STATEMENT OF EMERGENCY
907 KAR 15:015E

This emergency administrative regulation is being promulgated to implement state and federal changes to services provided by behavioral health provider groups and behavioral health multi-specialty groups. This emergency administrative regulation is needed pursuant to KRS 13A.190(1)(a)1. to meet an imminent threat to public health and pursuant to KRS 13A.190(1)(a)2. to prevent a loss of federal funds. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is not identical to this emergency administrative regulation, as this emergency administrative regulation includes an additional Section 6 to establish an implementation date of July 1, 2019.

MATTHEW G. BEVIN, Governor
ADAM M. MEIER, Secretary

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Policy and Operations
(Emergency Amendment)

907 KAR 15:015E. Reimbursement provisions and requirements for behavioral health services provided by individual approved behavioral health practitioners[providers], behavioral health provider groups, or behavioral health multi-specialty groups.

RELATES TO: KRS 205.520, 42 U.S.C. 1396a(a)(10)(B), 1396a(a)(23), 1396a(a)(30)(A)
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.6311
EFFECTIVE: June 28, 2019
NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has a 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 to qualify for federal Medicaid funds. This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by[certified] individual approved behavioral health practitioners[professionals] who are independently enrolled in the Medicaid Program, practitioners working for or under the supervision of the individual approved behavioral health practitioners[professionals], and approved individual behavioral health professionals, [and] practitioners under supervision working in behavioral health provider groups or in behavioral health multi-specialty groups, to Medicaid recipients who are not enrolled with a managed care organization.

Section 1. General Requirements. For the department to reimburse for a service covered under this administrative regulation, the service shall be:
(1) Covered in accordance with 907 KAR 15:010; and
(2) Billed to the department by an individual approved behavioral health practitioner[provider], behavioral health provider group, or behavioral health multi-specialty group recognized as a Medicaid Program provider in accordance with 907 KAR 15:010.

Section 2. Reimbursement. (1) One (1) unit of service shall be:
(a) Fifteen (15) minutes in length unless a different unit of service exists for the service in the corresponding:
1. Current procedural terminology code; or
2. Healthcare common procedure coding system code; or
(b) The unit amount identified in the corresponding:
1. Current procedural terminology code if an amount is identified in the current procedural terminology code; or
2. Healthcare common procedure coding system code if an amount is identified in the healthcare common procedure coding system code.

(2) Except as provided by subsection (3) of this section, the rate per unit for a covered service shall be:
(a) Seventy-five (75) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:
1. Physician; or
2. Psychiatrist;
(b) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:
1. An advanced practice registered nurse; [or]
2. A licensed psychologist; or
3. A physician assistant;
(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by:
1. Licensed professional clinical counselor;
2. Licensed clinical social worker;
3. Licensed psychological practitioner;
4. Certified psychologist with autonomous functioning;
5. Licensed marriage and family therapist;
6. Licensed professional art therapist;
7. Licensed behavior analyst; or
8. Licensed clinical alcohol and drug counselor;
(d) Fifty-two and five-tenths (52.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:
1. Marriage and family therapy associate;
2. Licensed professional counselor associate;
3. Licensed psychological associate;
4. Certified social worker;
5. [Physician assistant;]
6. Licensed professional art therapist associate;
7. [Licensed assistant behavior analyst;]
8. [Certified psychologist; or]
9. [Licensed clinical alcohol and drug counselor associate; or
(e) Thirty-seven and five-tenths (37.5) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a certified alcohol and drug counselor.

(3) Reimbursement for the following services shall be as established on the Kentucky Medicaid Behavioral Health and Substance Abuse Services Outpatient (Non-facility) Fee Schedule and this administrative regulation for those services that are eligible to be provided by each individual approved behavioral health practitioner, behavioral health provider group, or behavioral health multi-specialty group as established pursuant to 907 KAR 15:010:
(a) Screening, brief intervention, and referral to treatment (SBIRT);
(b) Service planning;
(c) Day treatment;
(d) Comprehensive community support services;
(e) Peer support services;
(f) Intensive outpatient program services; or
(g) Therapeutic rehabilitation program services.

(4)(a) The department shall use the current version of the Kentucky-specific Medicare Physician Fee Schedule for reimbursement purposes.
(b) For example, if the Kentucky-specific Medicare Physician Fee Schedule currently published and used by the Centers for Medicare and Medicaid Services for the Medicare Program is:
  1. An interim version, the department shall use the interim version until the final version has been published; or
  2. The final version, the department shall use the final version.
(5) The department shall not reimburse for a service billed by or on behalf of an entity or individual that is not a billing provider.

Section 3. Not Applicable to Managed Care Organizations. A managed care organization shall not be required to reimburse in accordance with this administrative regulation for a service covered pursuant to:
(1) 907 KAR 15:010; and
(2) This administrative regulation.

Section 4. Federal Approval and Federal Financial Participation. The department’s reimbursement for services pursuant to this administrative regulation shall be contingent upon:
(1) Receipt of federal financial participation for the reimbursement; and
(2) Centers for Medicare and Medicaid Services’ approval for the reimbursement.

Section 5. Incorporation by Reference. (1) "Kentucky Medicaid Behavioral Health and Substance Abuse Services Outpatient (Non-Facility) Fee Schedule", July 2019[June 2016], is incorporated by reference.
(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at:
(a) The Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

Section 6. Delayed Implementation Date. The provisions of this administrative regulation shall be implemented beginning July 1, 2019.

CAROL H. STECKEL, Commissioner
ADAM M. MEIER, Secretary
APPROVED BY AGENCY: June 3, 2019
FILED WITH LRC: June 28, 2019 at 4 p.m.
CONTACT PERSON: Chase Coffey, Executive Administrative Assistant, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, KY 40621; phone: 502-564-6746; fax: 502-564-7091; CHFSregs@ky.gov.
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(1) Provide a brief summary of:
   (a) What this administrative regulation does: This administrative regulation establishes the reimbursement provisions and requirements regarding Medicaid Program behavioral health services provided by individual behavioral health professionals enrolled in the Medicaid Program.
   (b) The necessity of this administrative regulation: The administrative regulation is necessary to establish the reimbursement provisions for Medicaid Program behavioral health services provided by individual behavioral health professionals. These providers are a critical component of Medicaid Program substance use disorder (SUD) and mental health disorder treatment.
   (c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes by establishing Medicaid reimbursement for behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups.
   (d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation assists in the effective administration of the authorizing statutes by establishing Medicaid reimbursement for behavioral health services provided by individual behavioral health providers, behavioral health provider groups, and behavioral health multi-specialty groups.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:
   (a) How the amendment will change this existing administrative regulation: The amendments to the administrative regulation incorporate other changes made to 907 KAR Chapter 15. This administrative regulation in particular increases physician assistant’s reimbursement to 63.75% of the Medicare Physician Fee Schedule. In addition, the fee schedule is updated, and the regulatory reference to the fee schedule is more accurately a reference to all appropriate covered services provided by each type of provider.
   (b) The necessity of the amendment to this administrative regulation: The amendments are necessary to ensure that reimbursement is available for SUD and co-occurring disorders. In addition, the amendments help to implement a SUD 1115 Waiver and HB 124 from the 2018 Regular Session.
   (c) How the amendment conforms to the content of the authorizing statutes: The amendments conform to the content of the authorizing statutes by complying with federal mandates, and enhancing and ensuring Medicaid recipients’ access to behavioral health services, including SUD services and co-occurring disorders provided in an AODE. In addition, the amendments help to implement a SUD 1115 Waiver and HB 124 from the 2018 Regular Session.
   (d) How the amendment will assist in the effective administration of the statutes: The amendments assist in the effective administration of the statutes by complying with federal mandates, and enhancing and ensuring Medicaid recipients’ access to behavioral health services, including SUD services and co-occurring disorders provided in an alcohol and other drug entity (AODE) facility. In addition, the amendments help to implement a SUD 1115 Waiver and HB 124 from the 2018 Regular Session.

(3) List the type and number of individuals, businesses, organizations, or state and local
government affected by this administrative regulation: Physician assistants will be able to receive a higher reimbursement for the services they provide.

(4) Provide an analysis of how the entities identified in question (3) will 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) will have to take to comply with this administrative regulation or amendment. Physician assistants will need to continue billing for reimbursement for the services they provide.
   (b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). No additional cost is expected.
   (c) As a result of compliance, what benefits will accrue to the entities identified in question (3). A higher reimbursement rate for physician assistants will be available as a result of these changes.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:
   (a) Initially: The department does not anticipate any additional costs on an initial basis.
   (b) On a continuing basis: The department does not anticipate any additional cost on a continuing basis.

(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 the Social Security Act, Title XIX, and matching funds of general fund appropriations.

(7) Provide an assessment of whether an increase in fees or funding will 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 is 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? Yes, tiering is applied because reimbursements are tiered to the level of the provider/practitioner based on the provider/practitioner’s education and experience.

FEDERAL MANDATE ANALYSIS COMPARISON


2. State compliance standards. KRS 205.520(3) states: "Further, it is the policy of the Commonwealth to take advantage of all federal funds that may be available for medical assistance. 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." KRS 205.6311 requires the Department for Medicaid Services to "promulgate administrative regulations...to expand the behavioral health network to allow providers to provide services within their licensure category."

3. Minimum or uniform standards contained in the federal mandate. 42 U.S.C. 1396a(a)(10)(B) requires the Medicaid Program to ensure that services are available to Medicaid recipients in the same amount, duration, and scope. Expanding the provider base will help ensure Medicaid recipient access to services statewide and reduce or prevent the lack of availability of services due to demand exceeding supply in any given area. 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? The administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements than federal requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The administrative regulation does not impose stricter requirements, or additional or different responsibilities or requirements than federal requirements.

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 will be affected by the amendment to 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.010(1), 194A.030(2), 194A.050(1), 205.520(3), 205.6311, 42 U.S.C. 1396a.

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 will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? The amendment is not expected to generate revenue for state or local government.

   (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? The amendment is not expected to generate revenue for state or local government.

   (c) How much will it cost to administer this program for the first year? DMS does not expect any additional costs in administering these amendments during the first year.

   (d) How much will it cost to administer this program for subsequent years? DMS does not expect any additional costs in administering these amendments during 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: