative  
16 regulation if the Level I or II PRTF's occupancy percent is at least ninety-five (95) per-  
17 cent; or

18 (b) Twenty-five (25) percent of the rate established in Section 2 or 3 of this adminis-  
19 trative regulation if the Level I or II PRTF's occupancy percent is at least fifty (50) per-  
20 cent but less than ninety-five (95) percent.

21 (2) The department shall not reimburse for a bed reserve day **or therapeutic pass**  
22 **day** in a Level I or II PRTF if the Level I or II PRTF's occupancy percent is less than fifty  
23 (50) percent.

1 **(3) A Level I or II PRTF's occupancy percent shall be based on a midnight cen-**  
2 **sus.**

3 Section 7. Federal Financial Participation. A policy established in this administrative  
4 regulation shall be null and void if the Centers for Medicare and Medicaid Services:

5 (1) Denies or does not provide federal financial participation for the policy; or

6 (2) Disapproves the policy.

7 Section 8. Appeals. A provider may appeal a decision by the department regarding the  
8 application of this administration in accordance with 907 KAR 1:671.

9 Section 9. Not Applicable to Managed Care Organizations. (1) A managed care organ-  
10 ization may elect to reimburse for Level I and II psychiatric residential treatment facility  
11 services in accordance with this administrative regulation if the managed care organiza-  
12 tion so chooses.

13 (2) The reimbursement policies established in this administrative regulation shall not  
14 apply to a managed care organization, except the requirement that a Level I or II PRTF  
15 service shall be in accordance with 907 KAR 9:005 in order to be reimbursable under the  
16 Medicaid program.

17 Section 10. Incorporation by Reference. (1) The "Form CMS 2552-96", August 2010  
18 edition is incorporated by reference.

19 (2) The material referenced in subsection (1) of this section may be inspected, copied,  
20 or obtained, subject to applicable copyright law, at the Department for Medicaid Services,  
21 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8:00 a.m.  
22 through 4:30 p.m. ["Psychiatric residential treatment facility" (PRTF) means an appropri-  
23 ately licensed PRTF participating in the Medicaid Program.

1        ~~Section 2. Payment Rates. Covered inpatient psychiatric facility services for individuals~~  
2 ~~under twenty-two (22) years of age provided in PRTFs of sixteen (16) beds or less shall~~  
3 ~~be paid for in accordance with the following:~~

4        ~~(1) The PRTFs shall be paid a fixed rate of \$230 per diem which shall be adjusted up-~~  
5 ~~ward each biennium by 2.22 percent, or usual and customary charge if less; however, the~~  
6 ~~payment shall not exceed prevailing charges in the locality for comparable services pro-~~  
7 ~~vided under comparable circumstances.~~

8        ~~(2) The fixed rate, or usual and customary charge if less, covers total facility costs for~~  
9 ~~covered PRTF services, excluding the cost of drugs, as follows:~~

10        ~~(a) All care and treatment costs;~~

11        ~~(b) Costs for all ancillary services, excluding the cost of drugs which shall be reim-~~  
12 ~~bursed through the pharmacy program;~~

13        ~~(c) Capital costs; and~~

14        ~~(d) Room and board costs.~~

15        ~~Section 3. Cost Reports and Audits. PRTFs shall file a cost report annually using a uni-~~  
16 ~~form cost report form prescribed by the Department for Medicaid Services. The cabinet~~  
17 ~~may audit the cost reports as it deems necessary.~~

18        ~~Section 4. Access to PRTF Fiscal and Services Records. Access shall be granted to~~  
19 ~~PRTF fiscal and services records to the extent determined necessary by the cabinet, as~~  
20 ~~follows:~~

21        ~~(1) To assure accuracy of the cost report, that services are provided in accordance~~  
22 ~~with the standards shown in this administrative regulation and in 907 KAR 1:505; and~~

23        ~~(2) The PRTF is complying with all terms and conditions of the provider agreement be-~~

1 ~~tween the cabinet and PRTF.~~

2 ~~(3) Representatives of the United States Department of Health and Human Services,~~  
3 ~~Inspector General's Office, and Attorney General's Office shall have access to PRTF rec-~~  
4 ~~ords to the extent necessary to perform their functions which relate to the Medicaid Pro-~~  
5 ~~gram.~~

6 ~~Section 5. Implementation Date. The provisions of this administrative regulation shall~~  
7 ~~be applicable for services provided on or after November 1, 1995.] (18 Ky.R. 601; eff. 10-~~  
8 ~~6-91; Am. 22 Ky.R. 1908; eff. 6-6-96.)~~

907 KAR 9:010

REVIEWED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Lawrence Kissner, Commissioner  
Department for Medicaid Services

APPROVED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Audrey Tayse Haynes, Secretary  
Cabinet for Health and Family Services

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation Number: 907 KAR 9:010  
Cabinet for Health and Family Services  
Department for Medicaid Services  
Agency Contact: Jill Hunter (502) 564-5707 or Stuart Owen (502) 564-4321

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes Medicaid reimbursement policies for Level I and Level II psychiatric residential treatment facility services provided to a Medicaid recipient who is not enrolled in a managed care organization; however, a managed care organization shall be authorized to reimburse for Level I and II psychiatric residential treatment facility services in accordance with this administrative regulation if the managed care organization elects to do so.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish Medicaid reimbursement policies for Level I and II PRTF 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 Medicaid reimbursement policies for Level I and II PRTF services.
  - (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 authorizing statutes by establishing Medicaid reimbursement policies for Level I and II PRTF 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 amendment replaces the prior single reimbursement model for PRTF services with a per diem reimbursement methodology tailored to Level I and II PRTF services respectively. The Level I PRTF per diem is the lesser of \$274.01/day or the facility's usual and customary charge/day and is to be increased, for inflation, each biennium by 2.22 percent. Level II PRTF reimbursement is tiered with reimbursement increasing as the level of patient care increases. The Level II PRTF per diem rates range from \$345/day to \$405/day and are not adjusted for inflation. The amendment also establishes bed reserve day reimbursement policies. The amendments after comments include eliminate the words "all-inclusive" from the per diem rate definition as it is not an all-inclusive rate; revising the language regarding the four (4) Level II PRTF rate groups to be descriptive of the respective criteria of recipients in each rate group rather than to be descriptive of the PRTF (as it is recipient criteria); inserted an option for a Level II PRTF to request a thirty (30)-day extension on the deadline to submit an

annual Form CMS 2552-96; clarified that Level I and II PRTFs have to provide, upon request, all fiscal and service records relating to Kentucky Medicaid recipients (rather than all fiscal and service records); clarified that the Department for Medicaid Services (DMS) will use the evaluation, review, and analysis of data related to Level II PRTF reimbursement to determine if an adjustment to Level II PRTF reimbursement would be appropriate; clarified that DMS will review and audit a Form CMS 2552-96 submitted by a Level II PRTF to determine if the information is accurate; clarified that a facility's occupancy percent shall be based on a midnight census; and inserted reimbursement for a therapeutic pass day as it has been added as a covered service in 907 KAR 9:005.

- (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to comply with legislation (KRS 216B.450 through 457) which created Level I and II psychiatric residential treatment facilities. The amendment after comments regarding the per diem rate definition, the rewriting of the rate groups' language, the provision of fiscal and service records, the review and analysis of data related to Level II PRTF reimbursement, and the review and audit of a Form CMS 2552-96 submitted by a Level II PRTF, the policy that a facility's occupancy percent will be based on a midnight census are necessary to clarify or more accurately state policy; the addition of a thirty (30)-day extension on submitting a Form CMS 2552-96 is necessary to allow more time for providers to submit the form; and inserting reimbursement for a therapeutic pass day is necessary as DMS has added a therapeutic pass day as a covered service in 907 KAR 9:005.
  - (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to KRS 216B.450 through 457 by replacing reimbursement for PRTF services with reimbursement for, respectively, Level I and II PRTF services. The amendments after comments conform to the content of the authorizing statutes by clarifying or more accurately stating policy; by allowing providers more time to submit a required form; and by inserting reimbursement for a covered service.
  - (d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of KRS 216B.450 through 457 by replacing reimbursement for PRTF services with reimbursement for, respectively, Level I and II PRTF services. The amendments after comments will assist in the effective administration of the authorizing statutes by clarifying or more accurately stating policy; by allowing providers more time to submit a required form; and by inserting reimbursement for a covered service.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Level I and Level II psychiatric residential treatment facilities will be affected by the amendment. Level I and II PRTF beds are awarded through a certificate of need process. The Office of Certificate of Need has limited the number of Level I PRTF beds statewide to 315 and the number of Level II PRTF beds to 145 statewide. Not all

Level I PRTF certificates of need have been used and currently there are no licensed or operational Level II PRTFs.

- (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. Level I and II PRTFs will have to continue to submit cost reports annually to the Department for Medicaid Services (DMS).
  - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The Children's Alliance stated the following as a response to this question:  
"Additional costs will be incurred due to requirements to complete the CMS 2552-96 and providing all fiscal and service records when requested, which would be a huge administrative and financial burden. A PRTF will not be paid for holding a recipient's bed if they are below a 50% occupancy rate, which means they will have to absorb the costs of necessary hospitalizations or pass days when working to successfully transition the recipient home. In some instances, PRTFs will get paid for 5 reserve days, but they will no longer be paid the per diem rate for bed reserve days and the reduction to 5 partially paid days is a significant decrease from the full per diem reimbursement for 14 hospital and 21 pass days currently allowed. Cutting pass days and the reimbursement amount is the same as a rate cut. The outcome for children will ultimately result in more hospitalizations and re-admits, as well as increased costs for PRTFs."
  - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Participating Level I and II PRTFs will receive reimbursement tailored to care provided to the individuals they serve.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: The cost depends on several variables and is indeterminable at this time. The Office of Certificate of Need limited the number of Level II PRTF beds 145 statewide and currently there are no licensed or operational Level II PRTFs. Thus, one variable is how quickly Level II PRTFs will become licensed and operational and another is how quickly Level II PRTF beds will be filled. Additionally, not all Level I PRTF beds issued a certificate of need have been used. Additionally, Level I and II PRTF services are in the scope of managed care. Some individuals are excluded from managed care; however, DMS expects that few who are excluded will need Level I or II PRTF services. DMS pays managed care organizations (MCOs) a capitated rate per enrollee which is aggregated into a monthly capitated payment to the MCO for all enrollees in its care for the month. The capitated rates vary over time and depend on the amount of utilization and cost among the categories. DMS's cost; thus, includes the capitated rates it pays to MCOs for enrollees in the MCOs care whether or not the given enrollee utilizes services (such as Level I or II PRTF services) or not. The current capitated rates

that DMS pays for the population that would be eligible for Level I or II PRTF services range from \$120 per month to \$1200 per month. Again though, DMS pays the capitated rate regardless of whether a given individual received services or not.

- (b) On a continuing basis: For the reasons stated in the prior response - (5)(a) – the continuing basis cost is indeterminable at this time.
- (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 the Social Security Act, Title XIX and 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 required to implement the amendment to this administrative regulation.
- (8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: The amendment to this administrative regulation neither establishes nor increases any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used.) Tiering is applied as reimbursement for Level I PRTFs is less than reimbursement for Level II PRTFs as individuals served by Level II PRTFs require more intensive care than is required for Level I PRTF service recipients.

## FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 907 KAR 9:010

Agency Contact: Jill Hunter (502) 564-5707 or Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. 42 USC 1396a(a)(10), 42 USC 1396d(a)(16), 42 USC 1396d(h), 42 CFR 441.151 and 42 CFR 440.160.
2. State compliance standards. To qualify as a Level I or II PRTF, a facility must meet the criteria established in KRS 216B.450 through 457.
3. Minimum or uniform standards contained in the federal mandate.

Per federal Medicaid law, inpatient psychiatric facility services for individuals under twenty-one (21) is not a mandatory Medicaid benefit, but if a state's state plan includes intermediate care facility services for individuals with mental retardation, it must also cover inpatient psychiatric facility services for individuals under twenty-one (21.) Additionally, states may be required to provide inpatient psychiatric care under the early and periodic screening, diagnosis and treatment program (EPSDT).

Pursuant to 42 CFR 440.160, "Inpatient psychiatric services for individuals under age 21" means services that—

(a) Are provided under the direction of a physician;

(b) Are provided by—

(1) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations, or

(2) A psychiatric facility which is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Council on Accreditation of Services for Families and Children, the Commission on Accreditation of Rehabilitation Facilities, or by any other accrediting organization, with comparable standards, that is recognized by the State.

(c) Meet the requirements in §441.151 of this subchapter."

Additionally, 42 CFR 441.151 states, "(a) Inpatient psychiatric services for individuals under age 21 must be:

(1) Provided under the direction of a physician;

(2) Provided by—

(i) A psychiatric hospital or an inpatient psychiatric program in a hospital, accredited by the Joint Commission on Accreditation of Healthcare Organizations; or

(ii) A psychiatric facility that is not a hospital and is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children, or by any other accrediting organization with comparable standards that is recognized by the State.

(3) Provided before the individual reaches age 21, or, if the individual was receiving the services immediately before he or she reached age 21, before the earlier of the following—

(i) The date the individual no longer requires the services; or

(ii) The date the individual reaches 22; and

(4) Certified in writing to be necessary in the setting in which the services will be provided (or are being provided in emergency circumstances) in accordance with §441.152.

(b) Inpatient psychiatric services furnished in a psychiatric residential treatment facility as defined in §483.352 of this chapter, must satisfy all requirements in subpart G of part 483 of this chapter governing the use of restraint and seclusion.”

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 9:010

Agency Contact: Jill Hunter (502) 564-5707 or Stuart Owen (502) 564-4321

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? The Department for Medicaid Services will be affected by the amendment to this administrative regulation.
2. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. 42 CFR 441.151, 42 CFR 440.160, and this administrative regulation.
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? 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? The cost depends on several variables and is indeterminable at this time. The Office of Certificate of Need limited the number of Level II PRTF beds 145 statewide and currently there are no licensed or operational Level II PRTFs. Thus, one variable is how quickly Level II PRTFs will become licensed and operational and another is how quickly Level II PRTF beds will be filled. Additionally, not all Level I PRTF beds issued a certificate of need have been used. Additionally, Level I and II PRTF services are in the scope of managed care. Some individuals are excluded from managed care; however, DMS expects that few who are excluded will need Level I or II PRTF services. DMS pays managed care organizations (MCOs) a capitated rate per enrollee which is aggregated into a monthly capitated payment to the MCO for all enrollees in its care for the month. The capitated rates vary over time and depend on the amount of utilization and cost among the categories. DMS's cost; thus, includes the capitated rates it pays to MCOs for enrollees in the MCOs care whether or not the given enrollee utilizes services (such as Level I or II PRTF services) or not. The current capitated rates that DMS pays for the population that would be eligible for Level I or II PRTF services range from \$120 per month to \$1200 per month. Again though, DMS pays the capitated rate regardless of whether a given individual received services or not.
  - (d) How much will it cost to administer this program for subsequent years? For the rea-

sons stated in the prior response - 3.(c) – the subsequent years' cost is indeterminable at this time.

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:

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

907 KAR 9:010

Summary of Material Incorporated by Reference

The "Form CMS 2552-96", August 2010 edition is incorporated by reference. The document indicates costs by categories for providers and must be submitted annually to the Department for Medicaid Services.

The material incorporated by reference encompasses a total of 118 pages.