

CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Health Care Policy
(Amendment)

907 KAR 3:066. Nonemergency medical transportation waiver services and payments.

RELATES TO: KRS 96A.095, 205.520, 281.010, 281.605(9), 281.635(5), 281.872, 281.875, 42 C.F.R. 431.53, 440.170, 42 U.S.C. 1396n(b)

STATUTORY AUTHORITY: KRS 194A.050(1), 205.520(3), 42 C.F.R. 431.53, 42 U.S.C. 1396a

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, has responsibility to administer the Medicaid Program. KRS 205.520(3) authorizes the Cabinet, by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law to qualify for federal Medicaid funds. This administrative regulation establishes the coverage and payment requirements for nonemergency medical transportation services, excluding ambulance stretcher services, provided pursuant to 42 U.S.C. 1396n(b) and approved by the Centers for Medicare and Medicaid Services to waive Medicaid requirements related to nonemergency medical transportation of Medicaid requirements.

Section 1. Definitions.

- (1) "Capitated rate" means one (1) amount paid each month:
 - (a) For each Medicaid recipient covered under authority of the waiver; and
 - (b) That is:
 1. Not a statewide rate; and
 2. Set individually for each human service transportation delivery region as established in 603 KAR 7:080.
- (2) "Department" means the Department for Medicaid Services or its designee.
- (3) "Human service transportation" means provision of mass transportation and taxi services to transport an individual who is eligible to receive Medicaid transportation services.
- (4) "Nonemergency medical transportation or NEMT" means medical transportation not of an emergency nature, excluding ambulance stretcher services, provided to an eligible Medicaid recipient by the Transportation Cabinet pursuant to an agreement between the Transportation Cabinet and the department.
- (5) "Waiver authority" means the provisions contained in 42 U.S.C. 1396n(b).

Section 2. Interagency Agreement. Pursuant to waiver authority granted by the Centers for Medicare and Medicaid Services, the Department for Medicaid Services may enter into an agreement with the Transportation Cabinet for the provision of nonemergency medical transportation to a Medicaid recipient.

Section 3. Coverage.

- (1) The coverage provisions established in 603 KAR 7:080 shall comply with this administrative regulation.
- (2) A Medicaid-eligible recipient may receive nonemergency medical transportation services if the recipient meets the following conditions:
 - (a) The recipient is traveling to or from a Medicaid-covered service;
 - (b) The service is determined to be of medical necessity; and
 - (c)
 1. The recipient does not own a vehicle:

2. The recipient owns a vehicle, but a clinician, employer, school, mechanic, or transportation authority issues a note that is submitted by the recipient that states the vehicle is not:

- a. Operable; or
- b. Usable for the recipient.

3.

a. A recipient who is under the age of eighteen (18) shall have the same vehicle ownership status as the custodial parent or legal guardian.

b. A parent or guardian may request a two (2) week exemption to subparagraph a. of this paragraph in order to allow a child recipient to attend medically necessary services.

(3)

(a) A transportation provider shall not self-refer or solicit a recipient or a recipient's parent or guardian to use NEMT if the recipient or recipient's parent or guardian owns or has access to appropriate transportation pursuant to this section.

(b) A transportation provider that self-refers or solicits a recipient or a recipient's parent or guardian pursuant to paragraph (a) of this subsection may be excluded from offering NEMT on a permanent or temporary basis [~~Free transportation, which is appropriate for the recipient's medical needs, is not available or use of an appropriate and operational household vehicle is not available.~~]

Section 4. Reimbursement.

(1) The Transportation Cabinet shall be reimbursed at a monthly capitated rate set by the department for each Medicaid recipient receiving services pursuant to this administrative regulation.

(2) The capitated rate shall not exceed the Medicaid Program's usual aggregate cost on a projected statewide basis of providing nonemergency medical transportation services to the covered group of recipients.

Section 5. Appeal Rights.

(1) An appeal of a negative action regarding a Medicaid recipient shall be in accordance with 907 KAR 1:563.

(2) An appeal of a negative action regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.

(3) An appeal of a negative action regarding a Medicaid provider shall be in accordance with 907 KAR 1:671.

Section 6. Implementation. The provisions of this administrative regulation shall be applicable for nonemergency transportation waiver services provided in accordance with KRS Chapter 45A and Section 2 of this administrative regulation.

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

(1) Receipt of federal financial participation for the coverage and reimbursement; and

(2) Centers for Medicare and Medicaid Services' approval of the coverage and reimbursement, as relevant.

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: November 2, 2023

FILED WITH LRC: November 13, 2023 at 1:25 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on January 22, 2024, 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 January 12, 2024, 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 January 31, 2024. 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 Specialist, Office of Legislative and Regulatory Affairs, 275 East Main Street 5 W-A, Frankfort, Kentucky 40621; phone 502-564-7476; 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 Medicaid nonemergency medical transportation service policies and requirements.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to "ensure necessary transportation for recipients to and from providers" as required by 42 C.F.R. 431.53.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

This administrative regulation conforms with 42 C.F.R. 431.53 by establishing Medicaid nonemergency medical transportation service policies and requirements. The policies and requirements are authorized by 42 U.S.C. 1396a(a)(70).

(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 Medicaid nonemergency medical transportation service policies and requirements.

(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 amendment changes the administrative regulation by improving and more clearly stating those circumstances under which a recipient may use nonemergency transportation. The administrative regulation now allows an individual to use nonemergency transportation if they do not own a vehicle. It also allows for a clinician's, employer's, school's, mechanic's, or transportation authority's note to establish that a vehicle is not operable or suitable for the individual that needs transportation. A two-week exemption period is available for a parent to request to allow children to attend medically necessary services. A prohibition on self-referral is established for transportation brokers, in addition potential penalties for self-referral are proposed. Finally, a federal approval and participation clause is included in the administrative regulation.

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

The amendment is necessary to improve the language surrounding eligibility to utilize nonemergency medical transportation.

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

The amendment conforms to the content of the authorizing statutes by removing subjectivity in the administration of the nonemergency medical transportation benefit.

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

The amendment conforms to the content of the authorizing statutes by removing subjectivity in the administration of the nonemergency medical transportation benefit.

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

There were 2,420,907 nonemergency medical transportation trips made during SFY 2022.

(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:

Recipients who need transportation will be able to access it more easily. Transportation brokers will be prohibited from self-referral.

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

DMS does not anticipate any expenses for this population.

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

Individuals will be more freely able to access medically necessary services.

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

(a) Initially:

DMS does not anticipate additional costs on an initial basis in implementing the amendments to this administrative regulation.

(b) On a continuing basis:

DMS does not anticipate additional costs on a continuing basis in implementing the amendments to this administrative regulation.

(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:

Neither an increase in fees nor funding will be necessary to implement the amendments.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees:

The amendment does not establish or increase any fees.

(9) TIERING: 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.

FEDERAL MANDATE ANALYSIS COMPARISON

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

42 C.F.R. 431.53.

(2) State compliance standards.

KRS 194A.030(2) requires the Department for Medicaid Services to "serve as the single state agency in the commonwealth to administer Title XIX of the Federal Social Security Act."

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

The Department for Medicaid Services is required to "ensure necessary transportation for recipients to and from providers."

(4) Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

The amendment will not impose stricter than federal requirements.

(5) Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

The amendment will not impose stricter than federal requirements.

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?

The Department for Medicaid Services (DMS) 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.030(2), 194A.050(1), 205.520(3), 205.560.

(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?

DMS does not expect the amendment to this administrative regulation 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?

DMS does not expect the amendment to this administrative regulation 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 anticipate additional costs in administering this program in the first year.

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

DMS does not anticipate additional costs in administering this program in subsequent years.

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

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

(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 does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation in the first year.

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

DMS does not anticipate that cost savings will be generated for regulated entities as a result of the amendments to this administrative regulation 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.