FILED WITH LRC
TIME: 3pm
JUL 22 2014
Donna Little
REGULATIONS COMPILER

STATEMENT OF EMERGENCY
907 KAR 15:005E

(1) This emergency administrative regulation is being promulgated in conjunction with 907 KAR 15:025E, Reimbursement provisions and requirements regarding behavioral health services provided by behavioral health service organizations and 907 KAR 15:020E, Coverage provisions and requirements regarding behavioral health services, to comply with a federal mandate. 907 KAR 15:020E and 907 KAR 15:025E are necessary to establish Kentucky Medicaid Program coverage and reimbursement of behavioral health services (including substance use disorder services) provided by behavioral health service organizations. The Affordable Care Act mandates coverage of substance use disorder services for all Medicaid recipients (who meet qualifying criteria) and federal law requires Medicaid Programs to ensure that recipients have access to services. DMS is adding behavioral health service organizations to the behavioral health provider base to ensure that there is an adequate supply of providers to meet Medicaid recipient demand for care – as federally required. 907 KAR 15:005E establishes definitions used in 907 KAR 15:020E and 907 KAR 15:025E.

(2) This action must be taken on an emergency basis to prevent a loss of Medicaid federal funds and to meet a deadline for the promulgation of an administrative regulation necessary under federal law and regulation.

(3) This emergency administrative regulation differs from the prior emergency administrative regulation filed with the Legislative Research Commission on December 30, 2013 in that it defines three (3) new terms – "behavioral health practitioner under supervision", "billing supervisor", and "certified alcohol and drug counselor" – which are practitioners authorized to provide or supervise services provided in behavioral health services organizations (BHSOs). BHSOs are a new provider being created via the aforementioned companion administrative regulations (907 KAR 15:020E and 907 KAR 15:025E).

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

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

Steven L. Beshear
Governor

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Commissioner's Office

4 (Emergency Amendment)

5 907 KAR 15:005E. Definitions for 907 KAR Chapter 15.

6 RELATES TO: 194A.025(3)

7 STATUTORY AUTHORITY: KRS 194A.010(1), 194A.030(2), 194A.050(1),

8 205.520(3), 42 U.S.C. 1396a

9 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family

10 Services, Department for Medicaid Services, has responsibility to administer the Medi-

11 caid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to

12 comply with a requirement that may be imposed or opportunity presented by federal law

13 to qualify for federal Medicaid funds. This administrative regulation establishes the defi-

14 nitions for 907 KAR Chapter 15.

15 Section 1. Definitions. (1) "Advanced practice registered nurse" or "APRN" is defined

16 by KRS 314.011(7).

17 (2) "Approved behavioral health services provider" means a provider that is:

18 (a) A physician;

19 (b) A psychiatrist;

20 (c) An advanced practice registered nurse;

21 (d) A physician assistant;

1 (e) A licensed psychologist;

2 (f) A licensed psychological practitioner;

3 (g) A licensed clinical social worker;

4 (h) A licensed professional clinical counselor;

5 (i) A licensed marriage and family therapist;

6 (j) A licensed psychological associate;

7 (k) A marriage and family therapy associate;

8 (l) A certified social worker;

9 (m) A licensed professional counselor associate;

10 (n) A licensed professional art therapist; or

11 (o) A licensed professional art therapist associate.

12 (3) "Behavioral health practitioner under supervision" means an individual who is:

13 (a)1. A licensed psychological associate;

14 2. A licensed professional counselor associate;

15 3. A certified social worker;

16 4. A marriage and family therapy associate;

17 5. A licensed professional art therapist associate;

18 6. A licensed assistant behavior analyst;

19 7. A physician assistant; or

20 8. A certified alcohol and drug counselor; and

21 (b) Employed by or under contract with the same billing provider as the billing super-

22 visor.

23 (4) "Billing provider" means the individual who, [~~or~~] group of individual providers that,

1 or organization that:

2 (a) Is authorized to bill the department or a managed care organization for a service;

3 and

4 (b) Is eligible to be reimbursed by the department or a managed care organization for

5 a service.

6 (5) "Billing supervisor" means an individual who is:

7 (a)1. A physician;

8 2. A psychiatrist;

9 3. An advanced practice registered nurse;

10 4. A licensed psychologist;

11 5. A licensed clinical social worker;

12 6. A licensed professional clinical counselor;

13 7. A licensed psychological practitioner;

14 8. A licensed marriage and family therapist;

15 9. A licensed professional art therapist; or

16 10. A licensed behavior analyst; and

17 (b) Employed by or under contract with the same billing provider as the behavioral

18 health practitioner under supervision who renders services under the supervision of the

19 billing supervisor.

20 (6) "Certified alcohol and drug counselor" means an individual who meets the re-

21 quirements established in KRS 309.083.

22 (7)[~~(4)~~] "Certified social worker" means an individual who meets the requirements es-

23 tablished in KRS 335.080.

1 (8)[(~~5~~)] "Department" means the Department for Medicaid Services or its designee.

2 (9)[(~~6~~)] "Electronic signature" is defined by KRS 369.102(8).

3 (10)[(~~7~~)] "Enrollee" means a recipient who is enrolled with a managed care organiza-

4 tion.

5 (11)[(~~8~~)] "Face-to-face" means occurring:

6 (a) In person; or

7 (b) Via a real-time, electronic communication that involves two (2) way interactive

8 video and audio communication.

9 (12)[(~~9~~)] "Family peer support specialist" means an individual who meets the re-

10 quirements for a Kentucky family peer support specialist established in 908 KAR 2:230.

11 (13)[(~~10~~)] "Federal financial participation" is defined by 42 C.F.R. 400.203.

12 (14) "Healthcare common procedure coding system" or "HCPCS" means a collection

13 of codes acknowledged by the Centers for Medicare and Medicaid Services (CMS) that

14 represents procedures or items.

15 (15)[(~~11~~)] "Licensed assistant behavior analyst" is defined by KRS 319C.010(7).

16 (16)[(~~12~~)] "Licensed behavior analyst" is defined by KRS 319C.010(6).

17 (17)[(~~13~~)] "Licensed clinical social worker" means an individual who meets the li-

18 censed clinical social worker requirements established in KRS 335.100.

19 (18)[(~~14~~)] "Licensed marriage and family therapist" is defined by KRS 335.300(2).

20 (19)[(~~15~~)] "Licensed professional art therapist" is defined by KRS 309.130(2).

21 (20)[(~~16~~)] "Licensed professional art therapist associate" is defined by KRS

22 309.130(3).

23 (21)[(~~17~~)] "Licensed professional clinical counselor" is defined by KRS 335.500(3).

1 (22)[~~(18)~~] "Licensed professional counselor associate" is defined by KRS 335.500(4).

2 (23)[~~(19)~~] "Licensed psychological associate" means an individual who:

3 (a)1. Currently possesses a licensed psychological associate license in accordance

4 with KRS 319.010(6); and

5 2. Meets the licensed psychological associate requirements established in 201 KAR

6 Chapter 26; or

7 (b) Is a certified psychologist.

8 (24)[~~(20)~~] "Licensed psychological practitioner" means an individual who:

9 (a) Meets the requirements established in KRS 319.053; or

10 (b) Is a certified psychologist with autonomous functioning.

11 (25)[~~(21)~~] "Licensed psychologist" means an individual who:

12 (a) Currently possesses a licensed psychologist license in accordance with KRS

13 319.010(6); and

14 (b) Meets the licensed psychologist requirements established in 201 KAR Chapter

15 26.

16 (26)[~~(22)~~] "Managed care organization" means an entity for which the Department for

17 Medicaid Services has contracted to serve as a managed care organization as defined

18 in 42 C.F.R. 438.2.

19 (27)[~~(23)~~] "Marriage and family therapy associate" is defined by KRS 335.300(3).

20 (28)[~~(24)~~] "Medically necessary" or "medical necessity" means that a covered benefit

21 is determined to be needed in accordance with 907 KAR 3:130.

22 (29)[~~(25)~~] "Peer support specialist" means an individual who meets the peer specialist

23 qualifications established in 908 KAR 2:220.

1 (30)[(~~26~~)] "Person-centered service plan" means a plan of services for a recipient that
2 meets the requirements established in 42 C.F.R. 441.540.
3 (31)[(~~27~~)] "Physician" is defined by KRS 205.510(11).
4 (32)[(~~28~~)] "Physician assistant" is defined by KRS 311.840(3).
5 (33)[(~~29~~)] "Provider" is defined by KRS 205.8451(7).
6 (34)[(~~30~~)] "Provider abuse" is defined by KRS 205.8451(8).
7 (35)[(~~31~~)] "Provider group" means a group of more than one (1) individually licensed
8 practitioners who form a business entity to:
9 (a) Render health services; and
10 (b) Bill the Medicaid Program for services rendered to Medicaid recipients.
11 (36)[(~~32~~)] "Recipient" is defined by KRS 205.8451(9).
12 (37)[(~~32~~)] "Recipient abuse" is defined by KRS 205.8451(10).
13 (38)[(~~33~~)] "Registered nurse" is defined by KRS 314.011(5).
14 (39)[(~~34~~)] "Youth peer support specialist" means an individual who meets the re-
15 quirements established for a Kentucky youth peer support specialist established in 908
16 KAR 2:240.

907 KAR 15:005E

REVIEWED:

7/2/14
Date

Lawrence Kissner, Commissioner
Department for Medicaid Services

APPROVED:

7/8/14
Date

Audrey Tayse Haynes, Secretary
Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 907 KAR 15:005E
Contact Person: Stuart Owen (502) 564-4321

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services, including substance use disorder services, provided by independently enrolled providers (such as a licensed psychologist, licensed professional clinical counselor, licensed clinical social worker, licensed psychological practitioner, licensed marriage and family therapist) rather than agency behavioral health service providers (such as a community mental health center, federally qualified health center, or rural health clinic.)

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services, including substance use disorder services, provided by independent providers. The Department for Medicaid Services (DMS) is expanding its scope of behavioral health service coverage to include substance use disorder services as a result of an Affordable Care Act mandate for Medicaid programs to cover such services for all Medicaid recipients. Currently, DMS covers such services for pregnant women and children.

(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 definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services, including substance use disorder services, provided by independent providers.

(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 the definitions for administrative regulations located in 907 KAR Chapter 15. Chapter 15 contains Medicaid administrative regulations regarding behavioral health services, including substance use disorder services, provided by independent providers.

(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 creates/inserts a definition for "behavioral health practitioner under supervision", "billing supervisor", "certified alcohol and drug counselor", and "healthcare common procedure coding system."

(b) The necessity of the amendment to this administrative regulation: Inserting the three (3) new definitions is necessary to define practitioners authorized to render services in a behavioral health services organization or BHSO. A BHSO is a new category of provider of behavioral health services of which the coverage and reimbursement provisions are established in 907 KAR 15:020 (Coverage provisions and requirements re-

garding behavioral health services) and 907 KAR 15:025 (Reimbursement provisions and requirements regarding behavioral health services). Coverage and reimbursement of BHSO services is necessary to comply with federal mandates. Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients. 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base (to include behavioral health services organizations) will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

(c) How the amendment conforms to the content of the authorizing statutes: The amendments after comments will conform to the content of the authorizing statutes by defining terms utilized in BHSO administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes: The amendments after comments will assist in the effective administration of the authorizing statutes by defining terms utilized in BHSO administrative regulations.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid recipients of behavioral health services and BHSOs (as well as behavioral health practitioners who work for BHSOs) will be affected by the amendment.

(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: No action is required by this administrative regulation is it only contains definitions.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No cost is imposed.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). Individuals will benefit due to terms being defined.

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

(a) Initially: No cost is necessary to initially implement this administrative regulation.

(b) On a continuing basis: No continuing cost is necessary to implement this administrative regulation.

(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 comprised of general fund and restricted 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 are 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 directly or indirectly increases any fees.

(9) Tiering: Is tiering applied? Tiering is neither applied nor necessary as the administrative regulation establishes definitions for Medicaid independent behavioral health services (including substance use disorder services) and reimbursement.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation: 907 KAR 15:005E
Contact Person: Stuart Owen (502) 564-4321

1. Federal statute or regulation constituting the federal mandate. Section 1302(b)(1)(E) of the Affordable Care Act, 42 U.S.C. 1396a(a)(10)(B), and 42 U.S.C. 1396a(a)(23).

2. State compliance standards. KRS 194A.030(2) states, "The Department for Medicaid Services shall serve as the single state agency in the Commonwealth to administer Title XIX of the Federal Social Security Act."

3. Minimum or uniform standards contained in the federal mandate. There is no federal mandate to define Medicaid terms in an administrative regulation; however, Section 1302(b)(1)(E) of the Affordable Care Act mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky's Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its behavioral health provider/practitioner base to comport with the freedom of choice of provider requirement. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Stricter requirements are not imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation: 907 KAR 15:005E
Contact Person: 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 this administrative regulation.

2. 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.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? None.
(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.
(c) How much will it cost to administer this program for the first year? No cost is necessary to implement this administrative regulation in the first year.
(d) How much will it cost to administer this program for subsequent years? No cost is necessary in subsequent years to implement this administrative regulation.
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: