

## 907 KAR 7:005. Certified waiver provider requirements.

RELATES TO: KRS Chapter 13B, 194A.515, 42 C.F.R. 447.90, 455, 1002, 1003, 42 U.S.C. 1320a-3, 1320a-5, 1320a-7, 1395y(o), 2000d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 205.6318, 205.8467, 42 C.F.R. 1002.1-.230, 1003.105, 42 U.S.C. 1320a-7, 1396b(q), 1396m, 1396n(c)(2)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.8451 through KRS 205.8483 establish that the Cabinet for Health and Family Services and the Department for Medicaid Services shall be responsible for the control of Medicaid provider fraud and abuse. 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 to qualify for federal Medicaid funds. This administrative regulation establishes the certification requirements and provisions regarding 1915(c) home and community based service waiver providers who are required to be certified.

Section 1. Definitions. (1) "1915(c) home and community based service" means a service available or provided via a 1915(c) home and community based services waiver program.

(2) "1915(c) home and community based services waiver program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(3) "Applicant" means an individual or entity applying to be a certified waiver provider.

(4) "Certification period" means a period of time that a provider has been certified or approved by the department to provide, and be reimbursed for, 1915(c) home and community based services.

(5) "Certified waiver provider" means a provider who:

(a) Is currently enrolled in the Medicaid program in accordance with 907 KAR 1:672;

(b) Is currently participating in the Medicaid program in accordance with 907 KAR 1:671;

(c) Provides Kentucky Medicaid program covered services to a recipient in a 1915(c) home and community based services waiver program; and

(d) Has been determined by the department to have met the certified waiver provider requirements established in this administrative regulation.

(6) "Citation" means a written document:

(a) Issued by the department to a certified waiver provider; and

(b) Addressing a certified waiver provider's failure to comply with:

1. This administrative regulation; or

2. Any other administrative regulation within Title 907 of the Kentucky Administrative Regulations which establishes provisions and requirements regarding a 1915(c) home and community based services waiver program.

(7) "Contingency" means a circumstance that requires immediate action by a provider to correct a citation that impacts the health, safety, or welfare of a 1915(c) home and community based services waiver program participant prior to the provider submitting a corrective action plan.

(8) "Corrective action plan" means a document submitted by a certified waiver provider to the department that:

(a) States the system changes, processes, or other actions that the provider shall take to prevent a future occurrence of a violation stated in a citation or findings report;

(b) States the timeframe in which the provider shall successfully implement or perform a system change, process, or other action required by the corrective action plan; and

- (c) Is not valid or effective until approved by the department.
- (9) "Credible allegation of fraud" is defined by 42 C.F.R. 405.370.
- (10) "Department" means the Department for Medicaid Services or its designee.
- (11) "Fraud" is defined by KRS 205.8451(2).
- (12) "Moratorium" means the department's prohibition against a provider providing services to a new 1915(c) home and community based services waiver participant.
- (13) "New 1915(c) home and community based services waiver participant" means an individual who has never received 1915(c) home and community based services from a given provider though the individual may have previously received 1915(c) home and community based services from another provider.
- (14) "Provider abuse" is defined by KRS 205.8451(8).
- (15) "Repeat citation" means a citation that was previously issued by the department within the past two (2) years that did not result in a sustainable correction.
- (16) "Restriction" means a limitation or condition placed on a provider by:
  - (a) The professional board governing the provider's profession;
  - (b) A court of competent jurisdiction;
  - (c) A federal agency with jurisdiction over the:
    - 1. Medicaid program; or
    - 2. Provider; or
  - (d) The department in accordance with this administrative regulation.
- (17) "Sanction" means an administrative action taken by the department which:
  - (a)1. Limits or bars an individual's, agency's, entity's, or organization's participation in the Medicaid program; or
  - 2. Imposes a fiscal penalty against the provider, including the:
    - a. Imposition of civil penalties or interest imposed at the department's discretion; or
    - b. Withholding of future payments; and
  - (b) Does not include:
    - 1. A voluntary moratorium;
    - 2. A decision not to renew a certification;
    - 3. A citation; or
    - 4. Denial of an initial application for certification.
- (18) "Unacceptable practice" means:
  - (a) Conduct which constitutes:
    - 1. Fraud;
    - 2. Provider abuse;
    - 3. Neglect;
    - 4. Exploitation;
    - 5. Willful misrepresentation;
  - (b) An action resulting in an exclusion, sanction, finding of fact, moratorium, suspension, or termination by:
    - 1. The licensing entity with jurisdiction over the provider's license;
    - 2. The certifying entity with jurisdiction over the provider's certification; or
    - 3. The department;
  - (c) Failure to disclose required information in accordance with 907 KAR 1:671, 907 KAR 1:672, or this administrative regulation;
  - (d) Making, causing to be made, inducing, or seeking to induce a false, fictitious, or fraudulent statement or misrepresentation of material fact when providing information to the department; or
  - (e) Conduct which results in a restriction.

Section 2. Certified Waiver Provider Enrollment. (1) The provisions and requirements established in 907 KAR 1:672 regarding a Medicaid provider or person or entity who applies for enrollment as a participating Medicaid provider shall apply to a certified waiver provider or applicant.

(2) To enroll in the Medicaid program as a certified waiver provider, an applicant shall:

(a) Meet and comply with the Medicaid provider enrollment requirements, terms, and conditions established in:

1. 907 KAR 1:672; and

2. Each administrative regulation located in Title 907 of the Kentucky Administrative Regulations which establishes the requirements for the respective type of 1915(c) home and community based service waiver provider that the applicant is applying to be (for example, the requirements, terms, and conditions for Supports for Community Living waiver providers if the applicant is applying to be a Supports for Community Living waiver service provider); and

(b) Submit to the department a valid professional license, registration, certificate, or letter of certification or approval from a certifying entity that allows the applicant to provide services within the applicant's scope of practice.

(3) The department shall deny enrollment if an applicant:

(a) Does not provide requested information to the department within the time period specified in the department's notice of omitted information;

(b) Fails to:

1. Provide correct, accurate, and truthful information requested by the department at any time during the application or enrollment process;

2. Update the department of any change in information previously submitted during the application or enrollment process; or

3. Demonstrate the capacity to:

a. Execute necessary administrative competency as required by the department;

b. Develop a system of care which has an infrastructure necessary to provide coordinated services, supports, treatment, and care; or

c. Follow direction provided by the department; or

(c) Is eligible for exclusion under Section 6 of this administrative regulation.

Section 3. Certified Waiver Provider Participation Requirements. (1) To participate in the Medicaid program, a provider shall:

(a) Comply with the Medicaid provider participation requirements, terms, and conditions established in 907 KAR 1:671; and

(b) Meet and comply with the Medicaid provider enrollment requirements, terms, and conditions established in each administrative regulation located in Title 907 of the Kentucky Administrative Regulations which establishes the requirements for the respective type of 1915(c) home and community based service waiver provider that the applicant is applying to be (for example, the requirements, terms, and conditions for Supports for Community Living waiver providers if the applicant is applying to be a Supports for Community Living waiver service provider).

(2) The provisions and requirements established in 907 KAR 1:671 regarding Medicaid providers shall apply to a certified waiver provider.

Section 4. Citations Resulting in a Corrective Action Plan.

(1)(a)1. If the department issues a citation or citations to a certified waiver provider, the provider shall submit to the department a corrective action plan.

2. The department shall have thirty (30) days in which to review a corrective action plan and notify the provider of the results of that review, in accordance with paragraph (b) of this subsection.

(b)1. A certified waiver provider shall implement the submitted corrective action plan unless the department notifies the certified waiver provider:

- a. That it does not approve the corrective action plan; and
- b. Of the revisions that need to be made to the corrective action plan.

2. If a certified waiver provider is notified by the department that a corrective action plan was not approved, the certified waiver provider shall submit a revised corrective action plan to the department that is revised pursuant to the department's direction.

(c) The certified waiver provider shall successfully perform everything required in the approved corrective action plan within the timeframe or timeframes established in the corrective action plan.

(d)1. If a certified waiver provider fails to successfully perform everything required in an approved corrective action plan within the timeframe or timeframes established in the corrective action plan, the department shall:

a. Extend the timeframe for corrective action plan compliance if the department determines that the provider's progress in complying with the corrective action plan warrants an extension; or

b. Terminate the certified waiver provider.

2. If a certified waiver provider refuses to submit a corrective action plan to the department or modify a corrective action plan in response to the department's instruction to modify the corrective action plan, the department shall terminate the provider.

(2)(a) If the department terminates a provider, the department shall notify the provider in writing of the:

1. Reason for termination; and
2. Provider's right to appeal the termination.

(b) The provider shall have the right to appeal the termination in accordance with 907 KAR 1:671.

Section 5. Voluntary Moratorium Pending Investigation. (1)(a) If the department has reliable evidence that leads it to believe that a certified waiver provider has committed a violation that threatens the health, safety, or welfare of a recipient, the department shall offer the provider an opportunity to undergo a voluntary moratorium while the department conducts an investigation of the matter.

(b) If the certified waiver provider refuses to undergo a voluntary moratorium while the department conducts an investigation, the department shall terminate the provider in accordance with Section 4(2) of this administrative regulation.

(c)1. Within thirty (30) days of completing an investigation referenced in paragraphs (a) and (b) of this subsection, the department's designee shall issue a findings report to the:

- a. Certified waiver provider; and
- b. Department.

2. If the findings report indicates that the certified waiver provider did not commit a violation that threatened the health, safety, or welfare of a recipient, the moratorium shall immediately be lifted.

3. If the findings report indicates that the certified waiver provider committed a violation that threatened the health, safety, or welfare of a recipient, but the department does not initiate termination, the department shall:

a. Offer the provider an opportunity to continue the voluntary moratorium in which the pro-

vider creates and submits a corrective action plan to the department; or

b. Initiate termination of the certified waiver provider if the provider chooses to not continue the voluntary moratorium.

4. If the findings report indicates that the certified waiver provider committed a violation that threatened the health, safety, or welfare of a recipient that warrants termination, the department shall terminate the provider in accordance with Section 4(2) of this administrative regulation.

(d)1. If a certified waiver provider undergoes a voluntary moratorium, the provider shall not accept any new 1915(c) home and community based waiver services participant to the program until the department determines that the provider has completed all of the actions required within each timeframe established pursuant to the corrective action plan referenced in paragraph (c)3.a. of this subsection.

2. If a certified waiver provider that agreed to undergo a voluntary moratorium fails to complete all of the actions required within each timeframe established in the corrective action plan, the department shall:

a. Extend the timeframe for corrective action plan compliance if the department determines that the provider's progress in complying with the corrective action plan warrants an extension; or

b. Terminate the provider in accordance with Section 4(2) of this administrative regulation.

3. If the department determines that the certified waiver provider successfully implemented the corrective action plan, the department shall lift the moratorium.

(2)(a) If during a recertification or follow-up of an investigation or complaint, a repeat citation is warranted regarding a system or process which creates a deficiency regarding more than one (1) requirement in this administrative regulation or any administrative regulation within Title 907 of the Kentucky Administrative Regulations which establishes requirements regarding a 1915(c) home and community based services waiver program, the department shall:

1. Offer the certified waiver provider an opportunity to undergo a voluntary moratorium in which the provider creates and submits a corrective action plan to the department; or

2. Terminate the provider in accordance with Section 4(2) of this administrative regulation if the provider chooses to not undergo a voluntary moratorium.

(b) If the certified waiver provider agrees to undergo a voluntary moratorium, the provisions and requirements established in subsection (1)(d) of this section shall apply.

Section 6. Exclusion Due to Employee, Volunteer, or Contractor. (1) Except as established in subsection (2) of this section, the department shall exclude an applicant or provider from Medicaid program participation:

(a) If an individual who is an employee, contractor, or volunteer with the applicant or provider has:

1. Engaged in an unacceptable practice; or

2. Acted in a way which resulted in the individual or any entity with whom the individual previously worked, volunteered, or had a contractual relationship or currently works, volunteers, or has a contractual relationship being excluded from Medicaid program participation at any time; or

(b) If the department determines that enrolling the applicant or provider would not be in the best interest of:

1. Current or future recipients; or

2. The department.

(2)(a) The department shall not exclude an applicant or provider from Medicaid program participation as a result of the actions of an individual referenced in subsection (1)(a) of this

section if the department determines that the individual's actions were unforeseen by the applicant or provider.

(b) To demonstrate to the department that an individual's actions, as referenced in subsection (1)(a) of this section, were unforeseen, the applicant or provider shall prove that the applicant or provider:

1. Did not know of the individual's actions;
2. Had work rules in place designed to prevent the actions from occurring;
3. Communicated the work rules referenced in subparagraph 2 of this paragraph to all of its employees, contractors, and volunteers;
4. Took steps to discover the actions which violated the work rules; and
5. Consistently enforced the standard when a violation of the work rules occurred.

Section 7. Suspension of Payment Due to a Credible Allegation of Fraud. (1)(a) In accordance with 42 C.F.R. 455.23, 42 U.S.C. 1395y(o), 42 U.S.C. 1396b(i)(2)(C), and 42 C.F.R. 447.90, the department shall suspend payment to any provider if a credible allegation of fraud regarding the provider exists except as established in paragraph (b) of this subsection.

(b) The department shall not suspend payment to a provider if a credible allegation of fraud regarding the provider exists if the:

1. Payment is for an emergency item or service that was not furnished in the emergency room of a hospital; or
2. Department determines that good cause not to suspend payment exists in accordance with 42 C.F.R. 455.23.

(2) In accordance with 42 C.F.R. 455.23, the department shall suspend payment to a provider only in part if good cause to suspend payment only in part exists in accordance with 42 C.F.R. 455.23(f).

(3) The department shall comply with the notice of suspension of payment requirements established in 42 C.F.R. 455.23(b).

(4) The duration of a suspension of payment shall be in accordance with 42 C.F.R. 455.23(c).

Section 8. Additional Actions Regarding a Certified Waiver Provider. (1) In addition to an action established in 907 KAR 1:671 regarding a Medicaid provider, the department may impose or do the following regarding a certified waiver provider:

- (a) Impose a contingency;
- (b) Terminate a provider's participation in the Medicaid program;
- (c) Establish liability for a civil payment in accordance with KRS 205.8467;
- (d) Procure restitution of:
  1. Departmental costs in accordance with KRS 205.8467; or
  2. An overpayment; or
- (e) Impose a lien in accordance with KRS 205.8471.

(2) The department shall impose a contingency if during a recertification more than one (1) deficiency is found which requires immediate correction in order for the certified waiver provider to be recertified.

(3) In addition to the reasons for terminating a provider's participation in the Medicaid program established in 907 KAR 1:671, the department may terminate a certified waiver provider's participation in the Medicaid program if:

- (a) The provider engages in an unacceptable practice;
- (b) The department continues to impose an exclusion or sanction after twelve (12) months of an exclusion or sanction occurring; or

(c) During a recertification or follow-up of an investigation or complaint, a repeat citation is warranted regarding:

1. A recipient's health, safety, or welfare; or
2. A system or process which creates a deficiency regarding more than one (1) requirement

in:

a. This administrative regulation; or

b. Any administrative regulation within Title 907 of the Kentucky Administrative Regulations which establishes requirements regarding a 1915(c) home and community based services waiver program.

(4) If the department terminates a certified waiver provider's participation in the Medicaid program, the department shall terminate in accordance with Section 4(2) of this administrative regulation.

Section 9. Not Renewing a Provider's Participation and Not Enrolling an Applicant. (1) The department shall not enroll an applicant as a provider in the Medicaid program:

(a) For any reason for which it would exclude, sanction, or terminate the applicant;

(b) If the applicant is not in good standing with the Kentucky Secretary of State pursuant to 30 KAR 1:010 and 30 KAR 1:020;

(c) If the applicant has ever been terminated from:

1. The Kentucky Medicaid program;
2. Another state's Medicaid program; or
3. The Medicare program; or

(d) If the department determines that enrolling the applicant would not be in the best interest of:

1. Current or future recipients; or
2. The department.

(2) The department shall not renew a certified waiver provider's participation in the Medicaid program:

(a) For any reason for which it would exclude, sanction, or terminate the provider;

(b) If the provider is not in good standing with the Kentucky Secretary of State pursuant to 30 KAR 1:010 and 30 KAR 1:020;

(c) If the provider has ever been terminated from:

1. The Kentucky Medicaid program;
2. Another state's Medicaid program; or
3. The Medicare program; or

(d) If the department determines that renewing the provider's participation in the Medicaid Program would not be in the best interest of:

1. Current or future recipients; or
2. The department.

Section 10. Applicability of Actions to 1915(c) Home and Community Based Services Waiver Programs. (1) If the department acts, as established in this administrative regulation, regarding a certified waiver provider due to the provider's behavior in one (1) 1915(c) home and community based services waiver program, the action regarding the certified waiver provider shall apply in every 1915(c) home and community based services waiver program in which the provider is participating. For example, if the department terminates a certified waiver provider in the supports for community living program, the provider shall be terminated from every 1915(c) home and community based services waiver program in which the provider is participating.

(2) If a certified waiver provider volunteers to undergo a moratorium, the voluntary moratorium shall apply to each 1915(c) home and community based services waiver program in which the provider is participating during the time of the voluntary moratorium.

Section 11. Licensed Provider Exemption. If a 1915(c) home and community based service provider is licensed and is not required to be certified pursuant to the administrative regulation governing the 1915(c) home and community based services waiver program by which the individual or entity provides services, the certified waiver provider provisions and requirements established in this administrative regulation shall not apply to the provider.

Section 12. Reapplying after Termination. The department shall not accept an application for enrollment from an individual or entity that has been terminated until at least five (5) years have lapsed since the termination.

Section 13. Appeals. (1) A certified waiver provider's appeal shall be in accordance with 907 KAR 1:671.

(2) The following shall not be considered a sanction and shall not be appealable:

(a) A voluntary moratorium;

(b) A decision not to renew a certification;

(c) A citation; or

(d) Denial of an initial certification. (40 Ky.R. 916; 2298; eff. 5-2-2014; Crt eff. 12-6-2019.)