

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

907 KAR 7:015. Reimbursement for home and community based waiver services version 2.

RELATES TO: 42 C.F.R. 441 Subparts B, G, 42 U.S.C. 1396a, 1396b, 1396d, 1396n
STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3)

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health and Family Services, Department for Medicaid Services, is required 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 Medicaid Program reimbursement requirements and provisions for home and community based waiver services version 2.

Section 1. Definitions.

- (1) "ADHC" means adult day health care.
- (2) "ADHC center" means an adult day health care center that is:
 - (a) Licensed in accordance with 902 KAR 20:066; and
 - (b) Certified for Medicaid participation by the department.
- (3) "Department" means the Department for Medicaid Services or its designee.
- (4) "Fixed upper payment limit" means the maximum amount the department shall reimburse per unit.
- (5) "HCB" means home and community based waiver.
- (6) "Participant" means a recipient who:
 - (a) Meets the nursing facility level of care criteria established in 907 KAR 1:022; and
 - (b) Meets the eligibility criteria for HCB services established in 907 KAR 7:010.
- (7) "Recipient" is defined by KRS 205.8451(9).

Section 2. HCB Service Reimbursement.

- (1)
 - (a) Except as provided in Section 3, 4, or 5 of this administrative regulation, the department shall reimburse for a home and community based waiver service or item at the lesser of the billed charges or the fixed upper payment limit for each unit.
 - (b) The base payment rate~~[fixed upper payment limits]~~, unit amounts, and reimbursement maximums established in the following table shall apply:

<u>Service</u>	<u>Unit</u>	<u>Base Rate Effective</u> <u>January 1, 2025</u>
<u>Adult Day Health Care - Level I</u>	<u>15-</u> <u>Minute</u>	<u>\$3.82</u>
<u>Adult Day Health Care - Level II</u>	<u>15-</u> <u>Minute</u>	<u>\$4.15</u>
<u>Attendant Care - Traditional</u>	<u>15-</u> <u>Minute</u>	<u>\$7.26</u>
<u>Attendant Care - PDS</u>	<u>15-</u> <u>Minute</u>	<u>\$7.26</u>

<u>Conflict Free Case Management</u>	<u>Per Month</u>	<u>\$425.92</u>
<u>Environmental and Minor Home Modifications</u>	<u>Per Year</u>	<u>Up to \$3,025</u>
<u>Financial Management</u>	<u>Per Month</u>	<u>\$196.63</u>
<u>Goods and Services - Traditional</u>	<u>Per Year</u>	<u>Up to \$4,235</u>
<u>Goods and Services - PDS</u>	<u>Per Year</u>	<u>Up to \$4,235</u>
<u>Home Delivered Meals</u>	<u>Per Meal</u>	<u>\$9.08</u>
<u>Non-Specialized Respite - Traditional</u>	<u>15-Minute</u>	<u>\$5.92</u>
<u>Non-Specialized Respite - PDS</u>	<u>15-Minute</u>	<u>\$5.92</u>
<u>Specialized Respite - Level I</u>	<u>15-Minute</u>	<u>\$5.92</u>
<u>Specialized Respite - Level II</u>	<u>15-Minute</u>	<u>\$12.10</u>
<u>Specialized Respite - Level I (Congregate Setting)</u>	<u>15-Minute</u>	<u>\$5.92</u>
<u>Specialized Respite - Level II (Congregate Setting)</u>	<u>15-Minute</u>	<u>\$12.10</u>

<u>{Service}</u>	<u>{Fixed Upper Payment Limit}</u>	<u>{Unit Amount}</u>	<u>{Maximum}</u>
<u>{PDS coordination}</u>	<u>[\$162.50 per unit]</u>		<u>{Two (2) units per month}</u>
<u>{Case management}</u>	<u>[\$100.00]</u>	<u>{One (1) month}</u>	<u>{One (1) unit per month}</u>
<u>{Attendant care not as a PDS}</u>	<u>[\$24.00 per hour]</u>	<u>{One (1) hour}</u>	<u>{\$200 per day alone or in combination with ADHC services. Travel to and from the participant's residence shall be excluded.</u>
<u>{Home and community supports}</u>	<u>[\$2.88 per unit]</u>	<u>{Fifteen (15) minutes}</u>	<u>{Forty-five (45) hours per week; Maximum of \$200 per day alone or in combination with ADHC services; Travel to and from the participant's residence shall be excluded.</u>

{Non-specialized respite}	{\$2.75 per unit}	{Fifteen (15) minutes}	{ \$200 per day alone or in combination with specialized respite. Non-specialized respite alone or in combination with specialized respite shall not exceed \$4,000 per level of care year. }
{Goods and services}	{ \$3,500 per level of care year }	{Level of care year}	{ \$3,500 per level of care year; shall not be covered unless prior authorized }
{Home delivered meals}	{ \$7.50 per hot meal }	{One (1) hot meal}	{One (1) hot meal per day and five (5) hot meals per week}
{Adult day health care services}	{ \$2.83 per unit for Level I services; \$3.43 per unit for Level II services except for specialized respite, which shall be \$10.00 per unit for Level II }	{Fifteen (15) minutes}	{200 units per week}
{Specialized respite}	{ \$4.00 per unit for Level I; \$10.00 per unit for Level II }	{Fifteen (15) minutes}	{ \$200 per day alone or in combination with non-specialized respite. Specialized respite alone or in combination with non-specialized respite shall not exceed \$4,000 per level of care year. }
{Environmental or minor home adaptation}	{ \$2,500 per level of care year }	{One (1) level of care year}	{ \$2,500 per level of care year; shall not be covered unless prior authorized }

(2)

(a) Reimbursement for a service provided as a PDS shall not exceed the department's allowed reimbursement for the same service as established in the table in subsection (1) of this section.

(b) Participants receiving services through the PDS option shall have three (3) months from the date of level of care recertification to comply with the reimbursement limit established in paragraph (a) of this subsection.

(3)

(a) Three (3) quotes from a prospective provider shall be required for:

1. An environmental or minor home adaptation; or
2. Goods and services.

(b) Documentation justifying the need for the following shall be uploaded into the MWMA:

1. An environmental or minor home adaptation; or

2. Goods and services.

(4) A service listed in subsection (1) of this section shall not be subject to cost settlement by the department unless provided by a local health department.

Section 3. Local Health Department HCB Service Reimbursement.

(1) The department shall reimburse a local health department for HCB services:

- (a) Pursuant to Section 2 of this administrative regulation; and
- (b) Equivalent to the local health department's HCB services cost for a fiscal year.

(2) A local health department shall:

- (a) Each year complete a Home Health and Home and Community Based Cost Report completed in accordance with the Home Health and Home and Community Based Cost Reporting Instructions; and
- (b) Submit the Home Health and Home and Community Based Cost Report to the department at fiscal year's end.

(3) The department shall determine, based on a local health department's most recently submitted annual Home Health and Home and Community Based Cost Report, the local health department's estimated costs of providing HCB services by multiplying the cost per unit by the number of units provided during the period.

(4) If a local health department's HCB service reimbursement for a fiscal year is less than its cost, the department shall make supplemental payment to the local health department equal to the difference between:

- (a) Payments received for HCB services provided during a fiscal year; and
- (b) The estimated cost of providing HCB services during the same time period.

(5) If a local health department's HCB service cost as estimated from its most recently submitted annual Home Health and Home and Community Based Cost Report is less than the payments received pursuant to Section 2 of this administrative regulation, the department shall recoup any excess payments.

(6) The department shall audit a local health department's Home Health and Home and Community Based Cost Report if it determines an audit is necessary.

Section 4. Reimbursement for an ADHC Service.

(1) Reimbursement for an ADHC service shall:

(a) Be made:

- 1. Directly to an ADHC center; and
- 2. For a service only if the service was provided on site and during an ADHC center's posted hours of operation;

(b) If made to an ADHC center for a service not provided during the center's posted hours of operation, be recouped by the department; and

(c) Be limited to 200 units per calendar week per participant.

(2) Level I reimbursement shall be the lesser of:

- (a) The provider's usual and customary charges; or
- (b) The base payment rate established for this service in the table established in Section 3 [~~Two (2) dollars and eighty-three (83) cents per unit of service~~].

(3)

(a) Except as established in paragraph (b) of this subsection, Level II reimbursement shall be the lesser of:

- 1. The provider's usual and customary charges; or
- 2. The base payment rate established for this service in the table established in Section 3 [~~Three (3) dollars and forty-three (43) cents per unit of service~~].

(b)

1. The department shall pay a Level II reimbursement for specialized respite provided by a:

- a. Registered nurse; or

- b. Licensed practical nurse under the supervision of a registered nurse.
- 2. The Level II reimbursement for specialized respite shall be the lesser of:
 - a. The ADHC center's usual and customary charges; or
 - b. The base payment rate established for this service in the table established in Section 3 [Ten (10) dollars per unit of service].
- (c) An ADHC center's reimbursement for Level II services shall be:
 - 1. Per participant; and
 - 2. Based upon the participant's assessed level of care and most recent person-centered service plan.
- (4) An ADHC basic daily service shall constitute care for one (1) participant.
- (5) One (1) unit of ADHC basic daily service shall equal fifteen (15) minutes.
- (6) The level of and reimbursement rate for any ADHC service provided to a participant shall be determined by an assessment of the participant using the Kentucky Home Assessment Tool (K-HAT).

Section 5. Criteria for High Intensity Level II Reimbursement and Home Health Level II Reimbursement.

- (1) Any ADHC service provided to a participant by an ADHC center shall qualify for Level II reimbursement if the participant meets the Level II High Intensity criteria established in the Kentucky Home Assessment Tool (K-HAT).
- (2)
 - (a) Specialized respite care provided to a participant by a home health agency shall qualify for Level II reimbursement if:
 - 1. The participant meets the Level II High Intensity criteria established in the Kentucky Home Assessment Tool (K-HAT); and
 - 2. Provided by a:
 - a. Registered nurse; or
 - b. Licensed practical nurse under the supervision of a registered nurse.
 - (b) The Level II reimbursement for specialized respite provided by a home health agency shall be the reimbursement established in Section 4(3)(b) of this administrative regulation.
- (3) If a participant's assessment determines that:
 - (a) ADHC services to the participant do not qualify for Level II reimbursement, the department shall reimburse the Level I rate to the ADHC center for services provided to the participant; or
 - (b) Specialized respite care to the participant does not qualify for Level II reimbursement, the department shall reimburse the Level I rate to the ADHC center or home health agency for the specialized respite care service.

Section 6. Applicability. The reimbursement provisions and requirements established in this administrative regulation shall:

- (1) Apply to services or items provided to individuals who receive home and community based services version 2 pursuant to 907 KAR 7:010; and
- (2) Not apply to services or items provided to individuals receiving home and community based services version 1 pursuant to 907 KAR 1:160.

Section 7. Appeal Rights. An HCB service provider may appeal a department decision as to the application of this administrative regulation as it impacts the provider's reimbursement in accordance with 907 KAR 1:671, Sections 8 and 9.

Section 8. Incorporation by Reference.

- (1) The following material is incorporated by reference:
 - (a) "Kentucky Home Assessment Tool (K-HAT)", July 1, 2015;

(b) "The Home Health and Home and Community Based Cost Report", November 2007; and

(c) "The Home Health and Home and Community Based Cost Report Instructions", November 2007.

(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 40601, 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/hcb-waiver.aspx> [~~<http://www.chfs.ky.gov/dms/incorporated.htm>].~~

LISA D. LEE, Commissioner

ERIC C. FRIEDLANDER, Secretary

APPROVED BY AGENCY: December 20, 2024

FILED WITH LRC: December 23, 2024 at 12:15 p.m.

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.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Jonathan Scott or Krista Quarles

(1) Provide a brief summary of:

(a) What this administrative regulation does:

This administrative regulation establishes the Medicaid Program reimbursement requirements and provisions for home and community based waiver services.

(b) The necessity of this administrative regulation:

This administrative regulation is necessary to establish the Medicaid Program reimbursement requirements and provisions for home and community based waiver 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 the Medicaid Program reimbursement requirements and provisions for home and community based waiver services.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This administrative regulation assists in the effective administration of the statutes by establishing the Medicaid Program reimbursement requirements and provisions for home and community based waiver 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 delete and update the reimbursement methodology to reflect the approval of new federal 1915(c) waivers. The approvals allow for higher reimbursement for providers and this administrative regulation is being updated to reflect the higher reimbursement.

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

This amendment is necessary to update reimbursement methodology to new, higher rates approved by the federal government.

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

This amendment conforms to the content of the authorizing statutes by implementing a federally approved rate increase.

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

This amendment assists with the affective administration of the statutes by establishing a process to update increased federal reimbursement.

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

DMS anticipates that up to 16,500 recipients will utilize the services available under this waiver.

(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, regulated entities will be able to bill and receive a higher reimbursement.

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

Regulated entities will experience no new costs in complying with this administrative regulation.

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

Recipients will be able to participate in the expanded reimbursement now available for this waiver.

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

(a) Initially:

DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(b) On a continuing basis:

DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(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.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, 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).

(2) Identify the promulgating agency and any other affected state units, parts, or divisions:

Department for Medicaid Services is the promulgating agency, other agencies have not been identified.

(a) Estimate the following for the first year:

Expenditures:DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

Revenues:The Department does not anticipate revenues as a result of this administrative regulation.

Cost Savings:The Department does not anticipate cost savings as a result of this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

(3) Identify affected local entities (for example: cities, counties, fire departments, school districts):

N/A

(a) Estimate the following for the first year:

Expenditures:DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6.

Revenues:The department does not anticipate revenues as a result of this administrative regulation.

Cost Savings:The department does not anticipate cost savings as a result of this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

DMS does not expect additional expenditures, revenues, or cost savings for local entities as a result of this regulation.

(4) Identify additional regulated entities not listed in questions (2) or (3):

Enrolled providers providing supports for community living waiver services.

(a) Estimate the following for the first year:

Expenditures:DMS does not anticipate additional expenditures for regulated entities.

Revenues:Participating providers will benefit from increased reimbursement.

Cost Savings:The department does not anticipate cost savings as a result of this administrative regulation.

(b) How will expenditures, revenues, or cost savings differ in subsequent years?

DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB 6. Future slots and increases will be dependent on the state budgeting process

and federal reimbursement requirements. Revenues: Participating providers will benefit from increased reimbursement. Cost Savings: The department does not anticipate cost savings as a result of this administrative regulation.

(5) Provide a narrative to explain the:

(a) Fiscal impact of this administrative regulation:

DMS anticipates no additional costs beyond those budgeted in 2024 Regular Session HB (6) Future slots and increases will be dependent on the state budgeting process and federal reimbursement requirements.

(b) Methodology and resources used to determine the fiscal impact:

The department worked with interested parties to gain input and perspectives as well as completed a multiyear process working with a contracted third party to re-design the 1915(c) waivers and reimbursement.

(6) Explain:

(a) Whether this administrative regulation will have an overall negative or adverse major economic impact to the entities identified in questions (2) - (4). (\$500,000 or more, in aggregate)

The administrative regulation will not have a major economic impact – as defined by KRS 13A.010 – on regulated entities.

(b) The methodology and resources used to reach this conclusion:

This administrative regulation will provide additional reimbursement for all 1915(c) providers.

FEDERAL MANDATE ANALYSIS COMPARISON

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

42 C.F.R. 441.305(b).

(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.

Federal approval is for a limited number of waiver slots.

(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.