CABINET FOR HEALTH AND FAMILY SERVICES
Department for Medicaid Services
Division of Fiscal Management
(Amendment)

907 KAR 1:595. Model Waiver II service coverage and reimbursement policies and requirements.

RELATES TO: KRS 205.8451(9), 314.011, 314A.010(3)(a), 42 C.F.R. 400.203, 42 C.F.R. 440.70, 440.185, 42 U.S.C. 1396, 42 U.S.C. 1396n(c)

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 42 U.S.C. 1315

CERTIFICATION STATEMENT:

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, to qualify for federal Medicaid funds. This administrative regulation establishes the service coverage and reimbursement policies and requirements relating to Model Waiver II services provided to a Medicaid-eligible recipient. These services are provided pursuant to a 1915(c) home and community based waiver granted by the U. S. Department for Health and Human Services in accordance with 42 U.S.C. 1396n(c).

Section 1. Definitions.

(1) "1915(c) home and community based waiver program" means a Kentucky Medicaid program established pursuant to and in accordance with 42 U.S.C. 1396n(c).

(2) "Department" means the Department for Medicaid Services or its designee.

(3) "Federal financial participation" is defined in 42 C.F.R. 400.203.

(4) "Home health agency" means an agency that is:

(a) Licensed in accordance with 902 KAR 20:081;

(b) Medicare certified; and

(c) Medicaid certified.

(5) "Licensed practical nurse (LPN)" is defined by KRS 314.011(9).

(6) "Model Waiver II services" means 1915(c) home and community based waiver program in-home ventilator services provided to a Medicaid-eligible recipient who:

(a) Is dependent on a ventilator; and

(b) Would otherwise require a nursing facility level of care in a hospital based nursing facility that will accept a recipient who is dependent on a ventilator.

(7) "MWMA" means the Kentucky Medicaid Waiver Management Application internet portal located at https://www.chfs.ky.gov/agencies/dms/dca/Pages/mwma.aspx.

(8) "Participant" means a recipient who qualifies for and is receiving Model Waiver II services in accordance with Section 2 of this administrative regulation.

(9) "Person-centered service plan" means a written individualized plan of services.

(10) "Private duty nursing agency" means a facility licensed to provide private duty nursing services:

(a) By the Cabinet for Health and Family Services, Office of Inspector General; and

(b) Pursuant to 902 KAR 20:370.

(11) "Recipient" is defined by KRS 205.8451(9).

(12) "Registered nurse (RN)" is defined by KRS 314.011(5).

(13) "Registered respiratory therapist (RT)" is defined by KRS 314A.010(3)(a).

(14) "Ventilator" means a respiration stimulating mechanism.

(15) "Ventilator dependent" means the condition or state of an individual who:

(a) Requires the aid of a ventilator for respiratory function; and

(b) Meets the high intensity nursing facility patient status criteria established in 907 KAR 1:022.

Section 2. Participant Eligibility and Related Policies.

(1)

(a) To be eligible to receive Model Waiver II services, an individual shall:

1. Be eligible for Medicaid pursuant to 907 KAR 20:010;

2. Require ventilator support for at least twelve (12) hours per day; and

3. Meet ventilator dependent patient status requirements established in 907 KAR 1:022.

(b) In addition to the individual meeting the requirements established in paragraph (a) of this subsection:

1. The individual or a representative on behalf of the individual shall:

a. Apply for 1915(c) home and community based waiver services via the MWMA;

b. Complete and upload into the MWMA a MAP - 115 Application Intake - Participant Authorization; and

c. Complete and upload into the MWMA a MAP - 116 Service Plan – Participant Authorization prior to or at the time the person-centered service plan is uploaded into the MWMA; and

2. A registered nurse on behalf of the individual applying for services shall:

a. Complete and upload into the MWMA:

(i) A MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form;

(ii) A person-centered service plan; and

(iii) A MAP-351A, Medicaid Waiver Assessment; and

b. Upload a MAP-10, Waiver Services – Physician's Recommendation, which shall be signed and dated by a physician.

(c) An individual's eligibility for Model Waiver II services shall begin upon receiving notification of approval from the department.

(2) For an individual to remain eligible for Model Waiver II services:

(a) The individual shall:

1. Maintain Medicaid eligibility requirements established in 907 KAR 20:010; and

2. Remain ventilator dependent pursuant to 907 KAR 1:022;

(b) A Model Waiver II level of care determination confirming that the individual qualifies shall be performed and submitted to the department every six (6) months; and

(c) A MAP-10 Waiver Services – Physician's Recommendation shall be:

1. Signed and dated by a physician every sixty (60) days on behalf of the individual; and

2. Uploaded into the MWMA after being signed and dated in accordance with subparagraph 1 of this paragraph, every sixty (60) days.

(3) A Model Waiver II service shall not be provided to a recipient who is:

(a) Receiving a service in another 1915(c) home and community based waiver program; or

(b) An inpatient of:

1. A nursing facility;

2. An intermediate care facility for individuals with an intellectual disability; or

3. Another facility.

(4) The department shall not authorize a Model Waiver II service unless it has ensured that:

(a) Ventilator dependent status has been met; and

(b) The service:

1. Is available to the recipient;
2. Will meet the need of the recipient; and
3. Does not exceed the cost of traditional institutional ventilator care.

Section 3. Provider Participation Requirements. To participate in the Model Waiver II program, a:

(1) Home health agency shall:

(a) Be a currently participating Medicaid provider in accordance with 907 KAR 1:671;

(b) Be currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and

(c) Meet the home and community based waiver service provider requirements established in:

1. 907 KAR 1:160; or
2. 907 KAR 7:010; or

(2) Private duty nursing agency shall:

(a) Be a currently participating Medicaid provider in accordance with 907 KAR 1:671;

(b) Be currently enrolled as a Medicaid provider in accordance with 907 KAR 1:672; and

(c) Be a licensed private duty nursing agency in accordance with 902 KAR 20:370.

Section 4. Covered Services.

(1) The following shall be covered Model Waiver II services:

(a) Skilled nursing provided by:

1. A registered nurse; or
2. A licensed practical nurse; or

(b) Respiratory therapy.

(2) Model Waiver II services shall be provided by an individual employed by or under contract through a private duty nursing agency or home health agency as a:

(a) Registered nurse;

(b) Licensed practical nurse; or

(c) Registered respiratory therapist.

Section 5. Payment for Services. The department shall reimburse a participating home health agency or private duty nursing agency for the provision of covered Model Waiver II services as established in this section.

(1) Reimbursement shall be as established by the following table:

Service	Unit	Base Rate Effective January 1, 2025
Skilled Services by an LPN	15-minutes	$11.58
Skilled Services by an RN	15-minutes	$15.99
Skilled Services by an RN or LPN	15-minutes	$15.99
Skilled Services by an RT	15-minutes	$13.36

(2) Payment shall not be made for a service to an individual for whom it can reasonably be expected that the cost of the 1915(c) home and community based waiver program

service furnished under this administrative regulation would exceed the cost of the service if provided in a hospital-based nursing facility.

Section 6. Maintenance of Records.

(1) A Model Waiver II service provider shall maintain:

(a) A clinical record for each participant, which shall contain:

1. Pertinent medical, nursing, and social history;

2. A person-centered service plan;

3. A copy of the MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form, signed by the participant or the participant's legal representative at the time of application or reapplication and each recertification thereafter;

4. Documentation of all level of care determinations;

5. All documentation related to prior authorizations including requests, approvals, and denials;

6. Documentation that the participant or legal representative was informed of the procedure for reporting complaints; and

7. Documentation of each service provided that shall include:

a. The date the service was provided;

b. The duration of the service;

c. The arrival and departure time of the provider, excluding travel time, if the service was provided at the participant's home;

d. Progress notes, which shall include documentation of changes, responses, and treatments utilized to evaluate the participant's needs; and

e. The signature of the service provider;

(b) Each MAP-10 Waiver Services – Physician's Recommendation submitted regarding the participant in accordance with Section 2 of this administrative regulation; and

(c) Incident reports as required by Section 7 of this administrative regulation if an incident with the participant occurs.

(2)

(a) Except as provided in paragraph (b) of this subsection, a clinical record or incident report shall be retained for at least six (6) years from the date that a covered service is provided.

(b) If the participant is a minor, a clinical record or incident report shall be retained for three (3) years after the participant reaches the age of majority under state law, if that is a longer time period than the time period required by paragraph (a) of this subsection.

(3) Upon request, a provider shall make information regarding service and financial records available to the:

(a) Department;

(b) Cabinet for Health and Family Services, Office of Inspector General or its designee;

(c) United States Department for Health and Human Services or its designee;

(d) General Accounting Office or its designee;

(e) Office of the Auditor of Public Accounts or its designee; or

(f) Office of the Attorney General or its designee.

Section 7. Incident Reporting.

(1)

(a) There shall be two (2) classes of incidents.

(b) The following shall be the two (2) classes of incidents:

1. An incident; or

2. A critical incident.

(2) An incident shall be any occurrence that impacts the health, safety, welfare, or lifestyle choice of a participant and includes:

(a) A minor injury;

(b) A medication error without a serious outcome; or

(c) A behavior or situation that is not a critical incident.

(3) A critical incident shall be an alleged, suspected, or actual occurrence of an incident that:

(a) Can reasonably be expected to result in harm to a participant; and

(b) Shall include:

1. Abuse, neglect, or exploitation;

2. A serious medication error;

3. Death;

4. A homicidal or suicidal ideation;

5. A missing person; or

6. Other action or event that the provider determines may result in harm to the participant.

(4)

(a) If an incident occurs, the Model Waiver II provider shall:

1. Report the incident by making an entry into the MWMA that includes details regarding the incident; and

2. Be immediately assessed for potential abuse, neglect, or exploitation.

(b) If an assessment of an incident indicates that the potential for abuse, neglect, or exploitation exists:

1. The incident shall immediately be considered a critical incident;

2. The critical incident procedures established in subsection (5) of this section shall be followed; and

3. The Model Waiver II provider shall report the incident to the participant's registered nurse and participant's guardian, if the participant has a guardian, within twenty-four (24) hours of discovery of the incident.

(5) If a critical incident occurs, the:

(a) Individual who witnessed the critical incident or discovered the critical incident shall immediately:

1. Act to ensure the health, safety, and welfare of the at-risk participant; and

2. Report the critical incident by making an entry in the MWMA portal including details of the incident; and

(b) Model Waiver II provider shall:

1. Conduct an immediate investigation and involve the participant's registered nurse in the investigation; and

2. Prepare a report of the investigation, which shall be recorded in the MWMA portal and shall include:

a. Identifying information of the participant involved in the critical incident and the person reporting the critical incident;

b. Details of the critical incident; and

c. Relevant participant information including:

(i) A listing of recent medical concerns;

(ii) An analysis of causal factors; and

(iii) Recommendations for preventing future occurrences.

(6) If a critical incident does not require reporting of abuse, neglect, or exploitation, the critical incident shall be reported via the MWMA within eight (8) hours of discovery.

(7) If a death of a participant occurs, a Model Waiver II provider shall submit to the MWMA mortality data documentation within fourteen (14) days of the death including:

(a) The participant's person-centered service plan at the time of death;

(b) Any current assessment forms regarding the participant;
(c) The participant's medication administration records from all service sites for the past three (3) months along with a copy of each prescription;
(d) Progress notes regarding the participant from all service elements for the past thirty (30) days;
(e) The results of the participant's most recent physical exam;
(f) All incident reports, if any exist, regarding the participant for the past six (6) months;
(g) Any medication error report, if any exists, related to the participant for the past six (6) months;
(h) A full life history of the participant including any update from the last version of the life history;
(i) Names and contact information for all staff members who provided direct care to the participant during the last thirty (30) days of the participant's life;
(j) Emergency medical services notes regarding the participant if available;
(k) The police report if available;
(l) A copy of:
1. The participant's advance directive, medical order for scope of treatment, living will, or health care directive if applicable; and
2. The cardiopulmonary resuscitation and first aid card for any provider's staff member who was present at the time of the incident that resulted in the participant's death;
(m) A record of all medical appointments or emergency room visits by the participant within the past twelve (12) months; and
(n) A record of any crisis training for any staff member present at the time of the incident that resulted in the participant's death.

(8) A Model Waiver II provider shall report a medication error by making an entry into the MWMA.

Section 8. Use of Electronic Signatures. The creation, transmission, storage, and other use of electronic signatures and documents shall comply with the requirements established in KRS 369.101 to 369.120.

Section 9. Federal Financial Participation. The department's coverage of and reimbursement for Model Waiver II services pursuant to this administrative regulation shall be contingent upon:

(1) Federal financial participation for the coverage and reimbursement; and
(2) Centers for Medicare and Medicaid Services' approval for the coverage and reimbursement.

Section 10. Appeal Rights.

(1) An appeal of a negative action regarding a Medicaid recipient shall be appealed in accordance with 907 KAR 1:563.
(2) An appeal of a negative action regarding a Medicaid beneficiary's eligibility shall be appealed in accordance with 907 KAR 1:560.
(3) An appeal of a negative action regarding a Medicaid provider shall be appealed in accordance with 907 KAR 1:671.

Section 11. Incorporation by Reference.

(1) The following material is incorporated by reference:
(a) "MAP - 115 Application Intake - Participant Authorization", June 2015;
(b) "MAP 350, Long Term Care Facilities and Home and Community Based Program Certification Form", June 2015;
(c) "MAP-10 Waiver Services – Physician's Recommendation", June 2015;

(d) "MAP - 116 Service Plan – Participant Authorization", June 2015; and

(e) MAP-351A, Medicaid Waiver Assessment", July 2015.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law:

(a) At the Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621, Monday through Friday, 8 a.m. to 4:30 p.m.; or

(b) Online at the department's Web site at https://www.chfs.ky.gov/agencies/dms/dca/Pages/mIIws.aspx.

(907 KAR 001:595. 24 Ky.R. 2788, 25 Ky.R. 585, 863; eff. 9-16-1998; 38 Ky.R. 697, 968; eff. 12-2-11; 39 Ky.R. 2438; eff. 9-6-2013; TAm 9-30-2013; 42 Ky.R. 968, 2150; eff. 2-5-2016; Cert eff. 1-30-2023; 51 Ky.R. 1558; eff. 7-30-2025.)

LISA D. LEE, Commissioner
ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 20, 2024

FILED WITH LRC: December 23, 2024

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall, if requested, be held on March 24, 2025, 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 March 17, 2025, 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 March 31, 2025. 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 502-564-7476; fax 502-564-7091; email CHFSregs@ky.gov.