STATEMENT OF EMERGENCY

907 KAR 3:183E

(1) This emergency administrative regulation is being promulgated to enable the Department for Medicaid Services to issue supplemental payments to hospitals reimbursed via the diagnosis-related group (DRG) reimbursement methodology which agreed, in April 2009, to the supplemental payments.

(2) This administrative regulation must be enacted on an emergency basis to:

(a) Provide funding necessary to participating hospitals to enable them to serve Medicaid recipients and; thus, protect the health, safety and welfare of Medicaid recipients; and

(b) Prevent a loss of federal funds authorized under Title XIX of the Social Security Act and the American Recovery and Reinvestment Act of 2009.

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

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

_____
Steven L. Beshear,
Governor

_____
Janie Miller,
Secretary

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Healthcare Facilities Management

(Emergency Amendment)

907 KAR 3:183E. Supplemental payments to participating DRG hospitals.[~~Instate inpatient hospital special reimbursement.~~]

RELATES TO: KRS 205.639, 205.640, 42 C.F.R. 440.10, 440.140, 447.250-447.280, 42 U.S.C. 1395ww(d)(4)(C)(i), 1395x(mm), 1396a, 1396b, 1396d[~~, 2006 Ky. Acts ch. 252, Part I., H.3.b.23~~]

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2) and (5), [~~205.641(2),~~] 42 C.F.R. 447.252, 447.253, 42 U.S.C. 1396a[~~, 2006 Ky. Acts ch. 252, Part I., H.3.b.23~~]

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 a 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 provisions regarding supplemental payments totaling $195 million in aggregate to hospitals reimbursed via the diagnosis-related group (DRG) reimbursement methodology which agreed, in April 2009, to accept the supplemental payments.

Section 1. Definitions. (1) “Aggregate cost gap” means the difference between a hospital’s cost and Medicaid payments received by the hospital for DRG services for the period beginning July 1, 2004 through June 30, 2007 trended to the midpoint of the January 2009 through December 2010 payment period.

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

(3) “DRG” means diagnosis-related group.

(4) “Federal financial participation” is defined by 42 CFR 400.203.

(5) “Pediatric teaching hospital” is defined by KRS 205.565(1).

(6) “Related to the provider” is defined by 42 CFR 413.17.

(7) “University hospital” is defined by KRS 205.639(4).

Section 2. Supplemental Payments to DRG Hospitals Which Have Agreed To Accept the Payments. (1) The department shall issue eight (8) payments:

(a) To a hospital:

1. Reimbursed via the DRG reimbursement methodology which agreed, in April 2009, to accept the supplemental payments; and

2. As a supplement to its reimbursement for inpatient hospital services paid via the DRG reimbursement methodology;

(b) Beginning with two (2) payments issued during the calendar quarter in which this emergency administrative regulation is enacted followed by one (1) payment for each subsequent calendar quarter until the quarter ending December 31, 2010; and

(c) Representing calendar quarters beginning with the calendar quarter ending March 31, 2009 and ending with the calendar quarter ending on December 31, 2010.

(2) A supplemental payment referenced in subsection (1) of this section shall be paid

from an aggregate supplemental payment pool:

(a) That shall not exceed $195 million; and

(b) That shall be reduced by the amount of the share of a hospital, if any, that foregoes its share of the aggregate supplemental payment pool in accordance with Section 3 of this administrative regulation.

(3) A hospital's share of the aggregate supplemental payment pool referenced in subsection (2) of this section shall:

(a) Equal its proportionate share of its aggregate cost gap compared to the aggregate cost gap of all hospitals reimbursed via the DRG reimbursement methodology:

1. Which agreed to accept the supplemental payments referenced in subsection (1) of this section; and

2. Except for the excluded hospitals referenced in Section 4(2), (3), or (4) of this administrative regulation;

(b) Be divided into thirty-six (36) equal units; and

(c) Be paid on a descending balance basis with the:

1. First (1st) quarterly payment representing eight (8) equal units;

2. Second (2nd) quarterly payment representing seven (7) equal units;

3. Third (3rd) quarterly payment representing six (6) equal units;

4. Fourth (4th) quarterly payment representing five (5) equal units;

5. Fifth (5th) quarterly payment representing four (4) equal units;

6. Sixth (6th) quarterly payment representing three (3) equal units;

7. Seventh (7th) quarterly payment representing two (2) equal units; and

8. Eighth (8th) quarterly payment representing one (1) unit.

Section 3. Foregoing Supplemental Payments. (1) A hospital shall forego its share of the aggregate supplemental payment pool referenced in Section 2(2) of this administrative regulation if it at any time does not agree to accept the supplemental payments referenced in Section 2(1) of this administrative regulation.

(2) If a hospital foregoes its share of the aggregate supplemental payment pool referenced in Section 2(2) in this administrative regulation, its share of the aggregate supplemental payment pool shall:

1. Not be paid to the hospital; and

2. Be subtracted from the $195 million aggregate supplemental payment pool.

Section 4. Excluded Hospitals. The department shall not make a supplemental payment referenced in Section 2(1) of this administrative regulation to the following hospitals reimbursed via the DRG reimbursement methodology;

(1) A hospital which foregoes its share of the aggregate supplemental payment pool in accordance with Section 3 of this administrative regulation;

(2) A university hospital;

(3) A pediatric teaching hospital; or

(4) A hospital which owns, operates, is any way affiliated with, has any common ownership with, or has any common operation with a pediatric teaching hospital.

Section 5. Federal Financial Participation. A supplemental payment referenced in Section 2(1) of this administrative regulation shall be contingent upon the department's receipt of federal financial participation for the payment.

Section 6: Upper Payment Limit. (1) A supplemental payment referenced in Section

2(1) of this administrative regulation shall not exceed the limit established in:

(a) 42 CFR 447.271;

(b) 42 CFR 447.72; or

(c) Any other applicable statute or regulation.

(2) No provision in this administrative regulation shall be interpreted to require the department to make a payment which:

(a) Would exceed the limit established in:

1. 42 CFR 447.271;

2. 42 CFR 447.72; or

3. Any other applicable statute or regulation; or

(b) Is not subject to federal financial participation.[~~, as mandated by 2006 Ky. Acts ch. 252, Part I, H.3.b.23, establishes special reimbursement for an instate inpatient acute care hospital, a freestanding rehabilitation hospital, a freestanding psychiatric hospital, a long-term acute care hospital and a state-designated rehabilitation teaching hospital that is not state owned or operated.~~

~~Section 1. Definitions. (1) "Acute care hospital" is defined by KRS 205.639(1).~~

~~(2)"Appalachian Regional Hospital system" means a private, not-for-profit hospital chain operating in a Kentucky county that receives coal severance tax proceeds.~~

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

~~(4) "Diagnosis-related group" or "DRG" means a clinically-similar grouping of services that can be expected to consume similar amounts of hospital resources.~~

~~(5) "Relative weight" means the factor assigned to each Medicare or Medicaid DRG classification that represents the average resources required for a Medicare or~~

~~Medicaid DRG classification relative to the average resources required for all relevant discharges in the nation or state.~~

~~(6) "State-designated rehabilitation teaching hospital that is not state-owned or operated" means a hospital not state-owned or operated which:~~

~~(a) Provides at least 3,000 days of rehabilitation care to Medicaid eligible recipients in a fiscal year;~~

~~(b) Provides at least seventy-five (75) percent of the statewide total of inpatient care to Medicaid eligible recipients; and~~

~~(c) Provides physical and occupational therapy services to Medicaid recipients needing inpatient rehabilitation services in order to function independently outside of an institution postdischarge.~~

~~Section 2. Instate Inpatient Hospital Reimbursement. Pursuant to 2006 Ky. Acts ch. 252, Part I, H.3.b.23 the department shall:~~

~~(1) Reimburse a lump sum payment to an instate inpatient acute care hospital based on the hospital's Medicaid recipient DRG volume already adjudicated for claims with admission dates of July 1, 2005 through June 30, 2006;~~

~~(2) Increase each DRG relative weight by seventeen (17) percent subject to the availability of funds. The DRG relative weight increase shall be a continuation of the relative weight increase which expired at close of business June 30, 2006, established in 907 KAR 3:180E submitted to the Legislative Research Commission on May 4, 2006 and shall not be an additional increase;~~

~~(3) Reimburse two (2) lump sum payments to an instate freestanding psychiatric hospital, instate freestanding rehabilitation hospital, instate long-term acute care hos-~~

~~pital, or an instate state-designated rehabilitation teaching hospital that is not state-owned or operated, as follows:~~

~~(a) One (1) lump sum payment shall be based on the hospital's Medicaid patient days covering admission dates from July 1, 2005 through June 30, 2006; and~~

~~(b) One (1) lump sum payment shall be based on the hospital's Medicaid patient days covering admission dates from July 1, 2006 through June 30, 2007; and~~

~~(4) Reimburse two (2) lump sum payments to an instate state-designated rehabilitation teaching hospital that is not state-owned or operated, as follows:~~

~~(a) One (1) lump sum payment shall equal eighty (80) dollars per Medicaid patient day for admission dates from July 1, 2005 through June 30, 2006; and~~

~~(b) One (1) lump sum payment shall equal eighty (80) dollars per Medicaid patient day for admission dates from July 1, 2006 through June 30, 2007.~~

~~Section 3. Supplemental Payments to Appalachian Regional Hospital System. (1) The department shall make quarterly supplemental payments to the Appalachian Regional Hospital system in an amount: that is equal to the lesser of:~~

~~(a) The difference between what the department pays for inpatient services pursuant to 907 KAR 1:013 and what Medicare would pay for inpatient services to Medicaid eligible individuals; or~~

~~(b) $7.5 million per year in aggregate.~~

~~(2) A quarterly payment to a hospital in the Appalachian Regional Hospital System shall be based on its Medicaid claim volume in comparison to the Medicaid claim volume of each hospital within the Appalachian Regional Hospital System.~~

~~(3) A supplemental payment made in accordance with subsection (1) of this section~~

~~shall be:~~

~~(a) For a service provided on or after July 1, 2005;~~

~~(b) Subject to the availability of coal severance funds that supply the state's share to be matched with federal funds; and~~

~~(c) In compliance with the limitations in 42 C.F.R. 447.272.~~] 33 Ky.R. 2856; Am. 3409; eff. 6-1-07.)

907 KAR 3:183E

REVIEWED:

Date	Elizabeth A. Johnson, Commissioner Department for Medicaid Services

APPROVED:

Date	Janie Miller, Secretary Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 3:183E
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: The administrative regulation establishes that the Department for Medicaid Services (DMS) will issue eight (8) supplemental payments to hospitals reimbursed via the diagnosis-related group (DRG) reimbursement methodology which agreed, in April 2009, to accept the supplemental payments.
(b) The necessity of this administrative regulation: This administrative regulation is necessary to provide funding necessary to participating hospitals to enable them to serve Medicaid recipients and; thus, protect the health, safety and welfare of Medicaid recipients and to prevent a loss of federal funds authorized under Title XIX of the Social Security Act and the American Recovery and Reinvestment Act of 2009.
(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by enabling DMS to provide funding necessary to participating hospitals to enable them to serve Medicaid recipients and; thus, protect the health, safety and welfare of Medicaid recipients.
(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 enabling DMS to provide funding necessary to participating hospitals to enable them to serve Medicaid recipients and; thus, protect the health, safety and welfare of Medicaid recipients.

(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 establishes that the Department for Medicaid Services (DMS) will issue eight (8) supplemental payments to hospitals reimbursed via the diagnosis-related group (DRG) reimbursement methodology who agreed, in April 2009, to accept the supplemental payments. Additionally, it eliminates provisions which have expired and clarifies that the supplemental payments are contingent upon the provision of federal financial participation by the Centers for Medicare and Medicaid Services (CMS) to the department.
(b) The necessity of the amendment to this administrative regulation: This administrative regulation is necessary to provide funding necessary to participating hospitals to enable them to serve Medicaid recipients and; thus, protect the health, safety and welfare of Medicaid recipients and to prevent a

loss of federal funds authorized under Title XIX of the Social Security Act and the American Recovery and Reinvestment Act of 2009. Failure to maintain this safe guard would jeopardize the health, safety and welfare of recipients of Medicaid program services as well as impose an extraordinarily injurious and unsound financial burden on the citizens of Kentucky.

(c) How the amendment to this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of authorizing statutes by enabling DMS to provide funding necessary to participating hospitals to enable them to serve Medicaid recipients and; thus, protect the health, safety and welfare of Medicaid recipients. Additionally, the amendment rendering supplemental payments contingent upon receipt of federal funding conforms to the content of authorizing statutes by maintaining the viability of the Medicaid program. CMS provides a significant majority of program funding to the department. The department, as part of its mission to serve the citizens of the Commonwealth of Kentucky in a fiscally responsible manner, must strive to ensure that program policies are contingent upon receipt of federal funding. Failure to maintain this safe guard would jeopardize the health, safety and welfare of recipients of Medicaid program services as well as impose an injurious and unsound financial burden on the citizens of Kentucky.

(d) How the amendment to 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 enabling DMS to provide funding necessary to participating hospitals to enable them to serve Medicaid recipients and; thus, protect the health, safety and welfare of Medicaid recipients 2009. Additionally, the amendment rendering supplemental payments contingent upon receipt of federal funding will assist in the effective administration of authorizing statutes by maintaining the viability of the Medicaid program. CMS provides a significant majority of program funding to the department. The department, as part of its mission to serve the citizens of the Commonwealth of Kentucky in a fiscally responsible manner, must strive to ensure that program policies are contingent upon receipt of federal funding. Failure to maintain this safe guard would jeopardize the health, safety and welfare of recipients of Medicaid program services as well as impose an injurious and unsound financial burden on the citizens of Kentucky.

(3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The amendment affects the sixty-two (62) hospitals reimbursed via a DRG reimbursement methodology which agreed to the supplemental payments.

(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: The sixty-two (62) hospitals reimbursed via a DRG reimbursement methodology

which agreed to the supplemental payments will need to continue agreeing to the supplemental payments.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The amendment imposes no cost on the entities identified in question (3).

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The groups identified in question (3) will receive supplemental payments from DMS.

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

(a) Initially: The amendment will cost DMS $195 million (federal and state combined) over a period of eight (8) calendar quarters. DMS would pay $140.8 million (federal and state combined) in calendar year 2009 and the balance - $54.2 million (federal and state combined) in calendar year 2010.

(b) On a continuing basis: The amendment will cost DMS $195 million (federal and state combined) over a period of eight (8) calendar quarters. DMS would pay $140.8 million (federal and state combined) in calendar year 2009 and the balance - $54.2 million (federal and state combined) in calendar year 2010.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Funding sources include federal funds authorized under Title XIX of the Social Security Act and authorized under the American Recovery and Reinvestment Act of 2009, matching funds of general fund appropriations and Medical Assistance Revolving Trust funds.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: Neither an increase in fees nor funding is necessary to implement the amendment.

(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)
This administrative regulation establishes supplemental payments to hospitals reimbursed via the DRG reimbursement methodology which agreed, in April 2009; to the supplemental payments. A hospital's share of the aggregate supplemental payment pool will equal its proportionate share of its aggregate cost gap compared to the aggregate cost gap of all hospitals reimbursed via the DRG reimbursement methodology which agreed to accept the supplemental payments.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Reg NO: 907 KAR 3:183E Contact Person: Stuart Owen (502) 564-4321

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

   Yes _X__ No ____
   If yes, complete 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department for Medicaid Services (DMS) as well as eight (8) county-owned hospitals will be affected by this administrative regulation.

3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. Pursuant to 42 USC 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et. seq.

   KRS 194A.030(2), KRS 194A.050(1), KRS 205.520(2) and (3) and KRS 205.560(1)(a) and (2) authorize the action taken by this administrative regulation.

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

   (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? Total payments, in aggregate, to the eight (8) county-owned hospitals agreeing to the supplemental payments equal $6.4 million (federal and state combined). $4.6 million of the $6.4 million would be paid in calendar year 2009 with the balance $1.8 million) to be paid in calendar year 2010.

   (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 Total payments, in aggregate, to the eight (8) county-owned hospitals agreeing to the supplemental payments equal $6.4 million (federal and state combined). $4.6 million of the $6.4 million would be paid in calendar year 2009 with the balance $1.8 million) to be paid in calendar year 2010.

   (c) How much will it cost to administer this program for the first year? The

amendment will cost DMS $195 million (federal and state combined.) DMS would pay $140.8 million (federal and state combined) in calendar year 2009 and the balance - $54.2 million (federal and state combined) in calendar year 2010.

(d) How much will it cost to administer this program for subsequent years The amendment will cost DMS $195 million (federal and state combined.) DMS would pay $140.8 million (federal and state combined) in calendar year 2009 and the balance - $54.2 million (federal and state combined) in calendar year 2010.

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: