

## **CABINET FOR HEALTH AND FAMILY SERVICES**

### **Department for Medicaid Services**

#### **Division of Healthcare Policy**

#### **(Amendment)**

### **907 KAR 1:028. Independent laboratory and radiological service coverage and reimbursement.**

RELATES TO: KRS 205.520, 205.560, 333.090, 42 C.F.R. 440.30, Part 493, 42 U.S.C. 1395l(h)(1)(A), 1396a(a)(9), 1396b(i)(7), 1396d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560, 42 C.F.R. 441.17,

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 authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the provisions relating to the coverage of and reimbursement for independent laboratory and radiological services.

#### Section 1. Definitions.

- (1) "CLIA" means the Clinical Laboratory Improvement Amendments, 42 C.F.R. Part 493.
- (2) "CMS" means the Centers for Medicare and Medicaid Services.
- (3) "Covered benefit" or "covered service" means an independent laboratory or radiological service for which the department shall reimburse.
- (4) "CPT" means the current procedural terminology coding system.
- (5) "Department" means the Department for Medicaid Services or its designee.
- (6) "Incidental" means a medical procedure or service which:
  - (a)
    1. Is performed at the same time as a more complex primary procedure or service; and
    2. Requires little additional resources; or
  - (b) Is clinically integral to the performance of the primary procedure or service.
- (7) "Independent laboratory" means a laboratory which:
  - (a) Is certified by CMS under the CLIA to perform laboratory services;
  - (b) Is independent of an institutional setting;
  - (c) Is a Medicare-participating facility;
  - (d) Meets the requirements established in 42 C.F.R. Part 493 regarding laboratory certification, registration, or other accreditation as appropriate; and
  - (e) Is a Medicaid-enrolled provider.
- (8) "Laboratory director" means an individual meeting the director of laboratory qualifications established in KRS 333.090(1), (2), or (3).
- (9) "Medicaid-enrolled provider" means a provider participating in the Kentucky Medicaid Program in accordance with 907 KAR 1:671 and 1:672.
- (10) "Medically necessary" or "medical necessity" means a covered benefit determined to be needed in accordance with 907 KAR 3:130.
- (11) "Medicare-participating" means certified by CMS and accepting reimbursement from Medicare.
- (12) "Mutually exclusive" means two (2) laboratory or radiological services:
  - (a) Not reasonably provided in conjunction with one (1) another during the same patient encounter on the same date of service; or

- (b) Representing:
  - 1. Duplicate or very similar items; or
  - 2. Medically inappropriate use of CPT codes.
- (13) "Prescriber" means a physician, podiatrist, optometrist, dentist, oral surgeon, advanced registered nurse practitioner, or physician's assistant who:
  - (a) Is acting within the legal scope of clinical practice under the licensing laws of the state in which the health care provider's medical practice is located;
  - (b) Is in good standing with:
    - 1. The licensure board of jurisdiction for the provider's practice; and
    - 2. CMS;
  - (c) Has the legal authority to write an order for a medically necessary service for the recipient; and
  - (d) If enrolled as a Kentucky Medicaid provider, is in compliance with all requirements of 907 KAR 1:671 and 1:672.
- (14) "Radiological service" means a service in which X-rays or rays from radioactive substances are used for diagnostic or therapeutic purposes.
- (15) "Recipient" is defined in KRS 205.8451(9).
- (16) "Usual and customary" means the uniform amount which a provider charges the general public for a specific procedure or service.

#### Section 2. Coverage.

- (1) The department shall reimburse for a procedure provided by an independent laboratory if the procedure:
  - (a) Is one that the laboratory is certified to provide by Medicare and in accordance with 907 KAR 1:575;
  - (b) Is prescribed in writing or by electronic request by a physician, podiatrist, dentist, oral surgeon, advanced registered nurse practitioner, or optometrist; and
  - (c) Is supervised by a laboratory director.
- (2) The department shall reimburse for a radiological service if the service:
  - (a) Is provided by a facility that:
    - 1. Is licensed to provide radiological services;
    - 2. Meets the requirements established in 42 C.F.R. 440.30;
    - 3. Is certified by Medicare to provide the given service;
    - 4. Is a Medicare-participating facility;
    - 5. Meets the requirements established in 42 C.F.R. Part 493 regarding laboratory certification, registration, or other accreditation as appropriate; and
    - 6. Is a Medicaid-enrolled provider;
  - (b) Is prescribed in writing or by electronic request by a physician, oral surgeon, dentist, podiatrist, optometrist, advanced registered nurse practitioner, or a physician's assistant;
  - (c) Is provided under the direction or supervision of a licensed physician.

Section 3. Exclusions. The department shall not reimburse for an independent laboratory or radiological service under this administrative regulation for the following services or procedures:

- (1) A service provided to a resident of a nursing facility or an intermediate care facility for individuals with an intellectual disability; or
- (2) A court-ordered laboratory or toxicology test.

#### Section 4. Reimbursement.

- (1) The department shall reimburse an independent laboratory the current Medicare rate established by CMS:
  - (a) For Kentucky;

- (b) For the covered service or procedure; and
- (c) In accordance with 42 U.S.C. 1395l(h)(1)(A).
- (2) Reimbursement for a service provided by an independent laboratory shall not exceed the limit established in 42 U.S.C. 1396b(i)(7).
- (3) The department shall reimburse a Medicaid-enrolled provider licensed to provide radiological services:
  - (a) The provider's usual and customary charge for the service; and
  - (b) Not to exceed sixty (60) percent of the upper payment limit established for the procedure in the Medicaid physician fee schedule pursuant to 907 KAR 3:010.

#### Section 5. Provider Participation Conditions.

- (1) To be reimbursed by the department for a service provided in accordance with this administrative regulation, a provider of independent laboratory services or radiological services shall:
  - (a) Be a Medicaid-enrolled provider;
  - (b) Comply with all relevant provisions of KAR Title 907;
  - (c) Comply with the requirements regarding the confidentiality of personal records pursuant to 42 U.S.C. 1320d-8 and 45 C.F.R. parts 160 and 164; and
  - (d) Annually submit documentation of:
    - 1. Current CLIA certification to the department if the provider is an independent laboratory; and
    - 2. A current radiological license to the department if the provider provides radiological services.
- (2) A provider may bill a recipient for a service not covered by the department if the provider informed the recipient of noncoverage prior to providing the service.

#### Section 6. Appeal Rights.

- (1) An appeal of a department decision regarding a recipient based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:563.
  - (2) An appeal of a department decision regarding Medicaid eligibility of an individual shall be in accordance with 907 KAR 1:560.
  - (3) An appeal of a department decision regarding a Medicaid provider based upon an application of this administrative regulation shall be in accordance with 907 KAR 1:671.
- (2 Ky.R. 108; 9-10-1975; 9 Ky.R. 1246; eff. 6-1-1983; Recodified from 904 KAR 1:028, 5-2-86; 12 Ky.R. 1955; eff. 7-2-1986; 13 Ky.R. 1795; eff. 5-14-1987; 15 Ky.R. 676; eff. 9-21-1988; 19 Ky.R. 2147; eff. 4-21-1993; 23 Ky.R. 3640; 4199; 24 Ky.R. 118; eff. 6-18-1997; 35 Ky.R. 2822; 36 Ky.R. 330; eff. 8-12-2009; TAm 7-16-2013; Crt eff. 12-6-2019; 51 Ky.R. 1002; eff. 2-13-2025.)

*LISA D. LEE, Commissioner*

*ERIC C. FRIEDLANDER, Secretary*

APPROVED BY AGENCY: September 30, 2024

FILED WITH LRC: October 9, 2024 at 1:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on December 23, 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 December 16, 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 December 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.

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