

202 KAR 6:020. CMRS provider cost recovery.

RELATES TO: KRS 65.7621-65.7643, 47 U.S.C. 153(27), 332(d)

STATUTORY AUTHORITY: KRS 65.7633(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 65.7631(3) requires the Kentucky 911 Services Board to distribute a portion of the revenues deposited into the CMRS fund to CMRS providers (carriers) licensed to do business in the Commonwealth, solely for the purpose of reimbursing the actual expenses incurred by the CMRS providers in complying with the wireless E911 service requirements established by the FCC order and any rules and regulations which are or may be adopted by the Federal Communications Commission in carrying out the FCC order. KRS 65.7633(1) requires the Kentucky 911 Services Board to promulgate administrative regulations to implement KRS 65.7621 to 65.7643. This administrative regulation establishes the process by which CMRS carriers may obtain cost recovery for those expenses.

Section 1. A provider shall file a cost recovery plan with the Kentucky 911 Services Board in order to receive reimbursement for NRCs and RCs.

Section 2. Cost Recovery Plan Submission.

(1) Upon receipt of a written request for wireless E911 service from a PSAP (public safety answering point) that has been certified by the board in accordance with KRS 65.7631(6)(a), the CMRS carrier shall:

- (a) Acknowledge receipt of the request back to the PSAP within thirty (30) days; and
- (b) Develop a comprehensive detailed plan for implementation of E911 service for:
 - 1. The requesting PSAP; or
 - 2. The appropriate service area if the CMRS carrier's switch serves more than one (1) PSAP.

(2) A CMRS provider shall provide the technical aspects of the plan to the requesting certified PSAP. The CMRS provider shall submit the plan and the associated cost structure to the board, including a completed "Kentucky CMRS Provider Data Sheet". The board shall request from the provider, if necessary to reach a decision:

- (a) Additional information; or
- (b) A presentation.

(3) Only carrier costs directly attributable to wireless E911 call completion shall be considered for recovery, in accordance with Section 8 of this administrative regulation.

Section 3. Cost Recovery Plan Requirements. A plan submitted to the board shall contain the following information:

- (1) The provider's good faith estimate of its total cost recovery reimbursement claim for providing wireless E911 service in the area served by the requesting PSAP or the appropriate service area for the carrier's switch;
- (2) Specific detail for each NRC and RC the carrier expects to recover:
 - (a) An RC shall be described as subscriber-based or nonsubscriber-based; and
 - (b) An RC shall be based on a calendar month unless a provider chooses a different period on which to base its RCs. If a different period is chosen, the provider shall state the period used and the reasons for using that period;
- (3) A description of the technology solution the CMRS provider has elected to implement and the projected implementation dates;
- (4) A map or other detailed description of the coverage area affected by the plan;
- (5) A list of the PSAPs affected by the provider; and
- (6) The name and office of any individual who is authorized by the carrier to submit sworn paid invoices to the board for reimbursement.

Section 4. Cost Recovery Plan Approval.

(1) A cost recovery plan submitted to the Kentucky 911 Services Board shall be stamped "Confidential" and proprietary information received shall be filed and maintained so as to preserve its confidentiality in accordance with KRS 65.7639.

(2) A cost recovery plan submitted to the board shall be evaluated for conformity with the requirements established in Sections 2 and 3 of this administrative regulation, and shall be approved or disapproved within ninety (90) days of its receipt by a simple majority vote of the board.

(3) Within ten (10) business days of its approval or disapproval, notice of the decision shall be sent to the provider and affected PSAPs, in writing, by certified mail, return receipt requested.

Section 5. Rejection of a Cost Recovery Plan.

(1) If a plan is rejected, the board shall include with the decision specific reasons for its rejection.

(2) The carrier may submit a revised plan to the board.

(3) The provider may appeal the board's rejection in accordance with KRS Chapter 13B.

Section 6. Implementation of Additional Service Using an Approved Plan.

(1) After initial approval of a CMRS provider plan by the board, if the provider wishes to implement service to an additional area in the state using the existing approved plan, the carrier:

(a) Shall send a letter to the board, by certified mail, return receipt requested, proposing the provider's intention to use an approved plan for the implementation of additional service;

(b) Shall include with the letter to the board a map of the area to be served by the planned additional implementation; and

(c) Need not make an additional presentation to the committee if the board agrees that the provider's intention fits within the existing approved plan.

(2) The board shall:

(a) Decide within ninety (90) days of its receipt of the provider's letter if it agrees that the provider's intention to use an approved plan is appropriate for the additional service implementation;

(b) Within ten (10) business days of its decision, notify the provider, in writing, by certified mail, return receipt requested; and

(c) Accept the cost recovery outlined in the approved plan as sufficient to submit a claim for reimbursement.

(3) If the board concludes that the inclusion of the additional service implementation is not appropriate under the approved plan, the board shall:

(a) Within ten (10) business days of its decision, notify the provider, in writing, by certified mail, return receipt requested, identifying its specific concerns; and

(b) Schedule the earliest possible date to meet with the carrier and discuss the identified concerns.

(4) If the board concludes that the inclusion of the additional service implementation is not appropriate under the approved plan, the provider may appeal the board's decision in accordance with KRS Chapter 13B.

Section 7. Revision of an Approved Plan.

(1) In addition to the process established in Section 6 of this administrative regulation, after a cost recovery plan is approved, a subsequent change may be requested by either the CMRS provider or the board.

(2) The board may review an existing plan and request re-substantiation, new documentation, and reapproval of an existing cost recovery plan, or may revoke approval of a plan as necessary, to maintain the integrity of:

- (a) The wireless E911 system as new technologies are deployed; and
- (b) The CMRS fund.
- (3) A provider may submit a revised plan or a change in reimbursement rate as business needs and new technologies dictate.
- (4) The party requesting revision of a plan shall send written notice of the requested changes to the other party by certified mail, return receipt requested.
- (5) An existing approved plan shall remain in effect until a review and decision regarding a requested change is made.
- (6) Except as stated in subsection (7) of this section, if the board revokes approval of a plan, reimbursements from the CMRS fund shall cease immediately, except for RCs and NRCs for which the carrier is obligated by a previously signed contract.
- (7) Failure of a carrier to respond in writing to a board request within the time frame indicated in the request, may be considered cause for the board to revoke approval of a previously approved plan and to cease reimbursement payments to the carrier.

Section 8. Appropriate Costs for Recovery.

- (1) For the purpose of differentiating between CMRS carrier costs and PSAP costs, the point of demarcation shall be the selective router of the contracted wireline E9-1-1 service provider, or similarly placed functional equipment within the E9-1-1 call completion hierarchy. The board shall determine, based upon industry standards, what equipment is to be considered "similarly placed functional equipment".
- (2) Recoverable RCs and NRCs shall include:
 - (a) Trunking;
 - (b) Connection fees between carrier switches or other interface equipment to a selective router;
 - (c) Facilities: T-1's, selective router ports;
 - (d) Routing charges;
 - (e) Operations;
 - (f) Engineering;
 - (g) Switch upgrades;
 - (h) Network design;
 - (i) Test plan development;
 - (j) P-ANI administration;
 - (k) Database management;
 - (l) Reporting requirements;
 - (m) Software required for the operation of wireless E-911;
 - (n) Call counting;
 - (o) Amortization and carrying costs;
 - (p) Costs of complying with CMRS audit; and
 - (q) Other costs attributed to wireless E911 call completion and approved by the board.

The CMRS provider shall provide full rationale for other costs submitted.

- (3) Submission of costs for activities that occurred more than twenty-four (24) months prior to submission of an invoice by the carrier to the Kentucky 911 Services Board shall not be reimbursed.

Section 9. Use of Reimbursed Funds. A CMRS carrier shall use money received from the CMRS fund only for those expenditures and purposes authorized in KRS 65.7631(3), listed in invoices accepted by the board and as previously authorized in an approved cost recovery plan.

Section 10. Claims for Reimbursement.

- (1) After a cost recovery plan is approved, a CMRS provider may file a claim for reimbursement of NRCs and RCs defined in the plan by submitting an invoice or other

documentation, as defined in the plan.

(2) An invoice submitted by a CMRS provider that is consistent with the then-current approved plan shall be paid by the board.

(3) A carrier may appeal a rejected invoice in accordance with KRS Chapter 13B.

(4) The board shall suspend payment of a claim, including a claim previously approved but unpaid by the board, from a carrier who fails to comply with the requirements for remittance as specified by KRS 65.7635, until the carrier complies.

Section 11. Amount of Reimbursement.

(1) The amount of payments by the board to a carrier shall be determined by one (1) of the following methods, as set out in the approved cost recovery plan:

(a) By submission of NRCs necessary for the realization of the carrier's approved plan and actually incurred by the carrier;

(b) By submission of the predefined calendar period's nonsubscriber-based RCs;

(c) By submission of the predefined calendar period's subscriber-based RCs; or

(d) By a combination of methods in paragraphs (a), (b), and (c) of this subsection, as previously approved by the board.

(2) To document costs requested to be reimbursed, a carrier shall submit:

(a) A sworn paid invoice for actual costs or purchases from other vendors or suppliers; and approved documentation for internal costs (e.g., time slips for actual work performed by the carrier's employees) sufficient to establish the internal costs as reasonable and necessary; or

(b) other appropriate documentation approved by the board as part of the cost recovery plan.

(3) The subscriber count reported monthly by a carrier with the CMRS fund remittance and reporting process shall be used to determine the total for subscriber-based RCs. The subscriber count shall be subject to audit by the board, in accordance with KRS 65.7629(13).

Section 12. Payment Frequency. At least once per calendar quarter, the Kentucky 911 Services Board shall approve and pay claims submitted by carriers for reimbursement that are consistent with approved cost recovery plans.

Section 13. Prorated Payments. If the board determines that the total amount of invoices submitted by CMRS carriers and approved by the board exceeds the amount of revenue in the fund in a month or other payment period, the board shall pay a prorated share of the available funds to carriers who have submitted board-approved invoices for the relevant period. The priority of payment shall be as follows:

(1) The balance of approved unpaid invoices, including additional carrying charges at a rate established in the approved plan, shall be paid first; and

(2) Current invoices approved by the board shall then be paid.

Section 14. Amortization of Costs.

(1) Nonrecurring costs may be amortized over a period not longer than twenty-four (24) months, until the amounts claimed for NRCs are fully recouped by the CMRS carrier.

(2) The board may reject a cost recovery plan or revised cost recovery plan if the amortization period of NRCs selected by the carrier is not long enough to ensure adequate monthly surcharge revenues with which to meet the carrier's monthly reimbursement demands.

(3) The interest rate for carrying unreimbursed NRCs shall be established and fully documented in the carrier's cost recovery plan.

(4) The actual cost of borrowing to fund NRCs shall be a legitimate recoverable RC.

(5) Only NRCs shall be amortized.

Section 15. Sunset of 202 KAR 6:020. Pursuant to KRS 65.7631(3)(b), enforcement of this administrative regulation shall sunset upon final payment of all outstanding carrier cost recovery obligations incurred by tier III CMRS providers from June 30, 2011, to January 1, 2016.

Section 16. Incorporation by Reference.

(1) "Kentucky CMRS Provider Data Sheet" (07/09/2007) is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky 911 Services Board, 200 Mero Street, Frankfort, Kentucky 40622, Monday through Friday, 8 a.m. to 4:30 p.m.

(26 Ky.R. 2105; Am. 27 Ky.R. 68; 1770; eff. 12-7-2000; 29 Ky.R. 1010; 1524; eff. 12-18-2002; 33 Ky.R. 4214; 34 Ky.R. 233; eff. 8-31-2007; 46 Ky.R. 133, 895; eff. 9-10-2019.)