

**907 KAR 1:023. Review and approval of selected therapies as ancillary services in nursing facilities.**

RELATES TO: 42 C.F.R. Parts 430, 431, 432, 433, 435, 440, 442, 447, 455, 456, 42 U.S.C. 1396a, b, d

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

NECESSITY, FUNCTION, AND CONFORMITY: EO 2004-726, effective July 9, 2004, reorganized the Cabinet for Health Services and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health and Family Services. The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of Medical Assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to the review and approval of selected therapies as ancillary services for Medicaid recipients in nursing facilities.

Section 1. Definitions. (1) "Adult recipient" means an individual who is:

(a) Eligible to participate in Kentucky's Medicaid Program; and

(b) Age twenty-one (21) or over.

(2) "Ancillary service" means a direct therapy service for which a separate charge is customarily made pursuant to Section 2 of this administrative regulation.

(3) "Attending physician" means the physician of record identified in the recipient's nursing facility medical record.

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

(5) "Nursing facility" or "NF" means:

(a) A facility:

1. To which the state survey agency has granted an NF license;

2. For which the state survey agency has recommended to the department certification as a Medicaid provider; and

3. To which the department has granted certification for Medicaid participation; or

(b) A hospital swing bed that provides services in accordance with 42 U.S.C. 1395tt and 1396l, if the swing bed is certified to the department as meeting requirements for the provision of swing bed services in accordance with 42 U.S.C. 1396r(b), (c), (d), 42 C.F.R. 447.280 and 482.66.

(6) "Pediatric recipient" means an individual who is:

(a) Eligible to participate in Kentucky's Medicaid Program; and

(b) Under twenty-one (21) years of age.

Section 2. Covered Ancillary Services. (1) Oxygen therapy shall be a covered ancillary service if the department determines that the therapy:

(a) Is medically necessary; and

(b) Meets criteria pursuant to Section 3 of this administrative regulation.

(2) The following therapies shall be covered ancillary services if the department determines that the therapies meet the criteria established in Section 3 of this administrative regulation:

(a) Physical therapy;

(b) Occupational therapy; or

(c) Speech therapy.

Section 3. On-site Review Approval and Denial Criteria. (1) The department shall approve a therapy as an ancillary service if, through an on-site review, the department determines that:

- (a) The nature and extent of functional deficiency requires a qualified therapist, as determined through chart evaluation and resident contact;
  - (b) The care setting is appropriate for treatment planned;
  - (c) The therapy frequency, duration and intensity shall be reasonable and necessary for the resident's current active diagnosis;
  - (d) The following documentation is complete:
    - 1. Referral request;
    - 2. Therapy assessment;
    - 3. Action plan;
    - 4. Progress report; and
    - 5. Service discontinuance;
  - (e) The progress of the resident can be verified against baseline and stated goals and time frames;
  - (f) The therapy is not duplicative of other services that the resident is receiving;
  - (g) The condition of the resident requires a registered therapist to:
    - 1. Evaluate the resident's active daily intervention program;
    - 2. Supervise trained staff to carry out a therapy regimen;
    - 3. Use assistive or adaptive equipment;
    - 4. Train staff to use assistive or adaptive equipment;
    - 5. Train the resident to use assistive or adaptive equipment during goal setting;
    - 6. Supervise and certify a therapy assistant who is participating in a treatment program;
    - 7. Establish a nursing care plan program to be performed by:
      - a. Nursing staff;
      - b. Restorative aide; or
      - c. A resident; and
    - 8. Be responsible for the timely discharge of a service level;
  - (h) A therapist has a:
    - 1. Specific diagnosis;
    - 2. Specific treatment plan that relates to a condition of the resident;
    - 3. Specific modality for intervention that relates to a condition of the resident; and
    - 4. Reasonable expectation for gain based on reasonable goals and time frames; and
  - (i) A resident is:
    - 1. An adult recipient who meets the approval criteria of the "Technical Criteria for Reviewing Ancillary Services for Adults"; or
    - 2. A pediatric recipient who meets the "Technical Criteria for Reviewing Ancillary Services for Pediatrics".
- (2) The department shall deny a request for a therapy as an ancillary service pursuant to Section 2 of this administrative regulation if, through an on-site review, the department determines that:
- (a) Services of a registered therapist are not needed on a daily basis because:
    - 1. Lack of progress of the patient;
    - 2. Goals have been met;
    - 3. A patient is unable to participate;
    - 4. Lack of ability of nursing staff or resident to conduct or perform care;
    - 5. The Nursing care plan program has been designed and will be performed by staff other than a therapist;
    - 6. Nursing staff or the resident is able to safely:
      - a. Perform the following:
        - (i) Repetitious exercise;
        - (ii) Nonrestorative exercise; or

- (iii) Drills; and
- b. Use equipment or devices;
- 7. The frequency or intensity of the services exceeds the benefits;
- 8. No further gains are reasonably achievable; or
- 9. A resident is:
  - a. Independent; or
  - b. Needs only minimal assistance for performance;
- (b) The resident is:
  - 1. An adult recipient who meets the "Indication for Denial" criteria established in the "Technical Criteria for Reviewing Ancillary Services for Adults"; or
  - 2. A pediatric recipient who meets the "Indication for Denial" criteria established in the "Technical Criteria for Reviewing Ancillary Services for Pediatrics"; and
- (c) If applicable, oxygen therapy is not medically necessary.

Section 4. Certification and Recertification Process for a Therapy as an Ancillary Service. (1) Within two (2) workdays of the date that a recipient's attending physician orders administration of a therapy pursuant to Section 2 of this administrative regulation, an NF shall:

- (a) Notify the department by telephone; and
- (b) Request an on-site review of the therapy.
- (2) Within five (5) workdays of receipt of notification pursuant to subsection (1) of this section, the department shall:
  - (a) Perform an on-site review pursuant to Section 3 of this administrative regulation; and
  - (b) Render a certification decision.
- (3) The department shall issue a written notice of approval or denial relating to:
  - (a) A request for oxygen therapy to the:
    - 1.a. Resident; or
    - b. Guardian;
    - 2. NF; and
    - 3. Attending physician; or
  - (b) A request for a therapy pursuant to Section 2(2) of this administrative regulation to the NF.
- (4) If a therapy pursuant to Section 2(2) of this administrative regulation is approved as an ancillary service, the department shall establish a certification period that includes:
  - (a) A start date of up to two (2) workdays prior to the date of notification by an NF pursuant to subsection (1) of this section; and
  - (b) An end date that the department determines to be a reasonable time period for an individual to meet goals established by an individualized therapy program.
- (5) Prior to the last day of a certification period for an approved therapy as an ancillary service, the department shall:
  - (a) Recertify a therapy as an ancillary service for the extended period of time, if an individual continues to meet criteria pursuant to Sections 2 and 3 of this administrative regulation; and
  - (b) Issue a written notice pursuant to subsection (3) of this section.
- (6) If the department denies a request for certification or recertification of a therapy as an ancillary service, the NF may request that the department reconsider a request pursuant to Section 5 of this administrative regulation.

Section 5. Reconsideration and Appeal of a Denial of a Therapy as an Ancillary Service. (1) The department shall reconsider its decision to deny a request for oxygen therapy as an ancillary service if, within thirty (30) days of the date on a notice of adverse action, a written request for reconsideration is submitted to the department by the:

- (a) Resident; or
  - (b) Resident's legal guardian.
- (2) If the department receives a request for reconsideration pursuant to subsection (1) of this section, the department shall:
- (a) Conduct a reconsideration on-site review within three (3) workdays from the receipt of the request;
  - (b) Employ a physician who was not involved with the initial on-site review or determination to conduct a reconsideration on-site review;
  - (c) Base its reconsideration decision solely upon information that is:
    - 1. Contained in the resident's medical records; and
    - 2. Submitted with the written request pursuant to subsection (1) of this section; and
  - (d) Issue a notification of approval or denial within two (2) workdays of a reconsideration on-site review.
- (3) The department shall reconsider its decision to deny a request for a therapy as an ancillary service pursuant to Section 2(2) of this administrative regulation if:
- (a) Form MAP-703, "Request for Reconsideration of Ancillary Therapy Billing" is submitted to the department by an NF; and
  - (b) Form MAP-703 is received by the department within seven (7) days of the date on the notice of adverse action.
- (4) If the department receives a request for reconsideration pursuant to subsection (3) of this section, the department shall:
- (a) Conduct a reconsideration on-site review within seven (7) workdays from receipt of the request;
  - (b) Employ a registered nurse who was not involved with the initial on-site review or determination to conduct the reconsideration on-site review;
  - (c) Base its reconsideration decision solely upon information that is:
    - 1. Contained in the resident's medical records; and
    - 2. Submitted with the request pursuant to subsection (3)(a) of this section; and
  - (d) Issue a notification of approval or denial within three (3) workdays of a reconsideration on-site review.
- (5) If an outcome of a reconsideration on-site review results in the denial of a therapy as an ancillary service, the department shall grant an appeal as follows:
- (a) An appeal of the denial of oxygen therapy as an ancillary service shall be granted pursuant to 907 KAR 1:563; and
  - (b) An appeal of the denial of a therapy pursuant to Section 2(2) of this administrative regulation as an ancillary service shall be granted pursuant to 907 KAR 1:671.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

- (a) The "Technical Criteria for Reviewing Ancillary Services for Adults", Department for Medicaid Services, November 2003 edition;
- (b) The "Technical Criteria for Reviewing Ancillary Services for Pediatrics", Department for Medicaid Services, November 2003 edition; and
- (c) Form "MAP-703, Request for Reconsideration of Ancillary Therapy Billing", Department for Medicaid Services, April 2000 edition.

(2) This material may be inspected, copied or obtained, subject to applicable copyright law, at the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m. (20 Ky.R. 3395; eff. 8-17-1994; 26 Ky.R. 1245; 1684; 1951; eff. 5-10-2000; 30 Ky.R. 1628; 1938; eff. 2-16-2004; Crt eff. 12-6-2019.)