

CHAPTER 110**(HB 8)**

AN ACT relating to ground ambulance service providers and making an appropriation therefor.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 142.301 is amended to read as follows:

As used in KRS 142.301 to 142.363:

- (1) *"Ground ambulance provider" means a Class I, II, or III ground ambulance provider described in KRS 311A.030;*
- (2) *"Assessment" means the Medicaid ambulance service provider assessment established in Section 2 of this Act;*
- (3) "Department" means the Department of Revenue;
- ~~(4)(2)~~ "Charitable provider" means any provider which does not charge its patients for health-care items or services, and which does not seek or accept Medicare, Medicaid, or other financial support from the federal government or any state government. The collaboration with public hospitals, agencies, or other providers in the delivery of patient care; affiliation with public institutions to provide health-care education; or the pursuit of research in cooperation with public institutions or agencies shall not be considered as the receipt of government support by a charitable provider;
- ~~(5)(3)~~ "Dispensing" means to deliver one (1) or more doses of a prescription drug in a suitable container, appropriately labeled for subsequent administration or use by a patient or other individual entitled to receive the prescription drug;
- ~~(6)(4)~~ "Entity" means any firm, partnership, joint venture, association, corporation, company, joint stock association, trust, business trust, syndicate, cooperative, or other group or combination acting as a unit;
- ~~(7)(5)~~ "Gross revenues" means the total amount received in money or otherwise by a provider for the provision of health-care items or services in Kentucky, less the following:
 - (a) Amounts received by any provider as an employee or independent contractor from another provider for the provision of health-care items or services if:
 1. The employing or contracting provider receives revenue attributable to health-care items or services provided by the employee or independent contractor receiving payment; and
 2. The employing or contracting provider is subject to the tax imposed by KRS 142.303, 142.307, 142.309, 142.311, 142.314, 142.315, 142.316, 142.361, or 142.363 on the receipt of that revenue;
 - (b) Amounts received as a grant or donation by any provider from federal, state, or local government or from an organization recognized as exempt from federal income taxation under Section 501(c)(3) of the Internal Revenue Code for:
 1. Research; or
 2. Administrative or operating costs associated with the implementation and operation of an experimental program;
 - (c) Salaries or wages received by an individual provider as an employee of a charitable provider, the federal government, or any state or local governmental entity;
 - (d) Salaries or wages received by an individual provider as an employee of a public university for the provision of services at a student health facility; and
 - (e) Amounts received by an HMO on a fixed, prepayment basis as premium payments.
- ~~(8)(6)~~ "Health-care items or services" means:
 - (a) Inpatient hospital services;

- (b) Outpatient hospital services;
 - (c) Nursing-facility services;
 - (d) Services of intermediate-care facilities for individuals with intellectual disabilities;
 - (e) Physicians' services provided prior to July 1, 1999;
 - (f) Licensed home-health-care-agency services;
 - (g) Outpatient prescription drugs;
 - (h) HMO services;
 - (i) Regional community services for mental health and individuals with intellectual disabilities;
 - (j) Psychiatric residential treatment facility services;
 - (k) Medicaid managed care organization services; and
 - (l) Supports for community living waiver program services;
- (9)~~(7)~~ "Health-maintenance organization" or "HMO" means an organization established and operated pursuant to the provisions of Subtitle 38 of KRS Chapter 304;
- (10)~~(8)~~ "Hospital" means an acute-care, rehabilitation, or psychiatric hospital licensed under KRS Chapter 216B;
- (11)~~(9)~~ "Hospital services" means all inpatient and outpatient services provided by a hospital. "Hospital services" does not include services provided by a noncontracted, university-operated hospital, or any freestanding psychiatric hospital, if necessary waivers are obtained by the Cabinet for Human Resources, Cabinet for Health Services, or Cabinet for Health and Family Services from the Health Care Financing Administration or Centers for Medicare and Medicaid Services, or hospitals operated by the federal government;
- (12)~~(10)~~ "Health and family services secretary" means the secretary of the Cabinet for Health and Family Services or that person's authorized representative;
- (13)~~(11)~~ "Inpatient hospital services," "outpatient hospital services," "intermediate-care-facility services for individuals with intellectual disabilities," "physician services," "licensed home-health-care-agency services," and "outpatient prescription drugs" have the same meaning as set forth in regulations promulgated by the Secretary of the Department of Health and Human Services and codified at 42 C.F.R. pt. 440, as in effect on December 31, 1993;
- (14)~~(12)~~ "Medicaid" means the state program of medical assistance as administered by the Cabinet for Health and Family Services in compliance with 42 U.S.C. sec. 1396;
- (15)~~(13)~~ "Nursing-facility services" means services provided by a licensed skilled-care facility, nursing facility, nursing home, or intermediate-care facility, excluding services provided by intermediate-care facilities for individuals with intellectual disabilities and services provided through licensed personal care beds;
- (16)~~(14)~~ "Person" means any individual, firm, partnership, joint venture, association, corporation, company, joint stock association, estate, trust, business trust, receiver, trustee, syndicate, cooperative, assignee, governmental unit or agency, or any other group or combination acting as a unit and the legal successor thereof;
- (17)~~(15)~~ "Provider" means any person receiving gross revenues for the provision of health-care items or services in Kentucky, excluding any facility operated by the federal government;
- (18)~~(16)~~ "Commissioner" means the commissioner of the Department of Revenue or that person's authorized representative;
- (19)~~(17)~~ "Total bed capacity" means the combination of licensed nursing home beds, licensed nursing facility beds, and licensed intermediate-care facility beds;
- (20)~~(18)~~ "Regional community services programs for mental health and individuals with an intellectual disability" means programs created under the provisions of KRS 210.370 to 210.480;
- (21)~~(19)~~ "Psychiatric residential treatment facility" has the same meaning as provided in KRS 216B.450; and
- (22)~~(20)~~ "Supports for Community Living Waiver Program" has the same meaning as provided in KRS 205.6317.

➔SECTION 2. A NEW SECTION OF KRS CHAPTER 142 IS CREATED TO READ AS FOLLOWS:

- (1) *A ground ambulance provider shall pay an assessment to the department in an amount established by the Department for Medicaid Services under Section 5 of this Act.*
- (2) *The payment of the assessment shall be made at the same time and in the same manner as in Section 3 of this Act.*
- (3)
 - (a) *In addition to any penalty assessed under KRS 131.180 and the interest assessed under KRS 131.183, the department, in coordination with the Cabinet for Health and Family Services, may require a ground ambulance provider that fails to pay an assessment required by this section to pay an additional penalty to the department.*
 - (b) *The department, in consultation with the Cabinet for Health and Family Services, may promulgate administrative regulations to establish the additional penalty.*
- (4) *The assessment shall not be implemented until after the Department for Medicaid Services receives notice of federal matching funds approval from the Centers for Medicare and Medicaid Services.*
- (5) *All assessments and all penalties and fees related to those assessments shall be deposited in the ambulance service assessment fund established in Section 6 of this Act.*
- (6) *A ground ambulance provider shall not increase charges or add a surcharge to ground transport fees based on, or as a result of, the assessment paid to the department.*

➔Section 3. KRS 142.323 is amended to read as follows:

The taxes *and assessment* imposed by KRS 142.303, 142.307, 142.309, 142.311, 142.314, 142.315, 142.316, *Section 2 of this Act*, 142.361, and 142.363 are due and payable to the department monthly and shall be remitted on or before the twentieth day of the next succeeding calendar month.

➔SECTION 4. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

Upon approval by the Centers for Medicare and Medicaid Services of the assessment imposed under Section 2 of this Act for fee-for-service rates effective on or after July 1, 2020, the cabinet shall reimburse each ground ambulance provider that provided qualifying ground ambulance service transports during the relevant assessment period an amount not to exceed the emergency medical services ambulance rates adopted by the cabinet.

➔SECTION 5. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

- (1) *For purposes of this section and Sections 4 and 6 of this Act:*
 - (a) *"Ground ambulance provider" means a Class I, II, or III ground ambulance provider described in KRS 311A.030;*
 - (b) *"Assessment" means the Medicaid ambulance service provider assessment imposed in Section 2 of this Act;*
 - (c) *"Board" means the Kentucky Board of Emergency Medical Services;*
 - (d) *"Commissioner" means the commissioner of the Department for Medicaid Services; and*
 - (e) *"Department" means the Department for Medicaid Services.*
- (2) *The department shall:*
 - (a) *Promulgate administrative regulations to establish the standards and procedures necessary to implement the provisions of this section and Sections 4 and 6 of this Act;*
 - (b) *Calculate an assessment on emergency ground transport collections pursuant to subsection (3) of this section;*
 - (c) *Administer assessment proceeds according to subsection (6) of this section;*
 - (d) *Apply uniformly to all assessed ground ambulance providers any annual changes to the assessment rate according to the process described in subsection (3) of this section; and*
 - (e) *Evaluate current ground ambulance provider reimbursement rates paid by managed care organizations and require increases consistent with:*

1. *Sections 4 and 5 of this Act;*
 2. *Current fee-for-service reimbursement rates; and*
 3. *An adequate network of ambulance service providers.*
- (3) (a) *The assessment due from a ground ambulance provider on emergency ground transport collections shall be not less than one-half of one percent (0.5%) lower than the maximum limit for a provider assessment as approved by the Centers for Medicare and Medicaid Services.*
- (b) *For illustrative purposes only, if the maximum limit for a provider assessment as approved by the Centers for Medicare and Medicaid Services is six percent (6%) of the emergency revenues collected by the ground ambulance provider, the minimum taxable limit under this section would be five and one-half percent (5.5%) of the emergency revenues collected.*
- (4) *The assessment shall not generate more than the maximum amount as approved by the Centers for Medicare and Medicaid Services.*
- (5) (a) 1. *Within ninety (90) days after the effective date of this Act, the commissioner shall determine whether a state plan amendment or an amendment to any Kentucky federal Medicaid waiver is required to implement this section.*
2. *If the commissioner determines that a state plan amendment or an amendment to a Kentucky federal waiver is necessary, the commissioner is authorized to seek any necessary state plan or waiver amendment, and the assessment shall not take effect until the state plan or waiver amendment is approved.*
- (b) *The assessment shall not be implemented until the first day of the calendar quarter after the Department for Medicaid Services receives notice of federal matching funds approval from the Centers for Medicare and Medicaid Services and has notified the Department of Revenue of that approval.*
- (c) *The commissioner shall implement this section to the extent that it is not inconsistent with the state Medicaid plan or any Kentucky federal Medicaid waivers.*
- (d) *Payments to ground ambulance providers shall begin within ninety (90) days of the later of the approval of federal matching funds, the state plan, or waiver amendment. The first monthly assessment payment shall be due sixty (60) days after the implementation of the enhanced fee schedule.*
- (6) *The assessment shall be administered as follows:*
- (a) *An annual amount of two hundred thousand dollars (\$200,000) shall be returned to the department to offset the Medicaid administration expenses;*
- (b) *The remaining portion of the assessment shall:*
1. *Be utilized to increase the rates paid by a managed care organization for emergency ambulance services up to the amount paid by the fee-for-service Medicaid program for emergency ambulance services; or*
 2. *Be paid as supplemental payments to ground ambulance providers in a proportional amount according to the total Medicaid ambulance transports; and*
- (c) *If any funds are remaining after the department's duties have been completed under paragraph (b) of this subsection, the remaining funds shall be utilized by the department to increase non-emergency medical transport rates.*
- (7) *Each ground ambulance provider shall report to the board, at the time and in the manner required by the board, ground emergency revenue collected to accomplish the purposes of this section and Section 6 of this Act.*
- (8) (a) *No more than one hundred eighty (180) days after the end of each calendar year, the board shall submit to the cabinet transport data for all ground ambulance providers licensed in Kentucky.*
- (b) *The data required by paragraph (a) of this subsection shall, at a minimum, include the number of emergency ground transports completed during the previous calendar year and the emergency revenue collected.*

➔SECTION 6. A NEW SECTION OF KRS CHAPTER 205 IS CREATED TO READ AS FOLLOWS:

- (1) *There is established in the State Treasury the ambulance service assessment fund for the purpose of depositing assessments imposed under Section 2 of this Act.*
- (2) *The fund shall consist of the assessments and any related penalties collected by the Department of Revenue, donations made to the fund from private sources, and appropriations made by the General Assembly.*
- (3) *Moneys deposited into the fund are appropriated for the purpose of administering Section 5 of this Act and shall be transferred to the Department for Medicaid Services on a monthly basis for that purpose.*
- (4) *Moneys in the fund shall not be diverted to the general fund or any other public fund. Moneys in the fund may only be used to:*
 - (a) *Increase fee-for-service rates for ground ambulance services above those in effect on the effective date of this Act;*
 - (b) *Reimburse money to a ground ambulance provider that is erroneously collected from that provider; or*
 - (c) *Reimburse the cabinet in the amount of two hundred thousand dollars (\$200,000) annually for the purpose of administrative expenses.*
- (5) *If Section 5 of this Act is rendered invalid and void:*
 - (a) *To the extent that federal matching funds are not reduced due to the impermissibility of the assessments, the cabinet shall disburse the moneys remaining in the fund that were derived from the assessment imposed by Section 2 of this Act pursuant to subsection (4) of this section; and*
 - (b) *Following disbursement of moneys in the fund pursuant to paragraph (a) of this subsection, the cabinet shall refund any remaining moneys to each ground ambulance provider in proportion to the amount paid by each provider during the most recently completed quarterly payment period.*
- (6) *Notwithstanding KRS 45.229, moneys in the fund not expended at the close of the fiscal year shall not lapse but shall be carried forward to the next fiscal year.*
- (7) *Any interest earnings of the trust fund shall become part of the fund and shall not lapse.*
- (8) *Moneys transferred to this fund are hereby appropriated for the purposes set forth in this section.*

Signed by Governor April 24, 2020.