STATEMENT OF EMERGENCY
907 KAR 15:025E

This emergency administrative regulation is being promulgated to implement state and federal changes to services provided by behavioral health services organizations. 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 7 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 15:025E. Reimbursement provisions and requirements regarding behavioral health services provided by behavioral health services organizations.

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)
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 behavioral health services organizations 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:
(1) Meet the requirements established in 907 KAR 15:020 or 907 KAR 15:022; and
(2) Be covered in accordance with 907 KAR 15:020 or 907 KAR 15:022.

Section 2. Reimbursement. (1) One (1) unit of service shall be:
(a) Fifteen (15) minutes in length; or
(b) The unit amount identified in the corresponding:
1. Current procedural terminology code; or
2. Healthcare common procedure coding system code.
(2) The rates for covered services established pursuant to 907 KAR 15:020 and provided within a BHSO [The rate per unit for a screening or for crisis intervention] 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;[œ]
   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 a:
   1. Licensed professional clinical counselor;
   2. Licensed clinical social worker;
   3. Licensed psychological practitioner;
   4. Licensed marriage and family therapist; [œ]
   5. Licensed professional art therapist; [œ]
   6. Certified psychologist with autonomous functioning; or
   7. Licensed behavior analyst;
   (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 working under the supervision of a billing supervisor;
   2. Licensed professional counselor associate working under the supervision of a billing supervisor;
   3. Licensed psychological associate working under the supervision of a billing supervisor;
   4. Certified social worker working under the supervision of a billing supervisor;
   5. Certified psychologist[Physician assistant working under the supervision of a billing supervisor] ; or
   6. Licensed professional art therapist associate working under the supervision of a billing supervisor[œ]
   7. Certified alcohol and drug counselor working under the supervision of a billing supervisor;
   (3) The rates for covered services established pursuant to 907 KAR 15:022 and provided within a BHSO II[The rate per unit for an assessment] 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;[œ]
   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 a:
   1. Licensed professional clinical counselor;
   2. Licensed clinical social worker;
   3. Licensed psychological practitioner;
   4. Licensed marriage and family therapist; [œ]
   5. Licensed professional art therapist; [œ]
6. Certified psychologist with autonomous functioning; or
7. 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 working under the supervision of a billing supervi-
      sor;
   2. Licensed professional counselor associate working under the supervision of a billing su-
      pervisor;
   3. Licensed psychological associate working under the supervision of a billing supervisor;
   4. Certified social worker working under the supervision of a billing supervisor;
   5. Certified psychologist[Physician assistant working under the supervision of a billing su-
      pervisor];
   6. Licensed professional art therapist associate working under the supervision of a billing super-
      visor; or
   7. 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 counse-
   lor[Licensed assistant behavior analyst working under the supervision of a billing supervisor; or
   8. Certified alcohol and drug counselor working under the supervision of a billing supervi-
   sors].

(4) The rates for covered services established pursuant to 907 KAR 15:022 and provided
within a BHSO III 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;
   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 a:
   1. Licensed professional clinical counselor;
   2. Licensed clinical social worker;
   3. Licensed psychological practitioner;
   4. Licensed marriage and family therapist;
   5. Licensed professional art therapist;
   6. Certified psychologist with autonomous functioning; or
   7. 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 working under the supervision of a billing supervi-
      sor;
   2. Licensed professional counselor associate working under the supervision of a billing su-
      pervisor;
   3. Licensed psychological associate working under the supervision of a billing supervisor;
   4. Certified social worker working under the supervision of a billing supervisor;
   5. Certified psychologist:
6. Licensed professional art therapist associate working under the supervision of a billing supervisor; or
7. 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 [The rate per unit for psychological testing shall be:
      (a) 63.75 percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychologist;
      (b) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a licensed psychological practitioner; or
      (c) 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 licensed psychological associate working under the supervision of a licensed psychologist.
   (5) The rate per unit for individual outpatient therapy, group outpatient therapy, or collateral outpatient therapy 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;
      (c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:
         1. Licensed professional clinical counselor;
         2. Licensed clinical social worker;
         3. Licensed psychological practitioner;
         4. Licensed marriage and family therapist;
         5. Licensed professional art therapist; or
         6. Licensed behavior analyst; or
      (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 working under the supervision of a billing supervisor;
         2. Licensed professional counselor associate working under the supervision of a billing supervisor;
         3. Licensed psychological associate working under the supervision of a billing supervisor;
         4. Certified social worker working under the supervision of a billing supervisor;
         5. Physician assistant working under the supervision of a billing supervisor;
         6. Licensed professional art therapist associate working under the supervision of a billing supervisor;
         7. Licensed assistant behavior analyst working under the supervision of a billing supervisor; or
         8. Certified alcohol and drug counselor working under the supervision of a billing supervisor.
   (6) The rate per unit for family outpatient therapy 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;
(c) Sixty (60) percent of the rate on the Kentucky-specific Medicare Physician Fee Schedule for the service if provided by a:
   1. Licensed professional clinical counselor;
   2. Licensed clinical social worker;
   3. Licensed psychological practitioner;
   4. Licensed marriage and family therapist; or
   5. Licensed professional art therapist; or
(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 working under the supervision of a billing supervisor;
   2. Licensed professional counselor associate working under the supervision of a billing supervisor;
   3. Licensed psychological associate working under the supervision of a billing supervisor;
   4. Certified social worker working under the supervision of a billing supervisor;
   5. Licensed professional art therapist associate working under the supervision of a billing supervisor;
   6. Certified alcohol and drug counselor working under the supervision of a billing supervisor.
(5)(a)[(7)] Reimbursement for services provided by a BHSO I[the following services] shall be as established on the Kentucky Medicaid Behavioral Health and Substance Abuse Services Outpatient (Non-Facility)[BHSO Non-Medicare Services] Fee Schedule and this administrative regulation for those services that are eligible to be provided within a BHSO I as established pursuant to 907 KAR 15:020.
(b) Reimbursement for services provided by a BHSO II 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 within a BHSO II as established pursuant to 907 KAR 15:022.
(c) Reimbursement for services provided by a BHSO III shall be as established on the Kentucky Medicaid Behavioral Health and Substance Abuse Services Facility Fee Schedule and this administrative regulation for those services that are eligible to be provided within a BHSO III as established pursuant to 907 KAR 15:022:
   (a) Mobile crisis services;
   (b) Day treatment;
   (c) Peer support services;
   (d) Parent or family peer support services;
   (e) Intensive outpatient program services;
   (f) Service planning;
   (g) Residential services for substance use disorders;
   (h) Screening, brief intervention, and referral to treatment;
   (i) Assertive community treatment;
   (j) Comprehensive community support services; or
   (k) Therapeutic rehabilitation services.
(6)[(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. A final version, the department shall use the final version.

(7)[(9)] 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. No Duplication of Service. (1) The department shall not reimburse for a service provided to a recipient by more than one (1) provider of any program in which the service is covered during the same time period.

(2) For example, if a recipient is receiving a behavioral health service from an independent behavioral health provider, the department shall not reimburse for the same service provided to the same recipient during the same time period by a behavioral health services organization.

Section 4. 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)(a) 907 KAR 15:020; or
(b) 907 KAR 15:022; and
(2) This administrative regulation.

Section 5. 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 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Kentucky Medicaid Behavioral Health and Substance Abuse Services Outpatient (Non-Facility) Fee Schedule", July 2019; and
(b) "Kentucky Medicaid Behavioral Health and Substance Abuse Services Facility Fee Schedule", July 2019["BHSO Non-Medicare Services Fee Schedule", July 2014, 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, Monday through Friday, 8:00 a.m. to 4:30 p.m.; or

Section 7. Delayed Implementation Date. The provisions of this administrative regulation shall be implemented beginning July 1, 2019.

CAROL H. STECKEL, Commissioner
REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Persons: Jonathan Scott, (502) 564-4321, ext. 2015, jonathant.scott@ky.gov; and Chase Coffey

(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 each tier of behavioral health services organizations (BHSOs).
(b) The necessity of this administrative regulation: This administrative regulation is necessary to comply with federal mandates. 42 U.S.C. 18022(b)(1)(E) mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment" for all recipients. 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." 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 (to include behavioral health services organizations) 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. In addition, this administrative regulation implements the SUD 1115 Waiver, which is part of the Kentucky HEALTH 1115 waiver.
(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 complying with federal mandates, and enhancing and ensuring Medicaid recipients' access to behavioral health services.
(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the authorizing statutes by complying with federal mandates, and enhancing and ensuring Medicaid recipients' access to behavioral health services.

(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 changes made to 907 KAR Chapter 15. The BHSO administrative regulation has been divided into two administrative regulations to prevent entities operating as Alcohol and Other Drug Entities (AODEs) from needing to acquire dual licensure. This regulation was amended to conform to the promulgation of a new 907 KAR 15:022 which relates to enhanced SUD outpatient and residential services. The regulation is further amended to establish reimbursement between the 3 newly established tiers of BHSO. In addition, physician assistant’s reimbursement has been increased to 63.75% of the Medi-
care Physician Fee Schedule, and licensed clinical alcohol and drug counselors and associates have been included in the array of allowed providers within a BHSO. Finally, a previous fee schedule has been removed, and two new fee schedules have been referenced to cover all services in each BHSO Tier.

(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 AODE. 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: The following behavioral health professionals who are authorized to provide services in a behavioral health services organization will be affected: physician assistants and licensed clinical alcohol and drug counselors and associates. In addition, BHSOs that wish to operate as a BHSO II or BHSO III will be eligible for reimbursement. Finally, Medicaid recipients who qualify for behavioral health services will also be affected by this administrative regulation.

(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. Entities that qualify as behavioral health services organizations and who wish to provide services to Medicaid recipients will need to enroll with the Medicaid Program as prescribed in the Medicaid provider enrollment regulation (complete an application and submit it to DMS) and sign agreements with managed care organizations if the individual wishes to provide services to Medicaid recipients who are enrolled with a managed care organization.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3). The entities referenced in paragraph (a) could experience administrative costs associated with enrolling with the Medicaid Program.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3). The entities referenced in paragraph (a) will benefit by receiving Medicaid Program reimbursement. Behavioral health professionals authorized to provide services in a behavioral health services organization will benefit by having more employment opportunities in Kentucky. Medicaid recipients in need of behavioral health services will benefit from an expanded base of providers from which to receive these services.

(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? Tiering is not applied as the policies apply equally to the regulated entities.

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."

3. Minimum or uniform standards contained in the federal mandate. Substance use disorder services are federally mandated for Medicaid programs. 42 U.S.C. 18022(b)(1)(E) mandates that "essential health benefits" for Medicaid programs include "mental health and substance use disorder services, including behavioral health treatment." 42 U.S.C. 1396a(a)(23), is known as the freedom of choice of provider mandate. This federal law requires the Medicaid Program to "provide that (A) any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services." Medicaid recipients enrolled with a managed care organization may be restricted to providers within the managed care organization's provider network. The Centers for Medicare and Medicaid Services (CMS) – the federal agency which oversees and provides the federal funding for Kentucky’s Medicaid Program – has expressed to the Department for Medicaid Services (DMS) the need for DMS to expand its substance use disorder provider base to comport with the freedom of choice of provider requirement. 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 as available to other individuals (non-Medicaid.) 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. Similarly, 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 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 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 regulation that requires or authorizes the action taken by the administrative regulation. This administrative regulation authorizes the action taken by this administrative regulation.

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: