

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Physician and Special Services

4 (Amended After Comments)

5 907 KAR 3:125. Chiropractic services and reimbursement.

6 RELATES TO: KRS 312.015, 312.017, 42 CFR 440.230, 441 Subpart B[, 42 USC  
7 1396d(r)]

8 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560,  
9 Public Law 109-171 [~~EO 2004-726~~]

10 NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9,~~  
11 ~~2004, reorganized the Cabinet for Health Services and placed the Department for Medi-~~  
12 ~~caid Services and the Medicaid Program under the Cabinet for Health and Family Ser-~~  
13 ~~vices.]~~ The Cabinet for Health and Family Services, Department for Medicaid Services,  
14 has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the  
15 cabinet, by administrative regulation, to comply with any requirement that may be im-  
16 posed or opportunity presented by federal law for the provision of medical assistance to  
17 Kentucky's indigent citizenry. This administrative regulation establishes the provisions  
18 relating to chiropractic services for which payment shall be made by the Medicaid Pro-  
19 gram on behalf of both the categorically needy and the medically needy and amends  
20 coverage in accordance with Public Law 109-171.

21 Section 1. Definitions. (1) "Chiropractic service" means the diagnosis and the thera

1 peutic adjustment or manipulation of the subluxations of the articulations of the human  
2 spine and its adjacent tissues performed by, and within the scope of licensure of, a li-  
3 censed chiropractor in accordance with KRS 312.015 and 312.017.

4 (2) "Chiropractor" is defined in KRS 312.015(3).

5 (3) "Current procedural terminology code" or "CPT code" means the identifying code  
6 used by the department for reporting a medical service or procedure.

7 (4) "Department" means the Department for Medicaid Services or its designated  
8 agent.

9 (5) "Medically necessary" or "medical necessity" means that a covered benefit is de-  
10 termined to be needed in accordance with 907 KAR 3:130. [~~means that a covered~~  
11 ~~benefit shall be:~~

12 ~~(a) Provided in accordance with 42 CFR 440.230;~~

13 ~~(b) Reasonable and required to identify, diagnose, treat, correct, cure, ameliorate,~~  
14 ~~palliate, or prevent a disease, illness, injury, disability, or other medical condition, includ-~~  
15 ~~ing pregnancy;~~

16 ~~(c) Clinically appropriate in terms of amount, scope, and duration based on generally~~  
17 ~~accepted standards of good medical practice;~~

18 ~~(d) Provided for medical reasons rather than primarily for the convenience of a recipi-~~  
19 ~~ent, caregiver, or provider;~~

20 ~~(e) Provided in the most appropriate location, with regard to generally accepted stan-~~  
21 ~~dards of good medical practice, where the service may, for practical purposes, be safely~~  
22 ~~and effectively provided;~~

23 ~~(f) Needed, if used in reference to an emergency medical service, to evaluate or sta-~~

1 bilize an existing emergency medical condition that is found to exist using the prudent  
2 layperson standard; and

3 ~~(g) Provided in accordance with early and periodic screening, diagnosis, and treat-~~  
4 ~~ment (EPSDT) requirements established in 42 USC 1396d(r) and 42 CFR 441 Subpart~~  
5 ~~B for eligible recipients under twenty one (21) years of age.~~

6 (6) "Usual and customary charge" means the uniform amount that a medical provider  
7 charges to a private-pay patient or third-party payor in the majority of cases for a spe-  
8 cific medical procedure or service.

9 Section 2. Covered Services. (1) A covered chiropractic service shall include the fol-  
10 lowing:

11 (a) An evaluation and management service;

12 (b) Chiropractic manipulative treatment;

13 (c) Diagnostic X-rays;

14 (d) Application of a hot or cold pack to one (1) or more areas;

15 (e) Application of mechanical traction to one (1) or more areas;

16 (f) Application of electrical stimulation to one (1) or more areas; and

17 (g) Application of ultrasound to one (1) or more areas.

18 (2) A chiropractic service shall be covered, including reimbursement limits, to the ex-  
19 tent that the same service is covered by the department for a physician[;

20 (a) If medically necessary;

21 (b) Effective August 1, 2006, if clinically appropriate pursuant to the criteria estab-  
22 lished in 907 KAR 3:130; and

23 (c) Except as specified in Section 3 of this administrative regulation, [a medically-

1 ~~necessary chiropractic service shall be covered] to the extent[,]~~ and subject to the ser-  
2 ~~vice and reimbursement limitations[,]~~ that the same service is covered by the depart-  
3 ~~ment for a physician].~~

4 (3) A chiropractic service [and] shall be reported using:

5 (a) An evaluation and management CPT code;

6 (b) A chiropractic manipulative treatment CPT code;

7 (c) A diagnostic X-ray CPT code; or

8 (d) Physical modality application CPT codes for the following:

9 1. Application of a hot or cold pack to one (1) or more areas;

10 2. Application of mechanical traction to one (1) or more areas;

11 3. Application of electrical stimulation to one (1) or more areas; and

12 4. Application of ultrasound to one (1) or more areas.

13 (4) Coverage of chiropractic services shall:

14 (a) Be based on medical necessity; and

15 (b) Be limited to twenty-six (26) visits per recipient per twelve (12) month period.

16 (5) The visit limit shall be a hard limit, meaning the Department shall not cover chiro-  
17 practic visits in excess of twenty-six (26) visits per twelve (12) month period.

18 Section 3. [Unless a recipient's health care provider demonstrates that chiropractic  
19 services in excess of the following limitations are medically necessary, coverage of chi-  
20 ropractic services shall be limited to:

21 (a) Fifteen (15) chiropractic visits per year for a recipient age twenty-one (21) years  
22 and older; and

23 (b) Seven (7) chiropractic visits per year for a recipient under twenty one (21) years

1 of age.

2 ~~[(3) Coverage for a chiropractic service shall be based on medical necessity.]~~

3 ~~Section 3. Prior Authorization. (1) Prior authorization from the department shall be~~  
4 ~~required for reimbursement of a covered service, specified in Section 2(1) of this admin-~~  
5 ~~istrative regulation, for each chiropractic visit, including any additional visit beyond the~~  
6 ~~service limitation established in Section (2)(4) of this administrative regulation. [pro-~~  
7 ~~vided during a chiropractor-recipient face-to-face contact with the same provider occur-~~  
8 ~~ring after the initial twelve (12) contacts. If there has been an interval of at least six (6)~~  
9 ~~months since the last chiropractor-recipient face-to-face contact with the same provider,~~  
10 ~~up to twelve (12) additional chiropractor-recipient face-to-face contacts shall be reim-~~  
11 ~~bursed, if medically necessary, without prior authorization from the department.]~~

12 ~~(2) A chiropractor shall request prior authorization by mailing or faxing the following~~  
13 ~~information to the department:~~

14 ~~(a) A completed Kentucky Form MAP-810, Chiropractic Prior Authorization Form; and~~

15 ~~(b) If requested by the department, additional information required to establish medi-~~  
16 ~~cal necessity.~~

17 ~~Section 4.] Reimbursement for Covered Services. (1) A charge for a chiropractic ser-~~  
18 ~~vice submitted to the department for payment shall not exceed the usual and customary~~  
19 ~~charge to a private-pay patient or third-party payor for an identical procedure or service.~~

20 ~~(2) For reimbursement of a covered service, a chiropractor shall be paid the lessor of~~  
21 ~~the chiropractor's usual and customary actual billed charge or an amount determined in~~  
22 ~~accordance with the physician fee schedule established in 907 KAR 3:010.~~

23 ~~Section 4[5]. Conditions for Provider Participation. A participating chiropractor shall:~~

1 (1) Be licensed as a chiropractor in Kentucky or in the geographic location in which  
2 chiropractic services are provided;

3 (2) Have an active Medicare provider number; and

4 (3) Meet the requirements for provider participation in the Kentucky Medicaid Pro-  
5 gram in accordance with 907 KAR 1:671, 907 KAR 1:672 and 907 KAR 1:673.

6 Section 5[6]. Appeal Rights. (1) An appeal of a negative action taken by the depart-  
7 ment regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

8 (2) An appeal of a negative action taken by the department regarding Medicaid eligi-  
9 bility of an individual shall be in accordance with 907 KAR 1:560.

10 (3) An appeal of a negative action taken by the department regarding a Medicaid  
11 provider shall be in accordance with 907 KAR 1:671.

12 ~~[Section 7. Incorporation by Reference Material. (1) "Ky. Form MAP-810, Chiropractic~~  
13 ~~Prior Authorization Form, September 26, 2000 edition," is incorporated by reference.~~

14 ~~(2) The material may be inspected, copied, or obtained, subject to applicable copy-~~  
15 ~~right law, at the Department for Medicaid Services, 275 East Main Street, Frankfort,~~  
16 ~~Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m.]~~

907 KAR 3:125  
(Amended After Comments)

REVIEWED:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Glenn Jennings, Commissioner  
Department for Medicaid Services

\_\_\_\_\_  
Date

\_\_\_\_\_  
Mike Burnside, Undersecretary  
Administrative and Fiscal Affairs

APPROVED:

\_\_\_\_\_  
Date

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

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 3:125

Cabinet for Health and Family Services

Department for Medicaid Services

Agency Contact Person: Stuart Owen or Stephanie Brammer-Barnes (502-564-6204)

- (1) Provide a brief summary of:
  - (a) What this administrative regulation does: This administrative regulation establishes coverage provisions related to chiropractic services.
  - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish chiropractic service coverage.
  - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation allows for payment to be made under the Medicaid program for services that are within the lawful scope of practice of a chiropractor licensed pursuant to KRS Chapter 312, to the extent that Medicaid pays for the same services provided by a physician.
  - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation allows Medicaid coverage of chiropractic services provided by a licensed chiropractor in accordance with KRS 205.560.
  
- (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 amended after comments regulation removes the originally proposed chiropractic visit limit and prior authorization requirement established in the original amendment. In the original amendment, the Department proposed that reimbursement would be available for no more than fifteen (15) chiropractic visits per year for a recipient age twenty-one (21) and older, and no more than seven (7) chiropractic visits per year for a recipient under age twenty-one (21). The original amendment also required prior authorization before each chiropractic visit. The amended after comments regulation clarifies that chiropractic services will be limited to no more than twenty-six (26) visits per twelve (12) -month period for all *KyHealth Choices* members regardless of age. This visit limit will not be subject to overrides. Therefore, the Department will not approve visits in excess of twenty-six (26) per year. The amended after comments regulation further removes the prior authorization requirement for chiropractic visits. Prior authorization will not be required before any of the twenty-six (26) allowable visits per twelve (12) months.
  - (b) The necessity of the amendment to this administrative regulation: This amendment and amended after comments regulation is being enacted in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program which

- tailors benefit packages to individual needs and circumstances and is necessary to maintain the viability of the Medicaid Program. The benefit packages, already approved by the Centers for Medicare and Medicaid Services, established via KyHealth Choices are comprehensive choices, family choices, global choices and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs, family choices is designed for children, global choices is the basic coverage plan and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs.
- (c) How the amendment conforms to the content of the authorizing statutes: This amendment and amended after comments regulation establish chiropractic service limitations in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program which tailors benefit packages to individual needs and circumstances and is necessary to maintain the viability of the Medicaid Program. The benefit packages, already approved by the Centers for Medicare and Medicaid Services, established via KyHealth Choices are comprehensive choices, family choices, global choices and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs, family choices is designed for children, global choices is the basic coverage plan and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs.
- (d) How the amendment will assist in the effective administration of the statutes: This amendment and amended after comments regulation will assist in the effective administration of the authorizing statutes by limiting chiropractic service coverage to twenty-six (26) visits per twelve (12) -month period in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program which tailors benefit packages to individual needs and circumstances and is necessary to maintain the viability of the Medicaid Program. The benefit packages, already approved by the Centers for Medicare and Medicaid Services, established via KyHealth Choices are comprehensive choices, family choices, global choices and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs, family choices is designed for children, global choices is the basic coverage plan and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: Medicaid recipients in need of chiropractic services and chiropractic providers will be affected by this 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: Under the amended after comments regulation, recipients will be subject to twenty-six (26) chiropractic visits per twelve (12) -month period. This visit limit is not subject to overrides. Therefore, the Department will not approve visits in excess of twenty-six (26) per twelve (12) -month period. These actions are being taken in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages).
  - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Recipients will be financially responsible for any chiropractic visit in excess of twenty-six (26) per twelve (12) -month period.
  - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The transformed program, known as *KyHealth Choices*, provides innovative opportunities to Medicaid and Kentucky Children's Health Insurance Program (KCHIP) beneficiaries which will promote healthy lifestyles and personal accountability.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: No additional costs are necessary to implement this amendment; the Department anticipates an initial savings of \$130,390 as a result of capping chiropractic visits at twenty-six (26) per twelve (12) -month period.
  - (b) On a continuing basis: No additional costs are necessary to implement this amendment; the Department anticipates a continuing savings of \$130,390 as a result of capping chiropractic visits at twenty-six (26) per twelve (12) -month period.
- (6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Sources of funding 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 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: No increase in fees nor funding will be necessary 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: This administrative regulation does not establish or increase fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used)

Tiering by age group was applied in conjunction with 907 KAR 1:900E (KyHealth Choices Benefit Packages). 907 KAR 1:900E transforms the Kentucky Medicaid program into a program which tailors benefit packages to individual needs and circumstances and is necessary to maintain the viability of the Medicaid Program. The benefit packages, already approved by the Centers for Medicare and Medicaid Services, established via KyHealth Choices are comprehensive choices, family choices, global choices and optimum choices. Comprehensive choices is designed for individuals with nursing facility level of care needs, family choices is designed for children, global choices is the basic coverage plan and optimum choices is designed for individuals with intermediate care facility for individuals with mental retardation or developmental disabilities level of care needs.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Reg NO: 907 KAR 3:125

Contact Person: Stuart Owen or Stephanie Brammer-Barnes (564-6204)

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

Yes X No \_\_\_\_\_

If yes, complete 2-4.

2. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? This administrative regulation and amended after comments regulation will affect Medicaid recipients in need of chiropractic services and chiropractic providers.
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. Additionally, this administrative regulation and amended after comments regulation comply Public Law 109-171, governing the Medicaid program, by establishing visit limitations for Medicaid recipients.
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? This amendment will not generate any additional revenue for state or local governments during the first year of implementation.
  - (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? This amendment will not generate any additional revenue for state or local governments during subsequent years of implementation.
  - (c) How much will it cost to administer this program for the first year? No additional costs are necessary to implement this amendment during the first year; the Department anticipates an initial savings of \$130,390 as a result of capping chiropractic visits at twenty-six (26) per twelve (12) -month period.

(d) How much will it cost to administer this program for subsequent years? No additional costs are necessary to implement this amendment during subsequent years; the Department anticipates an initial savings of \$130,390 as a result of capping chiropractic visits at twenty-six (26) per twelve (12) -month period.

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: