

STATEMENT OF EMERGENCY

907 KAR 15:005E

(1) This emergency administrative regulation is being promulgated in conjunction with two (2) other administrative regulations – 907 KAR 15:010E, Coverage provisions and requirements regarding behavioral health services provided by independent providers, and 907 KAR 15:015E, Reimbursement provisions and requirements regarding behavioral health services provided by independent providers - to comply with an Affordable Care Act mandate. The three (3) administrative regulations are necessary to establish Kentucky Medicaid Program coverage and reimbursement of additional behavioral health services including substance use disorder services. The Department for Medicaid Services (DMS) currently covers substance use related services for pregnant women and children; however, the Affordable Care Act mandates coverage of substance use disorder services for all Medicaid recipients (who meet qualifying criteria.) Additionally, DMS is expanding the base of behavioral health providers to ensure that there is an adequate supply of providers to meet Medicaid recipient demand for care – as federally required.

(2) This action must be taken on an emergency basis to comply with a federal mandate.

(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

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 (New Emergency Administrative Regulation)

5 907 KAR 15:005. 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 administrative regulations in Chapter 15 of Title 907.

15 Section 1. Definitions. (1) "Advanced practice registered nurse" is defined by KRS
16 314.011(7).

17 (2) "Billing provider" means the individual or entity who:

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

20 (b) Is eligible to be reimbursed by the department or a managed care organization for
21 a service.

- 1 (3) "Certified social worker" means an individual who:
- 2 (a) Meets the requirements established in KRS 335.080; and
- 3 (b) Has at least a master's degree in social work.
- 4 (4) "Community support associate" means an individual who meets the community
- 5 support associate requirements established in 908 KAR 2:250.
- 6 (5) "Department" means the Department for Medicaid Services or its designee.
- 7 (6) "Enrollee" means a recipient who is enrolled with a managed care organization.
- 8 (7) "Electronic signature" is defined by KRS 369.102(8).
- 9 (8) "Face-to-face" means occurring:
- 10 (a) In person; or
- 11 (b) Via a real-time, electronic communication that involves two (2)-way interactive
- 12 video and audio communication.
- 13 (9) "Family peer support specialist" means an individual who meets the requirements
- 14 for a Kentucky family peer support specialist established in 908 KAR 2:230.
- 15 (10) "Federal financial participation" is defined by 42 C.F.R. 400.203.
- 16 (11) "Licensed clinical social worker" means an individual who meets the licensed
- 17 clinical social worker requirements established in KRS 335.100.
- 18 (12) "Licensed marriage and family therapist" is defined by KRS 335.300(2).
- 19 (13) "Licensed professional clinical counselor" is defined by KRS 335.500(3).
- 20 (14) "Licensed professional counselor associate" is defined by KRS 335.500(3).
- 21 (15) "Licensed psychological associate" means an individual who:
- 22 (a) Currently possesses a licensed psychological associate license in accordance
- 23 with KRS 319.010(6); and

1 (b) Meets the licensed psychological associate requirements established in Chapter
2 26 of the Kentucky Administrative Regulations.

3 (16) "Licensed psychological practitioner" means an individual who meets the re-
4 quirements established in KRS 319.053.

5 (17) "Licensed psychologist" means an individual who:

6 (a) Currently possesses a licensed psychologist license in accordance with KRS
7 319.010(6); and

8 (b) Meets the licensed psychologist requirements established in Chapter 26 of the
9 Kentucky Administrative Regulations.

10 (18) "Managed care organization" means an entity for which the Department for Med-
11 icaid Services has contracted to serve as a managed care organization as defined in
12 42 C.F.R. 438.2.

13 (19) "Marriage and family therapy associate" is defined by KRS 335.300(3).

14 (20) "Medically necessary" or "medical necessity" means that a covered benefit is de-
15 termined to be needed in accordance with 907 KAR 3:130.

16 (21) "Peer support specialist" means an individual who meets the peer specialist
17 qualifications established in 908 KAR 2:220.

18 (22) "Physician" is defined by KRS 205.510(11) and 42 C.F.R. 405.2401(b).

19 (23) "Physician assistant" is defined by KRS 311.840(3) and 42 C.F.R. 405.2401(b).

20 (24) "Provider" is defined by KRS 205.8451(7).

21 (25) "Provider abuse" is defined by KRS 205.8451(8).

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

23 (27) "Recipient abuse" is defined by KRS 205.8451(10).

- 1 (28) "Registered nurse" is defined by KRS 314.011(5).
- 2 (29) "Youth peer support specialist" means an individual who meets the requirements
- 3 established for a Kentucky youth peer support specialist established in 908 KAR 2:240.

907 KAR 15:005E

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 15:005E
Cabinet for Health and Family Services
Department for Medicaid Services
Agency 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 Chapter 15 of Title 907 of the Kentucky Administrative Regulations. 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 Chapter 15 of Title 907 of the Kentucky Administrative Regulations. 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 Chapter 15 of Title 907 of the Kentucky Administrative Regulations. 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 Chapter 15 of Title 907 of the Kentucky Administrative Regulations. 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: This is a new administrative regulation.
 - (b) The necessity of the amendment to this administrative regulation: This is a new administrative regulation.
 - (c) How the amendment conforms to the content of the authorizing statutes: This is a new administrative regulation.
 - (d) How the amendment will assist in the effective administration of the statutes: This is a new administrative regulation.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid recipients of behavioral health services (including substance use disorder services) and independent behavioral health service providers (including substance use disorder service providers) will be affected by the administrative regulation.
- (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 as 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? (Explain why tiering was or was not used) 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 Number: 907 KAR 15:005E

Agency 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 substance use disorder provider 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 Number: 907 KAR 15:005E

Agency 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: