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REGULATIONS COMPILER

1 CABINET FOR HEALTH AND FAMILY SERVICES

2 Department for Medicaid Services

3 Division of Fiscal Management

4 (Amended After Comments)

5 907 KAR 3:060. Ambulance provider assessment program.

6 RELATES TO: KRS 45.229, 142.301, 142.318, 142.343, 142.359, 194A.030(2), 205.5601,

7 205.5602, 205.5603, 42 Part C.F.R. 413, 42 U.S.C. 1396a

8 STATUTORY AUTHORITY: KRS 194A.050(1), 205.520(3), 205.5601[~~205.560(1)~~],

9 205.5602(2), KRS 205.5603

10 NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family
11 Services, Department for Medicaid Services has responsibility to administer the Medicaid
12 Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a
13 requirement that may be imposed, or opportunity presented, by federal law to qualify for federal
14 funds. KRS 205.5602(2) requires the department to promulgate an administrative regulation to
15 implement the Ambulance Provider Assessment Program, as established pursuant to KRS
16 205.5601 and 205.5603. This administrative regulation establishes the requirements for
17 implementing the Ambulance Provider Assessment Program for ground ambulance providers.

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12 Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with a
13 requirement that may be imposed, or opportunity presented, by federal law to qualify for federal
14 funds. KRS 205.5602(2) requires the department to promulgate an administrative regulation to
15 implement the Ambulance Provider Assessment Program, **as established pursuant to** KRS
16 205.5601 and 205.5603. This administrative regulation establishes the requirements for
17 implementing the Ambulance Provider Assessment Program for ground ambulance providers.

1 Section 1. Definitions. (1) "Assessment" is defined by KRS 205.5602(1)(b).

2 (2) "Department" is defined by KRS 205.5602(1)(e).

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

4 (4) "Ground ambulance provider" is defined by KRS 205.5602(1)(a).

5 (5) "Medicaid" is defined by KRS 142.301(14).

6 (6) "MMIS" means the Medicaid Management Information System or its successor program.

7 (7) "Program year" means the calendar year during which supplemental payments and tax
8 assessments are made.

9 Section 2. Ambulance Provider Assessment Program. (1) Prior to the program year, the
10 department shall calculate for eligible ground ambulance providers an interim uniform add-on
11 amount for:

12 (a) Emergent transports that the ground ambulance provider is eligible to receive as a
13 supplemental payment for the program year for Medicaid fee-for-service transports; and

14 (b) Non-emergent transports that the ground ambulance provider is eligible to receive as a
15 supplemental payment for the program year for Medicaid managed care transports.

16 (2) On an annual basis, the department shall calculate a lump sum **periodic, of at least once**
17 **per quarter,[monthly]** interim supplemental payment for each eligible ground ambulance
18 provider by:

19 (a) Utilizing the uniform add-on amounts referenced in subsection (1)(a) and (1)(b) of this
20 section;

21 (b) Utilizing MMIS fee-for-service data, MMIS managed care encounter data, and ground
22 ambulance survey data to calculate the transport volume; and

1 (c) Reducing the payment volume by a five (5) percent reserve in order to avoid overpayment
2 to ambulance providers.

3 (3) At least once per quarter~~[For each month]~~ in a program year, the department shall make
4 a ~~[monthly]~~ Medicaid:

5 (a) Fee-for-service interim payment to each qualifying ground ambulance provider in
6 accordance with the methodology established by KRS 205.5602; and

7 (b) Managed care interim payment to each qualifying ground ambulance provider in accordance
8 with the methodology established by KRS 205.5602.

9 (4) Payment of the ~~[monthly]~~ Medicaid managed care interim payment shall be made at least
10 once per quarter by distribution to each Medicaid managed care organization through a
11 ~~[monthly]~~ supplemental capitation payment.

12 (5) At least once per quarter, the department shall submit to each Medicaid managed care
13 organization a listing of the ~~[monthly]~~ Medicaid managed care supplemental payments that the
14 Medicaid managed care organization shall make to each eligible ground ambulance providers.

15 (6) Each Medicaid managed care organization shall remit to each ground ambulance provider,
16 as directed by the department, the ~~[monthly]~~ Medicaid managed care supplemental payment
17 within ten (10) business days of receipt of the ~~[monthly]~~ supplemental payment.

18 (7) On an annual basis, the department shall calculate the monthly tax assessment for each
19 ground ambulance provider in accordance with KRS 142.318 and KRS 205.5602.

20 (8) If a ground ambulance provider tax assessment is not received in a timely manner, the
21 requirements of this subsection shall be met.

22 (a) The department may deny or withhold future ~~[monthly]~~ supplemental payments until the
23 assessment is submitted.

1 (b) The department shall refer a provider to **the** Kentucky Board of Emergency Medical
2 Services (**KBEMS**) for potential action related to licensure.

3 (c) Additional penalties and interest may be assessed in accordance with KRS 142.343 and KRS
4 142.359.

5 Section 3. Annual Reconciliation. (1) On an annual basis following the program year, the
6 department shall make final reconciled payments to ground ambulance providers based on:

7 (a) A review of the interim emergent and non-emergent transport add-ons from Section 2(1)(a)
8 and (b) of this administrative regulation;

9 (b) Any interim add-ons that may be adjusted to account for differences between:

10 1. Expected utilization known at the time of the interim add-ons; and

11 2. Actual utilization following the program year; and

12 (c) Final add-ons that shall be applied to actual transport utilization, based on MMIS data, to
13 determine the final supplemental payment amount owed to each provider.

14 (2) Interim payments shall be subtracted from the final supplemental payment owed.

15 (a) A positive balance shall be paid to the provider.

16 (b) A negative balance shall be paid to the department.

17 **(3) When a survey is not received, the department may use a statewide average of revenue**
18 **per transport multiplied by provider transport count data, collected by KBEMS, as a proxy**
19 **for calculating taxable revenues for the following program year.**

20 Section 4. Reporting Requirements. (1) By April 1 of each program year, a ground ambulance
21 provider shall submit a completed revenue survey. An extension may be granted on a temporary
22 and case-by-case basis, not to exceed thirty (30) days, following a written request detailing the
23 exigent circumstances that prevented timely filing of the completed revenue survey.

1 (2) If a complete revenue survey is not received in a timely manner the department may deny
2 or withhold future **[monthly]** supplemental payments until a complete survey is submitted.

3 (3) A ground ambulance provider, licensed in Kentucky, operating outside of the state of
4 Kentucky shall report only revenues for transports originating in Kentucky on the revenue survey.

5 Section 5. Access to Supporting Records. Pursuant to 907 KAR 1:672, Section 2(6)(b), a ground
6 ambulance provider shall maintain and make available, upon request of the department or any
7 other auditing or investigating entity, any records and data necessary to justify and document:

8 (1) Revenue survey amounts, submitted in accordance with Section 4, of this administrative
9 regulation;

10 (2) Resolution of a supplemental payment that the ground ambulance provider suspects is in
11 error; or

12 (3) Quality metrics necessary for program reporting to the Centers for Medicare and Medicaid
13 Services.

14 Section 6. Appeal Rights. An appeal of a department decision regarding final reconciled
15 payments shall be in accordance with 907 KAR 1:671.

16 Section 7. Federal Approval and Federal Financial Participation. The department's coverage of
17 services pursuant to this administrative regulation shall be contingent upon:

18 (1) Receipt of federal financial participation for the coverage; and

19 (2) Centers for Medicare and Medicaid Services' approval for the coverage.

907 KAR 3:060

REVIEWED:

7/29/2021

Date

DocuSigned by:

Lisa Lee

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Lisa D. Lee, Commissioner
Department for Medicaid Services

APPROVED:

7/29/2021

Date

DocuSigned by:

Eric Friedlander

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Eric Friedlander, Secretary
Cabinet for Health and Family Services

REGULATORY IMPACT ANALYSIS
AND TIERING STATEMENT

Administrative Regulation Number: 907 KAR 3:060

Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov;
and Krista Quarles, (502) 564-6746, CHFSRegs@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the Department for Medicaid Services (DMS) ambulance provider assessment program. This administrative regulation serves to implement HB 8 from the 2020 Regular Session of the Kentucky General Assembly. Specifically, DMS is required to calculate annual assessment amounts, make payments for Medicaid fee-for-service ambulance transports, and an annual reconciling payment. The administrative regulation also requires DMS to distribute supplemental payments to qualifying ambulance providers by means of a supplemental capitation payment to managed care organizations (MCOs). The MCOs then forward the payments to the qualifying ambulance providers. The MCOs are required to remit the payment within 5 days, and failure to forward the entire payment within 5 days will result in the department assessing penalties. The administrative regulation also establishes requirements relating to the ambulance assessments, and establishes departmental actions when a payment is not received in a timely manner.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to establish DMS's reimbursement provisions and penalty provisions for the ambulance assessment program required by 2020 HB 8.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation implements the provisions of 2020 HB 8.

(d) How this administrative regulation currently assists or shall assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing a statutorily required ambulance assessment program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment shall change this existing administrative regulation:

The Amended after Comments version of this administrative regulation allows for future flexibility in the design and operation of this program by requiring that ambulance provider payments be submitted at least quarterly. The department intends to implement this program, however, with monthly payments. In addition, a process to estimate a payment when a revenue survey is not submitted has also been included.

(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 shall 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: There are approximately 180 licensed ground ambulance providers in Kentucky who will report revenue and participate in the ambulance provider assessment program.

(4) Provide an analysis of how the entities identified in question (3) shall 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) shall have to take to comply with this administrative regulation or amendment. Participating ambulance providers will submit required assessments and comply with reporting requirements to enable the department to calculate each monthly assessment.

(b) In complying with this administrative regulation or amendment, how much shall it cost each of the entities identified in question (3): Costs will vary by ambulance provider and reporting period for the payment of assessments, the supplemental payments disbursed will likely exceed the amount of assessments.

(c) As a result of compliance, what benefits shall accrue to the entities identified in question (3): Ambulance providers will benefit from enhanced rates available as part of this provider assessment program submitted as supplemental payments via the MCOs and as FFS reimbursement from DMS.

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

(a) Initially: DMS anticipates no additional costs to the department to implement this administrative regulation beyond the appropriation contained in 2020 HB 8.

(b) On a continuing basis: DMS anticipates no additional costs to the department 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 matching funds.

(7) Provide an assessment of whether an increase in fees or funding shall 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 shall be necessary to implement this administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes nor increases any fees.

(9) Tiering: Is tiering applied? (Explain why tiering was or was not used.) Tiering was not applied in this administrative regulation as it applies equally to all regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

Administrative Regulation Number: 907 KAR 3:060

Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov;
and Krista Quarles, (502) 564-6746, CHFSRegs@ky.gov

1. Federal statute or regulation constituting the federal mandate. 42 U.S.C. 1396a(a)(30)
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. Medicaid reimbursement for services is required to be consistent with efficiency, economy, and quality of care and be sufficient to attract enough providers to assure access to services. 42 U.S.C. 1396a(a)(30)(A) requires Medicaid state plans to:
“ . . . provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area.”
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 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 or different than the federal standard.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation Number: 907 KAR 3:060

Agency Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov;
and Krista, (502) 564-6746, CHFSRegs@ky.gov

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 (DMS) will be impacted by this administrative regulation.
2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2), 205.5602(2)(a), and 42 U.S.C. 1396a(a)(30).
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 shall this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? DMS anticipates that this administrative regulation will be revenue neutral to the department in the first year.
 - (b) How much revenue shall this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? DMS anticipates that this administrative regulation will be revenue neutral to the department in subsequent years.
 - (c) How much shall it cost to administer this program for the first year? The costs associated with this program will be met by the appropriations contained in 2020 HB 8 in the first year of operation.
 - (d) How much shall it cost to administer this program for subsequent years? The costs associated with this program will be met by the appropriations to the department contained in 2020 HB 8 in subsequent years.

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:

STATEMENT OF CONSIDERATION RELATING TO
907 KAR 3:060.

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Fiscal Management

Amended After Comments

I. A public hearing on 907 KAR 3:060 was not requested, and therefore, not held. However, written comments were received during the public comment period.

II. The following individuals submitted comments during the public comment period:

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Thomas Stephens, Executive Director	Kentucky Association of Health Plans
Amy Richardson, Director	Department for Medicaid Services, Division of Fiscal Management
Jonathan Scott, Regulatory and Legislative Advisor	Department for Medicaid Services, Commissioner's Office

III. The following individuals from the promulgating agency responded to comments received regarding 907 KAR 3:060.

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Lisa Lee, Commissioner	Department for Medicaid Services, Commissioner's Office
Veronica Cecil, Senior Deputy Commissioner	Department for Medicaid Services, Commissioner's Office
Steve Bechtel, Chief Financial Officer	Department for Medicaid Services, Commissioner's Office
Amy Richardson, Director	Department for Medicaid Services, Division of Fiscal Management
John Hay, Branch Manager	Department for Medicaid Services, Division of Fiscal Management
Jacob Wilson, Branch Manager	Department for Medicaid Services, Division of Fiscal Management

Jonathan Scott, Regulatory and Legislative Advisor	Department for Medicaid Services, Commissioner's Office
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IV. SUMMARY OF COMMENTS AND AGENCY'S RESPONSES

(1) Subject: Payment Frequency of the Ambulance Provider Assessment Program.

- (a) Comment: Thomas Stephens, Executive Director of the Kentucky Association of Health Plans, submitted comments assessing the ambulance provider assessment program in comparison to the hospital rate improvement program. Specifically, the APAP is a monthly payment and the HRIP is a quarterly payment structure. The comments point out the significant administrative burden that processing monthly payments has on the MCOs.
- (b) Response: The department agrees that a monthly payment processing requirement places an administrative burden on the MCOs. At the current time, and in order to implement this assessment program, DMS believes that it is important to start the program with a monthly processing requirement. However, as the program becomes operational, it may be possible to implement a quarterly payment requirement. The department will amend the administrative regulation to not reference a monthly payment requirement. However, the department will continue to require a monthly payment until and if all stakeholders are able to accommodate a quarterly reporting requirement. In order to add future flexibility, the phrase "monthly" will be replaced with the phrase "periodic, of at least once per quarter," or "at least once per quarter" as the context requires.

(2) Subject: Opportunities for providers to correct monthly payments.

- (a) Comment: Thomas Stephens, Executive Director of the Kentucky Association of Health Plans, submitted comments pointing out that the HRIP program has the ability to correct quarterly payments and requesting that a monthly payment in the APAP also have a process to correct a payment mistake. In addition, the MCOs have requested that they not be held liable for any errors in payment amount calculation.
- (b) Response: There are significant differences between the hospital payment program referenced in 907 KAR 10:840 and the ambulance provider assessment program. While the hospital quarterly payments are final in nature, the monthly ambulance supplemental payments are for interim cash flow purposes only and are subject to final reconciliation based on actual transports rendered during the program year. Providers will be given the opportunity to informally review the historical data utilized for monthly interim payments to identify and address any large discrepancies to avoid significant over or underpayments; however, the payments will not be finalized until complete claims information is available following the program year and adequate time for claims processing. After complete data is available, the payment add-ons will be revised to reflect actual utilization and final payments will be distributed among ambulance providers based on incurred transports during the program year. At the time of the final reconciliation, providers will be given formal appeal rights, as described in Section 6 of the regulation, including the right to submit additional claims for consideration. The department will not be amending the administrative regulation in response to the comment.

- (3) Subject: Federal authority to operate APAP program.
- (a) Comment: Thomas Stephens, Executive Director of the Kentucky Association of Health Plans, submitted comments seeking clarification as to whether the APAP program is authorized under 42 C.F.R. 438.6(c) or if it is authorized under a different specific federal authority.
- (b) Response: We confirm. The ambulance provider assessment program is federally authorized and has been approved by the Centers for Medicare and Medicaid Services under 42 CFR 438.6(c) as a state directed payment program.
- (4) Subject: Quality metrics associated with APAP.
- (a) Comment: Thomas Stephens, Executive Director of the Kentucky Association of Health Plans, submitted comments asking about how DMS will report on the two quality metrics associated with the APAP program (reduction in ambulance response times, and an increase in the number of certified emergency medical service (EMS) practitioners). In addition, the MCOs requested clarification on how DMS will report on the quality metrics.
- (b) Response: DMS plans to report on these quality metrics utilizing ambulance transport and practitioner information routinely collected by the Kentucky Board of Emergency Medical Services within the Kentucky State Ambulance Reporting System (KSTARS) data system. DMS does not anticipate any additional MCO reporting to support this effort at this time. The administrative regulation will not be amended in response to the comment.
- (5) Subject: Alternative method of estimating taxable revenues.
- (a) Comment: Amy Richardson, Director of the Division of Fiscal Management, Department for Medicaid Services submitted comments highlighting the difficulties involved in estimating an uncompleted revenue survey from an ambulance provider. Some clarity is requested in the regulation for the few circumstances where providers refuse or are unable to submit a completed revenue survey.
- (b) Response: The department agrees with this comment and will add a new subsection to Section 3 to the administrative regulation:
(3) When a survey is not received, the department may use a statewide average of revenue per transport multiplied by provider transport count data collected by KBEMS as a proxy for calculating taxable revenues for the following program year.
- (6) Subject: Technical updates
- (a) Comment: Jonathan Scott, Regulatory and Legislative Advisor, Department for Medicaid Services submitted comments indicating that due to new language in this Amended After Comments version of the administrative regulation that an abbreviation should be added following a reference to the Kentucky Board of Emergency Services. In addition, “the” has been added to reference the Kentucky Board of Emergency Services. Additional changes are needed to better reference the KRS 205.5601-205.5603 range of statutes within the Statutory Authority and Necessity, Function, and Conformity paragraphs.
- (b) Response: The department agrees with this comment and will make this technical amendment to the administrative regulation.

V. SUMMARY OF STATEMENT OF CONSIDERATION
AND ACTION TAKEN BY PROMULGATING ADMINISTRATIVE BODY

The Department for Medicaid Services (DMS) has considered the comments received regarding 907 KAR 3:060. This administrative regulation is being amended after comments. DMS is amending the administrative regulations as follows:

Statutory Authority

Page 1

Line 8

After “205.520(3),” insert “205.5601”.

Delete “205.560(1)”.

After “205.5602(2),” insert “, KRS 205.5603”.

Necessity, Function, and Conformity

Page 1

Line 14

After “Ambulance Provider Assessment Program,” insert “as established pursuant to”.

Section 2(2)

Page 2

Line 12

After “lump sum,” insert the following:

periodic, of at least once per quarter.

Delete “monthly”.

Section 2(3)

Page 2

Line 20

After “(3)” insert the following:

“At least once per quarter”.

Delete “For each month”.

After “shall make a”, delete “monthly”.

Section 2(4)

Page 3

Line 3

After “Payment of the”, delete “monthly”.

After “shall be made”, insert the following:

“at least once per quarter”.

Section 2(4)

Page 3

Line 4

After “through a”, delete “monthly”.

Section 2(5)

Page 3

Line 6

After “(4)” insert the following:

At least once per quarter,

Section 2(5)

Page 3

Line 7

After “a listing of the”, delete “monthly”.

Section 2(6)

Page 3

Line 10

After “as directed by the department the”, delete “monthly”.

Section 2(6)

Page 3

Line 11

After “days of receipt of the”, delete “monthly”.

Section 2(8)(a)

Page 3

Line 16

After “or withhold future”, delete “monthly”.

Section 2(8)(b)

Page 3

Line 18

After “a provider to”, insert “the”.

After “Kentucky Board of Emergency Medical Services”, insert “(KBEMS)”.

Section 3(2)

Page 4

Line 10

After line 10, insert the following:

(3) When a survey is not received, the department may use a statewide average of revenue per transport multiplied by provider transport count data, collected by KBEMS, as a proxy for calculating taxable revenues for the following program year.

Section 4(2)

Page 4

Line 16

After “or withhold future”, delete “monthly”.