

STATEMENT OF EMERGENCY

907 KAR 1:045E

(1) This emergency administrative regulation is being promulgated in conjunction with a companion administrative regulation – 907 KAR 1:044E, Coverage and provisions regarding community mental health center services - to comply with an Affordable Care Act mandate. The amendment to this administrative regulation is necessary to establish Kentucky Medicaid Program 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.)

(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 Division of Community Alternatives

4 (Emergency Amendment)

5 907 KAR 1:045E. Reimbursement provisions and requirements regarding~~Payments for~~

6 community mental health center services.

7 (Amendment)

8 RELATES TO: KRS 205.520(3), 210.370

9 STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R.

10 447.325, 42 U.S.C. 1396a-d

11 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Ser-

12 vices, Department for Medicaid Services has responsibility to administer the program of

13 Medical Assistance. KRS 205.520(3) authorizes the cabinet, by administrative regulation,

14 to comply with any requirement that may be imposed, or opportunity presented by federal

15 law to qualify for federal Medicaid funds~~for the provision of medical assistance to Ken-~~

16 ~~tucky's indigent citizenry~~. This administrative regulation establishes the reimbursement

17 provisions and requirements regarding~~method for determining amounts payable by the~~

18 ~~Medicaid Program for~~ community mental health center services provided to Medicaid re-

19 ipients who are not enrolled with a managed care organization.

20 Section 1. Definitions. (1) "Community mental health center" or "CMHC" means a

1 facility which meets the community mental health center requirements established in 902
2 KAR 20:091.

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

4 (3) "Enrollee" means a recipient who is enrolled with a managed care organization.

5 (4) "Federal financial participation" is defined by 42 C.F.R. 400.203.

6 (5) "Managed care organization" means an entity for which the Department for Medi-
7 caid Services has contracted to serve as a managed care organization as defined in 42
8 C.F.R. 438.2

9 (6) "Provider" is defined by KRS 205.8451(7).

10 (7) "Recipient" is defined by KRS 205.8451(9).

11 Section 2. General Reimbursement Provisions. (1) The department shall reimburse a
12 [Community Mental Health Centers.] participating in-state community mental health cen-
13 ter[centers shall be reimbursed] as follows:

14 (a)[(1) Effective July 1, 2005] The payment rate that was in effect on June 30, 2002, for
15 the community mental health center for community mental health center services shall re-
16 main in effect [throughout state fiscal year (SFY) 2006] and there shall be no cost settling;[.]

17 (b)[(2)] Allowable costs shall not:

18 1. Exceed customary charges which are reasonable;

19 2.[.]

20 (a) Allowable costs shall not] Include:

21 a.[4.] The costs associated with political contributions;

22 b.[2.] Travel or related costs for trips outside the state (for purposes of conventions,
23 meetings, assemblies, conferences, or any related activities);

24 c.[3.] The costs of motor vehicles used by management personnel which exceed

1 \$20,000 total valuation annually (unless the excess cost is considered as compensation to
2 the management personnel); or

3 d.[4.] Legal fees for unsuccessful lawsuits against the cabinet; and

4 (c)[-(b)] Costs (excluding transportation costs) for training or educational purposes out-
5 side the state shall be allowable costs.

6 (2) To be reimbursable, a service shall be:

7 (a) Provided:

8 1. By a CMHC:

9 a. That is currently enrolled in the Kentucky Medicaid Program in accordance with 907

10 KAR 1:672; and

11 b. Except as established in subsection (3) of this section, that is currently participating in
12 the Medicaid program in accordance with 907 KAR 1:671; and

13 2. To a recipient;

14 (b) Medically necessary; and

15 (c) A covered CMHC service pursuant to 907 KAR 1:044.

16 (3) In accordance with Section 3(3) of 907 KAR 17:010, a provider of a service to an
17 enrollee shall not be required to be currently participating in the Medicaid program if the
18 managed care organization in which the enrollee is enrolled does not require the provider
19 to be currently participating in the Medicaid program.

20 Section 3.[2.] Implementation of Payment System. (1)(a) Payments shall be based on
21 units of service.

22 (b) One (1) unit for each service shall be defined as follows:

Service	Unit of Service
Inpatient Service	15 minutes
<u>Outpatient Service</u>	<u>15 minutes</u>
Individual Therapy	15 minutes
Group Therapy	15 minutes
Family Therapy	15 minutes
Collateral Therapy	15 minutes
Intensive In-Home <u>Services</u> [Therapy]	15 minutes
Home Visit Service	15 minutes
Emergency Service	15 minutes
Personal Care Home <u>Service</u>	15 minutes
Evaluations, Examinations, and Testing <u>including Psy-</u> <u>chological Testing</u>	15 minutes
Therapeutic Rehabilitation for Children	1 hour
Therapeutic Rehabilitation for Adults	1 hour
Chemotherapy Service	15 minutes
Physical Examinations	15 minutes
<u>Services in a Detoxification Setting</u>	<u>15 minutes</u>
<u>Screening</u>	<u>15 minutes</u>
<u>Assessment</u>	<u>15 minutes</u>
<u>Crisis Intervention</u>	<u>15 minutes</u>
<u>Service Planning</u>	<u>15 minutes</u>
<u>Screening, Brief Intervention, and Referral to Treatment</u>	<u>15 minutes</u>

<u>Medication Assisted Treatment for a Substance Use Disorder</u>	<u>15 minutes</u>
<u>Mobile Crisis Services</u>	<u>15 minutes</u>
<u>Assertive Community Treatment</u>	<u>15 minutes</u>
<u>Intensive Outpatient Program Services</u>	<u>15 minutes</u>
<u>Residential Crisis Stabilization Services</u>	<u>15 minutes</u>
<u>Residential Services for Substance Use Disorders</u>	<u>15 minutes</u>
<u>Partial hospitalization</u>	<u>15 minutes</u>
<u>Day treatment</u>	<u>15 minutes</u>
<u>Comprehensive Community Support Services</u>	<u>15 minutes</u>
<u>Peer Support Services</u>	<u>15 minutes</u>
<u>Parent or Family Peer Support Services</u>	<u>15 minutes</u>

1 (2) An initial unit of service which lasts less than fifteen (15) minutes may be billed as
2 one (1) unit.

3 (3) Except for an initial unit of a service, a service that is:

4 (a) Less than one-half (1/2) of one (1) unit shall be rounded down; or

5 (b) Equal to or greater than one-half (1/2) of one (1) unit shall be rounded up.

6 (4) An individual provider shall not exceed four (4) units of service in one (1) hour.

7 (5) An overpayment [Overpayments] discovered as a result of an audit[audits] shall be
8 settled through recoupment or withholding.

9 (6) A community mental health center[The vendor] shall:

10 (a) Complete an annual cost report on forms provided by the department[cabinet] (and
11 included in the Community Mental Health Center[~~Mental Retardation~~] Reimbursement

1 Manual;

2 (b) ~~No[] not~~ later than ninety (90) days from the end of the community mental health cen-
3 ter's[] vendor's accounting year, submit the cost report to the department; and

4 (c) ~~[the vendor shall]~~ Maintain an ~~[acceptable]~~ accounting system approved by the de-
5 partment to account for:

6 1. The cost of total services provided;

7 2. ~~;~~ Charges for total services rendered; ~~;~~ ~~to~~ and

8 3. Charges for covered services rendered eligible recipients.

9 (7) ~~A~~ ~~Each~~ community mental health center shall make available to the department all
10 recipient records and fiscal records:

11 (a) ~~[cabinet]~~ At the end of each fiscal reporting period;

12 (b) Upon request by ~~;~~ ~~and~~ ~~At intervals as~~ the department; and

13 (c) ~~[cabinet may require (, all patient and fiscal records of the provider,)]~~ Subject to rea-
14 sonable prior notice by the department ~~[cabinet]~~.

15 (8) Payments due a community mental health center shall be made at least once a
16 month ~~[reasonable intervals but not less often than monthly]~~.

17 Section 3. Nonallowable Costs. The department ~~[cabinet]~~ shall not reimburse:

18 (1) ~~[make reimbursement]~~ Under the provisions of this administrative regulation for a
19 service that is ~~[services]~~ not covered by 907 KAR 1:044; or

20 (2) For ~~;~~ ~~mental health center services,~~ ~~nor for that portion of~~ a community mental health
21 center's costs found unreasonable or nonallowable in accordance with the "Community
22 Mental Health Center ~~[Mental Retardation]~~ Reimbursement Manual".

23 Section 4. Reimbursement of Out-of-state Providers. Reimbursement to a participating
24 out-of-state community mental health center ~~[centers]~~ shall be the:

1 (1) Lower of charges;

2 (2) ~~[, or the]~~ Facility's rate as set by the state Medicaid Program in the other state; ~~[,]~~ or

3 (3) ~~[the]~~ Upper limit for that type of service in effect for Kentucky providers.

4 Section 5. Appeal Rights. A community mental health center~~[provider]~~ may appeal a
5 Department for Medicaid Services decision as to the application of this administrative
6 regulation in accordance with 907 KAR 1:671.

7 Section 6. Not Applicable to Managed Care Organization. A managed care organiza-
8 tion shall not be required to reimburse for community mental health center services in ac-
9 cordance with this administrative regulation.

10 Section 7. Federal Approval. The department's reimbursement for services pursuant to
11 this administrative regulation shall be contingent upon:

12 (1) Receipt of federal financial participation for the reimbursement; and

13 (2) Centers for Medicare and Medicaid Services' approval for the reimbursement.

14 Section 8. Incorporation by Reference. (1) The "Community Mental Health Center~~[Health~~
15 ~~-Mental Retardation]~~ Reimbursement Manual", December 2013~~[July 2005 edition]~~", is in-
16 corporated by reference.

17 (2) This material may be inspected, copied, or obtained, subject to applicable copyright
18 law, at:

19 (a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky
20 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

21 (b) Online at the department's Web site at <http://www.chfs.ky.gov/dms/incorporated.htm>
22 (Recodified from 904 KAR 1:045, 5-2-86; Am. 13 Ky.R. 387; eff. 9-4-86; 14 Ky.R. 312; eff.

23 9-10-87; 15 Ky.R. 1980; eff. 3-15-89; 16 Ky.R. 9-20-89; 17 Ky.R. 574; eff. 10-14-90; 18

24 Ky.R. 916; eff. 10-16-91; 19 Ky.R. 323; eff. 8-28-92; 20 Ky.R. 664; eff. 10-21-93; Am 1364;

1 eff. 2-16-2004; 31 Ky.R. 461; 717; eff. 11-5-04; 32 Ky.R. 405; 685; eff. 10-14-05.)

907 KAR 1:045E

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 1:045E
Cabinet for Health and Family Services
Department for Medicaid Services
Agency Contact: Stuart Owen (502) 564-4321

- (1) Provide a brief summary of:
- (a) What this administrative regulation does: This administrative regulation establishes the Kentucky Medicaid Program reimbursement provisions and requirements regarding community mental health center (CMHC) services. CMHCs operate under the authority of regional community mental health boards [there are fourteen (14) in Kentucky] - in accordance with KRS 210.370 through KRS 210.485 - and are licensed and regulated by the Cabinet for Health and Family Services, Office of Inspector General.
 - (b) The necessity of this administrative regulation: This administrative regulation is necessary to establish the Kentucky Medicaid program reimbursement provisions and requirements regarding CMHC services.
 - (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 Kentucky Medicaid program reimbursement provisions and requirements regarding CMHC services.
 - (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing the Kentucky Medicaid program reimbursement provisions and requirements regarding CMHC services.
- (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 adds reimbursement for services (added to companion administrative regulation 907 KAR 1:044, Community mental health center services) not previously included in the scope of Medicaid CMHC services. Among the new services are substance use disorder services for all ages/categories of Medicaid recipients. Previously, the Department for Medicaid Services (DMS) only covered substance use treatment for pregnant women and children. The amendment also adds other new behavioral health services not previously covered by the Medicaid program and clarifies that the reimbursement rates for CMHC services remains in effect at the same level.
 - (b) The necessity of the amendment to this administrative regulation: The amendment is necessary to establish reimbursement for new services being added to the scope of CMHC services covered by the Medicaid Program including substance use disorder services for all ages/categories of Medicaid recipients. Previously, the Department for Medicaid Services (DMS) only covered substance use treatment for pregnant women and children; however, the Affordable Care Act mandates Medicaid coverage of substance use disorder services for all; thus, the 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.
 - (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.
- (3) List the type and number of individuals, businesses, organizations, or state and local government affected by this administrative regulation: The amendment applies to all CMHCs. There are currently fifteen (15) CMHCs participating in the Medicaid Program. 73,779 Medicaid recipients received CMHC services during the course of the state fiscal year that ended June 30, 2013 with CMHCs receiving a total of \$21.9 million from DMS for the services and \$38.86 million from managed care organizations for the services.
- (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 compliance action is mandated.
 - (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): This amendment imposes no cost on the regulated entities.
 - (c) As a result of compliance, what benefits will accrue to the entities identified in question (3): CMHCs will benefit by being reimbursed for more services covered by the Medicaid program and recipients will benefit by having access to more behavioral health services including substance use disorder services.
- (5) Provide an estimate of how much it will cost to implement this administrative regulation:
- (a) Initially: DMS is unable to accurately estimate the costs of expanding the scope of behavioral health services, including substance use disorder services, covered in community mental health centers due to the variables involved as DMS cannot estimate how many community mental health centers will choose to accordingly expand their scope of services nor how many Medicaid recipients will elect to receive the expanded scope of behavioral health services in community mental health centers. Additionally, some of the new services are expected to prevent Medicaid recipients from having to be admitted to an inpatient acute care hospital or psychiatric hospital (which are more expensive levels of care.) Thus, expanding the scope of such services could reduce Medicaid program expenditures in aggregate.
 - (b) On a continuing basis: The response in paragraph (a) above also applies here.
- (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 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: The amendment to this administrative regulation neither establishes nor increases any fees.
- (9) Tiering: Is tiering applied? (Explain why tiering was or was not used.) Tiering is not applied as the amendment applies to all regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 907 KAR 1:045E

Agency Contact: 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)(30), and 42 C.F.R. 447.204.
2. State compliance standards. KRS 205.520(3) states, “to qualify for federal funds the secretary for health and family services may by regulation comply with any requirement that may be imposed or opportunity that may be presented by federal law. Nothing in KRS 205.510 to 205.630 is intended to limit the secretary’s power in this respect.”
3. Minimum or uniform standards contained in the federal mandate. 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)(30) requires Medicaid program payments to be consistent with efficiency, economy, and quality of care and sufficient to enlist enough providers so that care and services are available at least to the extent that such care and services are available to the general population in the same geographic area. 42 C.F.R. 447.204 requires Medicaid reimbursement to be sufficient to enlist enough providers to ensure that services are available to Medicaid recipients at least to the extent that they are available to the general population.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The amendment does not impose stricter than federal requirements.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The policy is not stricter than the federal standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 907 KAR 1:045E

Agency Contact: 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 the amendment to this administrative regulation as will any community mental health center owned by a local government agency.
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? The Department for Medicaid Services (DMS) is unable to project the impact of this amendment on revenues for state or local government agencies as it depends on how many community mental health centers that are owned by a government entity elect to expand their scope of services to include substance use disorder services and other new behavioral health services and on utilization of those services in such entities.
 - (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? The response to question (a) also applies here.
 - (c) How much will it cost to administer this program for the first year? DMS is unable to accurately estimate the costs of expanding the scope of behavioral health services covered in community mental health centers due to the variables involved as DMS cannot estimate how many community mental health centers will choose to accordingly expand their scope of services nor how many Medicaid recipients will elect to receive the expanded scope of behavioral health services in community mental health centers. Additionally, some of the new services are expected to prevent Medicaid recipients from having to be admitted to an inpatient acute care hospital or psychiatric hospital (which are more expensive levels of care.) Thus, expanding the scope of such services could reduce Medicaid program expenditures in aggregate.
 - (d) How much will it cost to administer this program for subsequent years? The response to question (c) above also applies here.

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:

COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
DEPARTMENT FOR MEDICAID SERVICES

907 KAR 1:045E, Community mental health center services

Summary of Material Incorporated by Reference

An amended version of the “Community Mental Health Center Reimbursement Manual” is incorporated by reference. The December 2013 is replacing the July 2005 of the manual in order to clarify that the rates currently in effect for community mental health center services will remain in effect.

The manual is comprised of 165 pages.