

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Fiscal Management
(Amended After Comments)

907 KAR 3:060. Ambulance provider assessment program.

RELATES TO: KRS 45.229, 142.301, 142.318, 142.343, 142.359, 194A.030(2), 205.5601, 205.5602, 205.5603, 42 Part C.F.R. 413, 42 U.S.C. 1396a

STATUTORY AUTHORITY: KRS 194A.050(1), 205.520(3), **205.5601**~~[205.560(1)]~~, 205.5602(2), **205.5603**

NECESSITY, FUNCTION, AND CONFORMITY: 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 a requirement that may be imposed, or opportunity presented, by federal law to qualify for federal funds. KRS 205.5602(2) requires the department to promulgate an administrative regulation to implement the Ambulance Provider Assessment Program, **as established pursuant to** KRS 205.5601 and 205.5603. This administrative regulation establishes the requirements for implementing the Ambulance Provider Assessment Program for ground ambulance providers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Actual utilization following the program year; and

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

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

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

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

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

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

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

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

- (1) Revenue survey amounts, submitted in accordance with Section 4, of this administrative regulation;
- (2) Resolution of a supplemental payment that the ground ambulance provider suspects is in error; or
- (3) Quality metrics necessary for program reporting to the Centers for Medicare and Medicaid Services.

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

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

- (1) Receipt of federal financial participation for the coverage; and
- (2) Centers for Medicare and Medicaid Services' approval for the coverage.

LISA D. LEE, Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: July 29, 2021

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott and Krista Quarles

(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. Nei-

ther 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? Tiering was not applied in this administrative regulation as it applies equally to all regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

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

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: