

## **907 KAR 10:183. Supplemental payments to participating DRG hospitals.**

RELATES TO: KRS 205.639, 205.640, 42 C.F.R. 440.10, 440.140, 447.250-447.280, 42 U.S.C. 1395ww(d)(4)(C)(i), 1395x(mm), 1396a, 1396b, 1396d

STATUTORY AUTHORITY: KRS 194A.030(2), 194A.050(1), 205.520(3), 205.560(2) and (5), 42 C.F.R. 447.252, 447.253, 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 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 provisions regarding supplemental payments totaling \$195 million in aggregate to hospitals reimbursed via the diagnosis-related group (DRG) reimbursement methodology which agreed, in April 2009, to accept the supplemental payments.

### Section 1. Definitions.

- (1) "Aggregate cost gap" means the difference between a hospital's cost and Medicaid payments received by the hospital for DRG services for the period beginning July 1, 2004 through June 30, 2007 trended to the midpoint of the January 2009 through December 2010 payment period.
- (2) "Department" means the Department for Medicaid Services or its designee.
- (3) "DRG" means diagnosis-related group.
- (4) "Federal financial participation" is defined by 42 C.F.R. 400.203.
- (5) "Pediatric teaching hospital" is defined by KRS 205.565(1).
- (6) "Related to the provider" is defined by 42 C.F.R. 413.17.
- (7) "University hospital" is defined by KRS 205.639(4).

### Section 2. Supplemental Payments to DRG Hospitals Which Have Agreed To Accept the Payments.

- (1) The department shall issue eight (8) payments:
  - (a) To a hospital:
    1. Reimbursed via the DRG reimbursement methodology which agreed, in April 2009, to accept the supplemental payments; and
    2. As a supplement to its reimbursement for inpatient hospital services paid via the DRG reimbursement methodology;
  - (b) Beginning with two (2) payments issued during the calendar quarter ending June 30, 2009, followed by one (1) payment for each subsequent calendar quarter until the quarter ending December 31, 2010; and
  - (c) Representing calendar quarters beginning with the calendar quarter ending March 31, 2009 and ending with the calendar quarter ending on December 31, 2010.
- (2) A supplemental payment referenced in subsection (1) of this section shall be paid from an aggregate supplemental payment pool:
  - (a) That shall not exceed \$195 million; and
  - (b) That shall be reduced by the amount of the share of a hospital, if any, that foregoes its share of the aggregate supplemental payment pool in accordance with Section 3 of this administrative regulation.
- (3) A hospital's share of the aggregate supplemental payment pool referenced in subsection (2) of this section shall:
  - (a) Equal its proportionate share of its aggregate cost gap compared to the aggregate cost gap of all hospitals reimbursed via the DRG reimbursement methodology:
    1. Which agreed to accept the supplemental payments referenced in subsection (1) of this section; and

2. Except for the excluded hospitals referenced in Section 4(2), (3), or (4) of this administrative regulation;
- (b) Be divided into thirty-six (36) equal units; and
- (c) Be paid on a descending balance basis with the:
  1. First quarterly payment representing eight (8) equal units;
  2. Second quarterly payment representing seven (7) equal units;
  3. Third quarterly payment representing six (6) equal units;
  4. Fourth quarterly payment representing five (5) equal units;
  5. Fifth quarterly payment representing four (4) equal units;
  6. Sixth quarterly payment representing three (3) equal units;
  7. Seventh quarterly payment representing two (2) equal units; and
  8. Eighth quarterly payment representing one (1) unit.

**Section 3. Foregoing Supplemental Payments.**

- (1) A hospital shall forego its share of the aggregate supplemental payment pool referenced in Section 2(2) of this administrative regulation if it at any time does not agree to accept the supplemental payments referenced in Section 2(1) of this administrative regulation.
- (2) If a hospital foregoes its share of the aggregate supplemental payment pool referenced in Section 2(2) in this administrative regulation, its share of the aggregate supplemental payment pool shall:
  - (a) Not be paid to the hospital; and
  - (b) Be subtracted from the \$195 million aggregate supplemental payment pool.

**Section 4. Excluded Hospitals.** The department shall not make a supplemental payment referenced in Section 2(1) of this administrative regulation to the following hospitals reimbursed via the DRG reimbursement methodology;

- (1) A hospital which foregoes its share of the aggregate supplemental payment pool in accordance with Section 3 of this administrative regulation;
- (2) A university hospital;
- (3) A pediatric teaching hospital; or
- (4) A hospital which owns, operates, is any way affiliated with, has any common ownership with, or has any common operation with a pediatric teaching hospital.

**Section 5. Federal Financial Participation.** A supplemental payment referenced in Section 2(1) of this administrative regulation shall be contingent upon the department's receipt of federal financial participation for the payment.

**Section 6. Upper Payment Limit.**

- (1) A supplemental payment referenced in Section 2(1) of this administrative regulation shall not exceed the limit established in:
    - (a) 42 C.F.R. 447.271;
    - (b) 42 C.F.R. 447.272; or
    - (c) Any other applicable statute or regulation.
  - (2) This administrative regulation shall not be interpreted to require the department to make a payment which:
    - (a) Would exceed the limit established in:
      1. 42 C.F.R. 447.271;
      2. 42 C.F.R. 447.272; or
      3. Any other applicable statute or regulation; or
    - (b) Is not subject to federal financial participation.
- (33 Ky.R. 2856; 3409; eff. 6-1-2007; 36 Ky.R. 482; 820; eff. 11-6-2009; Recodified from 907 KAR 3:183; eff. 5-3-2011; Crt eff. 12-6-2019.)