

CABINET FOR HEALTH AND FAMILY SERVICES

Department for Medicaid Services

Division of Health Care Policy

(Amendment)

907 KAR 9:010. Reimbursement for non-outpatient Level I and II psychiatric residential treatment facility services.

RELATES TO: KRS 205.520, 216B.450, 216B.455, ~~42 U.S.C. 1395u[216B.459]~~

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 C.F.R. 440.160, 42 U.S.C. 1396a-d

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) empowers 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 Medicaid reimbursement policies for non-outpatient Level I and Level II psychiatric residential treatment facility services provided to a Medicaid recipient who is not enrolled in a managed care organization.

Section 1. Definition

- (1) "Department" means the Department for Medicaid Services or its designee.
- (2) "Federal financial participation" is defined by 42 C.F.R. 400.203.
- (3) "Level I PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(a).
- (4) "Level II PRTF" means a psychiatric residential treatment facility that meets the criteria established in KRS 216B.450(5)(b).
- (5) "Managed care organization" means an entity for which the department has contracted to serve as a managed care organization as defined in 42 C.F.R. 438.2.
- (6) "Medicare Economic Index" or "MEI" means the economic index referred to in 42 U.S.C. 1395u(b)(3)(L).
- (7) "Percentage increase in the MEI" is defined in 42 U.S.C. 1395u(i)(3).
- (8) "Per diem rate" means a Level I or II PRTF's total daily reimbursement as calculated by the department.
- (2) ~~(7)~~ "Recipient" is defined by KRS 205.8451(9).

Section 2. Reimbursement for Level I PRTF Services and Costs.

- (1) To be reimbursable under the Medicaid Program, Level I PRTF services and associated costs, respectively, shall be provided to or associated with a recipient receiving Level I PRTF services in accordance with 907 KAR 9:005.
- (2) The department shall reimburse for Level I PRTF services and costs referenced in subsection (4) of this section for a recipient not enrolled in a managed care organization:
 - (a) At the lesser of:
 1. A per diem rate of \$500~~[\$274.01]~~; or
 2. The usual and customary charge; and
 - (b) An amount not to exceed the prevailing charges, in the locality where the Level I PRTF is located, for comparable services provided under comparable circumstances.
- (3) The per diem rate referenced in subsection (2) of this section shall be increased annually~~each biennium~~ by the percentage increase in the MEI~~[2.22 percent]~~.
- (4) The reimbursement referenced in subsection (2) of this section shall represent the total Medicaid reimbursement for Level I PRTF services and costs:
 - (a) Including all care and treatment costs;

- (b) Including costs for all ancillary services;
- (c) Including capital costs;
- (d) Including room and board costs; and
- (e) Excluding the costs of drugs as drugs shall be:
 1. Covered in accordance with 907 KAR 23:010; and
 2. Reimbursed via the department's pharmacy program in accordance with 907 KAR 23:020.

Section 3. Reimbursement for Level II PRTF Services and Costs.

(1) To be reimbursable under the Medicaid program, Level II PRTF services and associated costs, respectively, shall be provided to or associated with a recipient receiving Level II PRTF services in accordance with 907 KAR 9:005.

(2) The department shall reimburse at the lesser of the usual and customary charge or a per diem rate of \$600~~[as follows]~~ for Level II PRTF services and costs for a recipient not enrolled in a managed care organization~~[-]~~

~~[(a)] [\$345 for Level II PRTF services to a recipient who meets the rate group one (1) criteria established in subsection (3)(a) of this section;]~~

~~[(b)] [\$365 for Level II PRTF services to a recipient who meets the rate group two (2) criteria established in subsection (3)(b) of this section;]~~

~~[(c)] [\$385 for Level II PRTF services to a recipient who meets the rate group three (3) criteria established in subsection (3)(c) of this section; or]~~

~~[(d)] [\$405 for Level II PRTF services to a recipient who meets the rate group four (4) criteria established in subsection (3)(d) or (e) of this section.]~~

~~[(3)]~~

~~[(a)] [Rate group one (1) criteria shall be for a recipient who:]~~

~~[1.] [Is twelve (12) years of age or younger; and]~~

~~[2.]~~

~~[a.] [Is sexually reactive; or]~~

~~[b.]~~

~~[(i)] [Has a severe and persistent aggressive behavior;]~~

~~[(ii)] [Does not have an intellectual or a developmental disability; and]~~

~~[(iii)] [Has an intelligence quotient higher than seventy (70).]~~

~~[(b)] [Rate group two (2) criteria shall be for a recipient who:]~~

~~[1.] [Is twelve (12) years of age or younger; and]~~

~~[2.]~~

~~[a.] [Is sexually reactive; and]~~

~~[b.]~~

~~[(i)] [Has a severe and persistent aggressive behavior;]~~

~~[(ii)] [Does not have an intellectual or a developmental disability; and]~~

~~[(iii)] [Has an intelligence quotient higher than seventy (70).]~~

~~[(c)] [Rate group three (3) criteria shall be for a recipient who:]~~

~~[1.] [Is thirteen (13) years of age or older; and]~~

~~[2.]~~

~~[a.] [Is sexually reactive; or]~~

~~[b.]~~

~~[(i)] [Has a severe and persistent aggressive behavior;]~~

~~[(ii)] [Does not have an intellectual or a developmental disability; and]~~

~~[(iii)] [Has an intelligence quotient higher than seventy (70).]~~

~~[(d)] [Rate group four (4) criteria shall be for a recipient who:]~~

~~[1.] [Is thirteen (13) years of age or older; and]~~

~~[2.]~~

~~[a.] [Is sexually reactive; and]~~

- ~~{b.}~~
 - ~~{(i)} [Has a severe and persistent aggressive behavior;]~~
 - ~~{(ii)} [Does not have an intellectual or a developmental disability; and]~~
 - ~~{(iii)} [Has an intelligence quotient higher than seventy (70).]~~
 - ~~{(c)} [Rate group four (4) criteria shall be for a recipient who:]~~
 - ~~{1.} [Is under twenty-two (22) years of age; and]~~
 - ~~{2.}~~
 - ~~{a.} [Is sexually reactive; or]~~
 - ~~{b.}~~
 - ~~{(i)} [Has a severe and persistent aggressive behavior;]~~
 - ~~{(ii)} [Has an intellectual or a developmental disability; and]~~
 - ~~{(iii)} [Has an intelligence quotient lower than seventy (70)].~~
- (3) ~~{(4)}~~ The per diem ~~rate~~~~[rates]~~ referenced in subsection (2) of this section, or the usual and customary charge if less than the per diem rate, shall represent the total Medicaid reimbursement for Level II PRTF services and costs:
- (a) Including all care and treatment costs;
 - (b) Including costs for all ancillary services;
 - (c) Including capital costs;
 - (d) Including room and board costs; and
 - (e) Excluding the costs of drugs as drugs shall be:
 1. Covered in accordance with 907 KAR 23:010; and
 2. Reimbursed via the department's pharmacy program in accordance with 907 KAR 23:020.
- (4) ~~{(5)}~~
- ~~{(a)} [The per diem rate referenced in subsection (2) of this section shall be increased annually by the percentage increase in the MEI [The department shall annually evaluate each per diem rate for Level II PRTF services and costs by reviewing the most recent, reliable claims data and cost report data to analyze treatment patterns, technology, and other factors that may alter the cost of efficiently providing Level II PRTF services.]~~
- ~~{(b)} [The department shall use the evaluation, review, and analysis referenced in paragraph (a) of this subsection to determine if an adjustment to the Level II PRTF reimbursement would be appropriate].~~

Section 4. Cost Reports and Audits.

- (1)
 - (a) A Level I or II PRTF shall annually submit to the department, within ninety (90) days of the closing date of the facility's fiscal year end, a legible and completed Form CMS 2552-96.
 - (b) The department shall grant a thirty (30) day extension for submitting a legible and completed Form CMS 2552-96 to the department if an extension is requested by a Level I or II PRTF.
- (2)
 - (a) A Form CMS 2552-96 shall be subject to review and audit by the department.
 - (b) The review and audit referenced in paragraph (a) of this subsection shall be to determine if the information provided is accurate.

Section 5. Access to Level I and II PRTF Fiscal and Services Records. A Level I or II PRTF shall provide, upon request, all fiscal and service records relating to services provided to a Kentucky recipient, to the:

- (1) Department;
- (2) Cabinet for Health and Family Services, Office of Inspector General;
- (3) Commonwealth of Kentucky, Office of the Attorney General;

- (4) Commonwealth of Kentucky, Auditor of Public Accounts;
- (5) Secretary of the United States Department of Health and Human Services; or
- (6) United States Office of the Attorney General.

Section 6. Bed Reserve and Therapeutic Pass Reimbursement.

(1) The department's reimbursement for a bed reserve day which qualifies as a bed reserve day pursuant to 907 KAR 9:005 for a recipient not enrolled in a managed care organization shall be:

(a) Seventy-five (75) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is at least eighty-five (85) percent; or

(b) Fifty (50) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is less than eighty-five (85) percent.

(2) The department's reimbursement for a therapeutic pass day which qualifies as a therapeutic pass day pursuant to 907 KAR 9:005 for a recipient not enrolled in a managed care organization shall be:

(a) 100 percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is at least fifty (50) percent; or

(b) Fifty (50) percent of the rate established in Section 2 or 3 of this administrative regulation if the Level I or II PRTF's occupancy percent is below fifty (50) percent.

(3)

(a) A Level I or II PRTF's occupancy percent shall be based on a midnight census.

(b) An absence from a Level I or II PRTF that is due to a bed reserve day for an acute hospital admission, a state mental hospital admission, a private psychiatric hospital admission, or an admission to a psychiatric bed in an acute care hospital shall count as an absence for census purposes.

(c) An absence from a Level I or II PRTF that is due to a therapeutic pass day shall not count as an absence for census purposes.

Section 7. Outpatient Services Reimbursement Established in 907 KAR 9:020. The department's reimbursement provisions and requirements regarding outpatient behavioral health services provided by a Level I or II PRTF shall be as established in 907 KAR 9:020.

Section 8. 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 9. Appeals. A provider may appeal a decision by the department regarding the application of this administrative regulation in accordance with 907 KAR 1:671.

Section 10. 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) This administrative regulation; or

(2) 907 KAR 9:005.

Section 11. Incorporation by Reference.

(1) "Form CMS 2552-96", August 2010 edition, is incorporated by reference.

(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, 8:00 a.m. to 4:30 p.m.

LISA D. LEE, Commissioner

ERIC FRIEDLANDER, Secretary

APPROVED BY AGENCY: September 22, 2023

FILED WITH LRC: October 4, 2023 at 2:45 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 27, 2023, at 9:00 a.m. using the CHFS Office of Legislative and Regulatory Affairs Zoom meeting room. The Zoom invitation will be emailed to each requestor the week prior to the scheduled hearing. Individuals interested in attending this virtual hearing shall notify this agency in writing by December 18, 2023, five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends virtually will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on this proposed administrative regulation until December 31, 2023. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person. Pursuant to KRS 13A.280(8), copies of the statement of consideration and, if applicable, the amended after comments version of the administrative regulation shall be made available upon request.

CONTACT PERSON: Krista Quarles, Policy Analyst, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-6746; fax 502-564-7091; email CHFSregs@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the Department for Medicaid Services' (DMS's) reimbursement provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish DMS's reimbursement provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility services.

(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 DMS's reimbursement provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility 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 establishing DMS's reimbursement provisions and requirements regarding non-outpatient Level I and II psychiatric residential treatment facility 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 establish new per diem rates of \$500 for Level I and \$600 for Level II PRTF services. In addition, the administrative regulation removes a stratified reimbursement structure for Level II PRTF services and implements a uniform daily rate. Finally, future inflation increases will be linked to the Medicare economic index and calculated annually instead of once each biennium.

(b) The necessity of the amendment to this administrative regulation:

This administrative regulation is needed to implement improved reimbursement for PRTFs and to implement an approved state plan amendment.

(c) How the amendment conforms to the content of the authorizing statutes:

This amendment implements a federal approval concerning enhanced PRTF rates.

(d) How the amendment will assist in the effective administration of the statutes:

This amendment will allow for continued operation and sustainability for PRTFs.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

Level I and II PRTFs will be affected by the amendment. Currently, there are eighteen (18) Level I PRTFs enrolled in the Medicaid Program and one (1) Level II PRTF enrolled in the Medicaid Program.

(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:

No action is required.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

There will be no additional costs experienced by affected providers.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

A sustainable provider reimbursement structure will be in place for PRTFs.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

The department shall meet its budget obligations pursuant to HB 1 of the 2022 Regular Session.

(b) On a continuing basis:

The department shall meet its budget obligations pursuant to HB 1 of the 2022 Regular Session.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

Sources of funding to be used for the implementation and enforcement of this administrative regulation are federal funds authorized under Title XIX and Title XXI of the Social Security Act, and state matching funds of general and agency 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:

At this time, DMS does not assess that an increase in fees or 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?

Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it.

FISCAL NOTE

(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?

DMS will be affected 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, 205.561(2), 205.6316(4), 42 U.S.C. 1396a(a)(30), 42 U.S.C. 1396r-8

(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?

This administrative regulation 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?

This administrative regulation 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?

The department shall meet its budget obligations pursuant to HB 1 of the 2022 Regular Session.

(d) How much will it cost to administer this program for subsequent years?

The department shall meet its budget obligations pursuant to HB 1 of the 2022 Regular Session.

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:

(4) Estimate the effect of this administrative regulation on the expenditures and cost savings of regulated entities for the first full year the administrative regulation is to be in effect.

(a) How much cost savings will this administrative regulation generate for the regulated entities for the first year?

DMS anticipates that the increased revenue created by these amendments will allow for PRTFs to be sustainable.

(b) How much cost savings will this administrative regulation generate for the regulated entities for subsequent years?

DMS anticipates that the increased revenue created by these amendments will allow for PRTFs to be sustainable in subsequent years.

(c) How much will it cost the regulated entities for the first year?

DMS does not anticipate that regulated entities will incur costs as a result of this amendment in the first year.

(d) How much will it cost the regulated entities for subsequent years?

DMS does not anticipate that regulated entities will incur costs as a result of this amendment in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Cost Savings (+/-):

Expenditures (+/-):

Other Explanation:

(5) Explain whether this administrative regulation will have a major economic impact, as defined below.

"Major economic impact" means an overall negative or adverse economic impact from an administrative regulation of five hundred thousand dollars (\$500,000) or more on state or local government or regulated entities, in aggregate, as determined by the promulgating administrative bodies. [KRS 13A.010(13)] The administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities.

FEDERAL MANDATE ANALYSIS COMPARISON

(1) Federal statute or regulation constituting the federal mandate.

42 U.S.C. 1396a(a)(30)(A).

(2) State compliance standards.

To qualify as a Level I or II PRTE, a facility must meet the criteria established in KRS 216B.450 through 457.

(3) Minimum or uniform standards contained in the federal mandate.

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 or different responsibilities than the 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 or different responsibilities than the federal requirements.