

STATEMENT OF EMERGENCY

907 KAR 1:082E

(1) This emergency administrative regulation is being promulgated to expand rural health clinic (RHC) service coverage to include behavioral health services in response to a mandate from the Centers for Medicare and Medicaid Services (CMS).

(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.

Ernie Fletcher
Governor

Mark Birdwhistell, Secretary
Cabinet for Health and Family Services

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Hospital and Provider Operations

4 (Emergency Amendment)

5 907 KAR 1:082E. Rural health clinic services.

6 RELATES TO: KRS 205.520, 314.011, 319.050, 335.100, 42 CFR 400.203, 42 CFR
7 405.2401(b), 42 CFR 405.2412 - 405.2417, 42 CFR 405.2450, 42 CFR 405.2452, 42 CFR
8 405.2468, 42 CFR 440.20, 42 CFR 491.1 - 491.11, 42 USC 1395x(aa) and (hh)

9 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)[, ~~EO 2004-~~
10 ~~726~~]

11 NECESSITY, FUNCTION, AND CONFORMITY: [~~EO 2004-726, effective July 9,~~
12 ~~2004, reorganized the Cabinet for Health Services and placed the Department for Medi-~~
13 ~~caid Services and the Medicaid Program under the Cabinet for Health and Family Ser-~~
14 ~~VICES.] The Cabinet for Health and Family Services, Department for Medicaid Services~~
15 ~~has responsibility to administer the Medicaid program [of Medical Assistance in accor-~~
16 ~~dance with Title XIX of the Social Security Act]. KRS 205.520(3) authorizes [empowers]~~
17 ~~the cabinet, by administrative regulation, to comply with any requirement that may be~~
18 ~~imposed or opportunity presented by federal law for the provision of medical assistance~~
19 ~~to Kentucky's indigent citizenry. This administrative regulation establishes [~~sets forth~~]~~
20 ~~the provisions relating to coverage of rural health clinic services for which payment shall~~
21 ~~be made by the Medicaid [~~Medical Assistance~~] Program on behalf of~~

1 both categorically needy and medically needy.

2 Section 1. Definitions.

3 (1) "Advanced registered nurse practitioner" is defined by KRS 314.011(7).

4 (2) "Clinical psychologist" means a doctorate level psychologist who is licensed in ac-
5 cordance with KRS 319.050

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

7 (4) "Homebound recipient" is defined by 42 CFR 440.20(b)(4)(iv).

8 (5) "Intermittent nursing care" is defined by 42 CFR 405.2401(b).

9 (6) "Licensed clinical social worker" means an individual who meets the licensed clinical
10 social worker requirements established in KRS 335.100.

11 (7) "Medically necessary" means that a covered benefit or service is necessary in ac-
12 cordance with the provisions of 907 KAR 3:130, Medical necessity and clinically appro-
13 priate determination basis, Section 2.

14 (8) "Nurse-midwife" is defined by 42 CFR 405.2401(b).

15 (9) "Part-time nursing care" is defined by 42 CFR 405.2401(b).

16 (10) "Physician" is defined by 42 CFR 405.2401(b).

17 (11) "Physician assistant" is defined by 42 CFR 405.2401(b).

18 (12) "Other ambulatory services" is defined by 42 CFR 440.20(c).

19 (13) "Rural health clinic" or "RHC" is defined by 42 CFR 405.2401(b).

20 (14) "State plan" is defined by 42 CFR 400.203.

21 (15) "Visiting nurse services" is defined by 42 CFR 405.2401(b).

22 Section 2. Covered Services. The department shall cover the following medically
23 necessary rural health clinic services furnished by an RHC that has been certified in ac-

1 cordance with 42 CFR 491.1 through 491.11:

2 (1) Services pursuant to 42 USC 1395x(aa):

3 (2) Services provided by a physician if the physician:

4 (a) Complies with the physician responsibility requirements established by 42 CFR

5 491.8(b); and

6 (b)1. Performs the services in an RHC; or

7 2. Is compensated under an agreement with an RHC for providing services furnished

8 to a Medicaid eligible RHC patient in a location other than the RHC;

9 (3) Services provided by a physician assistant, advanced registered nurse practitio-

10 ner, or nurse midwife who is employed by or receives compensation from the RHC if the

11 services:

12 (a) Are furnished by a member of the RHC's staff who complies with the responsibility

13 requirements established by 42 CFR 491.8(c);

14 (b) Are furnished under the medical supervision of a physician;

15 (c) Are furnished in accordance with a medical order for the care and treatment of a pa-

16 tient as prepared by a physician;

17 (d) Are within the provider's legally-authorized scope of practice; and

18 (e) Would be covered if furnished by a physician;

19 (4) Services or supplies furnished as an incident to services provided by a physician,

20 physician assistant, advanced registered nurse practitioner, or nurse midwife if the service

21 or supply meets the criteria established in 42 CFR 405.2413 or 42 CFR 405.2415;

22 (5) Part-time or intermittent visiting nurse care and related supplies, except for drugs or

23 biologicals, if:

1 (a) The RHC is located in an area where a determination has been made that there is a
2 shortage of home health agencies pursuant to 42 CFR 405.2417;

3 (b) The services are provided by a registered nurse, licensed practical nurse, or a li-
4 censed vocational nurse who is employed by or compensated for the services by the
5 RHC; and

6 (c) The services are furnished to a homebound recipient under a written plan of treat-
7 ment that is:

8 1. Established and reviewed at least every sixty (60) days by a supervising physician of
9 the RHC; or

10 2. Established by a physician, physician assistant, advanced registered nurse practitio-
11 ner, or nurse midwife and reviewed and approved at least every sixty (60) days by a su-
12 pervising physician of the RHC;

13 (6) Behavioral health services provided by a clinical psychologist, licensed clinical so-
14 cial worker, or advanced registered nurse practitioner if the services are:

15 (a) Provided by an individual who is employed by or furnishes services under contract
16 to the RHC; and

17 (b) Are within the provider's legally-authorized scope of practice;

18 (7) Services or supplies incident to a clinical psychologist's or licensed clinical social
19 worker's behavioral health services if the service or supply meets the criteria established
20 in 42 CFR 405.2452; and

21 (8) Other ambulatory services as established in the state plan.

22 Section 3. Provision of Services. An RHC shall comply with the service provision re-
23 quirements established by 42 CFR 491.9.

1 Section 4. Immunizations. An RHC may provide, upon request from a recipient, the fol-
2 lowing covered immunizations:

3 (1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);

4 (2) Measles, mumps, and rubella virus vaccine live (MMR);

5 (3) Poliovirus vaccine, live, oral (any type(s)) (OPV); and

6 (4) Hemophilus B conjugate vaccine (HBCV). [~~Conditions of Participation. Each rural~~
7 ~~health clinic wishing to participate as a rural health clinic in the Medical Assistance Pro-~~
8 ~~gram must be certified as a rural health clinic provider pursuant to Title XVIII of the Social~~
9 ~~Security Act in accordance with conditions set forth at 42 CFR Part 481.~~

10 ~~Section 2. Conditions of Coverage. Each participating rural health clinic may provide for~~
11 ~~eligible medical assistance recipients the same services it may provide to Medicare re-~~
12 ~~cipients, i.e., physicians' services, nurse practitioners' services, and, where permitted un-~~
13 ~~der state law, physicians' assistants' services. In addition, rural health clinics may provide~~
14 ~~any other ambulatory service covered under the Medical Assistance Program so long as~~
15 ~~the rural health clinic meets the conditions for participation for that service element and~~
16 ~~provides the services in accordance with the applicable state administrative regulation~~
17 ~~covering that service; except, however, the rural health clinic need not be certified or li-~~
18 ~~censed as the other type of provider (except to the extent provided for and/or required by~~
19 ~~law), nor have a separate participation agreement with the Medical Assistance Program~~
20 ~~for the provision of that type of service.~~

21 ~~Section 3. Immunizations. Effective with regard to services provided on or after October~~
22 ~~1, 1988, rural health clinics will be allowed to secure drugs for specified immunizations~~
23 ~~from the Department for Public Health free to provide immunizations for Medicaid recipi-~~

- 1 ~~ents. The specified immunizations are:~~
- 2 ~~(1) Diphtheria and tetanus toxoids and pertussis vaccine (DPT);~~
- 3 ~~(2) Measles, mumps, and rubella virus vaccine, live (MMR);~~
- 4 ~~(3) Poliovirus vaccine, live, oral (any type(s)) (OPV); and~~
- 5 ~~(4) Hemophilus B conjugate vaccine (HBCV).]~~

907 KAR 1:082E

REVIEWED:

Date

Shawn M. Crouch, Commissioner
Department for Medicaid Services

APPROVED:

Date

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

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 907 KAR 1:082E

Cabinet for Health Services

Department for Medicaid Services

Agency Contact Person: Stuart Owen (502) 564-6204 or Barry Ingram (502) 564-5969

- (1) Provide a brief summary of:
 - (a) What this administrative regulation does: This administrative regulation establishes rural health clinic (RHC) coverage provisions.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal and state laws requiring provision of medical services to Kentucky's indigent citizenry.
 - (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation fulfills requirements implemented in KRS 194A.050(1) related to the execution of policies to establish and direct health programs mandated by federal law.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation establishes RHC coverage provisions as permitted by state and federal authority.

- (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 amendment expands, as mandated by the Centers for Medicare and Medicaid Services (CMS), the rural health clinic coverage scope to include behavioral health services. Additionally, the amendment includes formatting and drafting changes to comply with KRS 13A.
 - (b) The necessity of the amendment to this administrative regulation: This amendment is necessary to comply with a federal mandate.
 - (c) How the amendment conforms to the content of the authorizing statutes: The amendment conforms to the content of the authorizing statutes by complying with a federal mandate to ensure receipt of federal matching funds for RHC services.
 - (d) How the amendment will assist in the effective administration of the statutes: The amendment will assist in the effective administration of the authorizing statutes by complying with a federal mandate to ensure receipt of federal matching funds for RHC services.

- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: All RHCs enrolled as participating providers in the Medicaid program are 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: Rather than restrict coverage, the amendments favor providers, expanding the scope of coverage to include behavioral health services.

(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 anticipated, the amendments expand, rather than restrict, the scope of coverage.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The amendments expand coverage which will enhance recipient access to behavioral health services as well as broaden provider's scope of care.

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

(a) Initially: The Department for Medicaid Services (DMS) anticipates the enhanced coverage may increase costs but the extent of cost is unknown and depends upon utilization and RHC practice patterns. DMS is not implementing limits at this time; however, if utilization increases significantly, it intends to explore adopting safeguards or other measures to ensure that utilization is appropriate and not excessive.

(b) On a continuing basis: DMS anticipates the enhanced coverage may increase costs but the extent of cost is unknown and depends upon utilization and RHC practice patterns. DMS is not implementing limits at this time; however, if utilization increases significantly, it intends to explore adopting safeguards or other measures to ensure that utilization is appropriate and not excessive.

(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 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 or funding will be necessary to implement this administrative regulation as the existing budget can accommodate the amendment.

(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 any fees.

(9) Tiering: Is tiering applied? (Explain why tiering was or was not used)
DMS did not apply tiering in this administrative regulation as the federal mandate applies to all RHCs

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 907 KAR 1:082E Agency Contact: Stuart Owen (502) 564-6204
or Barry Ingram (502) 564-5969

1. Federal statute or regulation constituting the federal mandate.
42 USC 1395x(aa) and as reinforced via Centers for Medicare and Medicaid Services (CMS) "BPHC Program Information Notice 2004-05 from CMS Director Dennis Smith.
2. State compliance standards.
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.
3. Minimum or uniform standards contained in the federal mandate.
State Medicaid programs are mandated to cover behavioral health services furnished by RHC clinical psychologists, clinical social workers and nurse practitioners, within their authorized scope of practice, to individuals who are categorically needy or medically needy (if the state Medicaid program has elected to cover rural health clinic services to individuals who are medically needy).
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?
This administrative regulation does not set stricter requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.
Neither stricter nor additional standards nor responsibilities are imposed.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Reg NO: 907 KAR 1:082E Contact Person: Stuart Owen (502) 564-6204 or Barry Ingram (502) 564-5969

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 amendment will affect all rural health clinics enrolled in the Medicaid program.
3. Identify each state or federal regulation that requires or authorizes the action taken by the administrative regulation. This amendment is authorized by 42 CFR 405.2450 and 42 CFR 405.2468.
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? DMS anticipates that the enhanced coverage may increase costs; however, the measures are necessary to enhance recipient access to mental health services.
 - (d) How much will it cost to administer this program for subsequent years? DMS anticipates that the enhanced coverage may increase costs; however, the measures are necessary to enhance recipient access to mental health services.

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: The fiscal impact is contingent upon utilization which cannot be accurately predicted at this time; therefore, the impact is indeterminable. The Department for Medicaid Services (DMS) anticipates the enhanced coverage may cost money; however, the measures are necessary to enhance recipient access to care.